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

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572–AB74

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, is amending its regulations to update the seismic safety requirements of the agency. These amendments will provide RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers, and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB.

DATES: This rule will become effective June 14, 2004, unless we receive written adverse comments or a written notice of intent to submit adverse comments on or before June 1, 2004. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held.

Written comments must be received by RUS or carry a postmark or equivalent no later than June 1, 2004.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Agency Web site: http://www.usda.gov/rus/index2/Comments.htm*. Follow the instructions for submitting comments.
- *E-mail: RUSComments@usda.gov*. Include in the subject line of the message "Seismic Safety".
- *Mail:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- *Hand Delivery/Courier:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168 South Building, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading "Seismic Safety". All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A notice of final rule entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) exempted RUS loans and loan guarantees to from coverage under this order.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator of RUS certifies that this rule, if adopted, will not have significant economic impact on a substantial number of small entities. The rule serves to clarify the existing regulation and to generally streamline the review process for such actions. Most of the changes in this rule should result in modest cost savings and ease the regulatory compliance burden for affected applicants.

Information Collection and Recordkeeping Requirements

The reporting and record keeping requirements contained in the rule has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0099, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs covered by this proposed rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans; 10.857, Rural Broadband Access Loans and Loan Guarantees, 10.760, Water and Waste Disposal System for Rural Communities; 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans.

This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS requires borrowers and grant recipients to meet applicable requirements mandated by Federal statutes and regulations to obtain RUS financing. One such requirement is compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., pg. 269).

Subpart C of this part codifies the policies and requirements that RUS and RTB borrowers and grant recipients must meet for new building construction when using funds provided or guaranteed by RUS or RTB, or when obtained through a lien accommodation or subordination approved by RUS or RTB.

The Executive Order requires all Federal agencies to ensure that any new building which is leased for Federal uses or purchased or constructed with Federal assistance is designed and constructed in accordance with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings. The Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) with recommending appropriate and cost-effective seismic design, construction standards and practices.

According to a recent study commissioned by the ICSSC, the model codes and standards that are equivalent to the 1997 NEHRP Recommended Provisions are the 2000 International Building Code and the ASCE 7–98 Minimum Design Loads for Buildings and Other Structures. These codes will be added to the list of codes equivalent to the 1994 or 1997 NEHRP Recommended Provisions. In addition, clarification is added to the acknowledgment.

List of Subjects in 7 CFR Part 1792

Buildings and facilities, Electric power, Grant programs, Loan programs, Reporting and recordkeeping requirements, Rural area, Seismic safety, Telephone.

■ For reasons set for in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1792—COMPLIANCE WITH OTHER FEDERAL STATUTES, REGULATIONS, AND EXECUTIVE ORDERS

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

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*; 42 U.S.C. 7701 *et seq.*; E.O. 12699 (3 CFR,1990 Comp., p. 269).

Subpart C—Seismic Safety

§ 1792.102 [Amended]

■ 2. Section 1792.102 is amended by removing the definition "seismic factor".

■ 3. Sections 1792.103 and 1792.104 are revised to read as follows:

§ 1792.103 Seismic design and construction standards for new buildings.

(a) In the design and construction of federally assisted buildings, the borrowers and grant recipients must utilize the seismic provisions of the most recent edition of those standards and practices that are substantially equivalent to or exceed the seismic safety level in the 1994, 1997, or 2000 editions of the NEHRP Recommended Provisions for the Development of Seismic Regulation for New Buildings.

(b) Each of the following model codes or standards provides a level of seismic safety substantially equivalent to that provided by the 1994 or 1997 NEHRP Recommended Provisions and are appropriate for federally assisted new building construction:

(1) 1997 International Conference of Building Officials (ICBO) Uniform Building Code. Copies of the book or CD–ROM are available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601–2298, phone: 1–800–284–4406, fax: 1–888–329–4226.

(2) 1995 or 1998 American Society of Civil Engineers (ASCE) 7, *Minimum Design Loads for Buildings and Other Structures.* Copies are available from the American Society of Civil Engineers, Publications Marketing Department, 1801 Alexander Bell Drive, Reston, VA 20191–4400, e-mail: *marketing@asce.org*, fax: 1–703–295–6211.

(3) 2000 International Code Council (ICC) *International Building Code.* Copies of the book or CD–ROM are available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601–2298, phone: 1–800–284–4406, fax: 1–888–329–4226.

(c) The NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings is available from the Office of Earthquakes and Natural Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

§ 1792.104 Seismic acknowledgments.

For each applicable building, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the building design stating that seismic provisions pursuant to § 1792.103 of this subpart will be used in the design of the building.

(a) For projects in which plans and specifications are required to be submitted to RUS, this acknowledgement shall be on the title page of the drawings included with the final plans and specifications. This acknowledgement will include the identification and date of the model code or standard that is used in the seismic design of the building project. The plans and specifications must be dated, signed, and sealed by the registered architect or engineer.

(b) For projects in which plans and specifications are not submitted, this acknowledgement shall be in the form

of a statement from the architect or engineer responsible for the building design. The statement shall identify the model code or standard identified that is used in the seismic design of the building or buildings and, shall be dated and signed.

Dated: April 15, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–9611 Filed 4–29–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–130–AD; Amendment 39–13597; AD 2004–09–08]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires relocating the most outboard latch in the right-hand leading edge of the refueling panel, and sealing of the original latch-mounting cutout. This action is necessary to prevent wear of the signal conditioner wiring harness behind the refueling panel, which could result in a short circuit and consequent smoke or fire behind the refueling panel. This action is intended to address the identified unsafe condition.

DATES: Effective June 4, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on March 5, 2004 (69 FR 10374). That action proposed to require relocating the most outboard latch in the right-hand leading edge of the refueling panel, and sealing of the original latch-mounting cutout.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 273 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $310 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $120,120, or $440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–09–08 Saab Aircraft AB: Amendment 39–13597. Docket 2003–NM–130–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers (S/N) 004 through 159 inclusive; and Model SAAB 340B series airplanes, S/Ns 160 through 459 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent wear of the signal conditioner wiring harness behind the refueling panel, which could result in a short circuit and consequent smoke or fire behind the refueling panel, accomplish the following:

Corrective Action

(a) Within 24 months from the effective date of this AD, relocate the most outboard latch in the right-hand leading edge of the refueling panel, and seal the original latch-mounting cutout in the refueling panel; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–57–042, dated May 7, 2003.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116,

FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Saab Service Bulletin 340–57–042, dated May 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in Swedish airworthiness directive 1–187, dated May 8, 2003.

Effective Date

(d) This amendment becomes effective on June 4, 2004.

Issued in Renton, Washington, on April 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9589 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–198–AD; Amendment 39–13600; AD 2004–09–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes, that requires performing, for both main landing gear (MLG), gap measurements of the upper and lower joint gaps; an ultrasonic inspection of the outer cylinder of the MLG for cracks between the downlock fitting attach lugs; and follow-on and corrective actions if necessary. This action is necessary to detect and correct cracks in the outer cylinder of the MLG, which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing. This action is intended to address the identified unsafe condition.

DATES: Effective June 4, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes was published in the **Federal Register** on December 5, 2003 (68 FR 67973). That action proposed to require performing, for both main landing gear (MLG), gap measurements of the upper and lower joint gaps; an ultrasonic inspection of the outer cylinder of the MLG for cracks between the downlock fitting attach lugs; and follow-on and corrective actions if necessary.

Comments

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

Request To Add Overhaul/Replacement Option

One commenter requests that an option for overhaul or replacement be added to paragraph (b) of the proposed AD. The commenter notes that paragraph (b) of the proposed AD only states to do a gap measurement and inspection per Part 1 of the service bulletin and does not give operators an option to do the overhaul or replacement per Part 2 of the service bulletin. The commenter contends that overhauled or new outer cylinders would have been adequately inspected prior to installation, and the identified unsafe condition would have been detected and corrected.

The FAA agrees with the commenter that an option to do the inspection should be added allowing operators to replace the outer cylinder of the main landing gear with a new or overhauled outer cylinder. New or overhauled outer cylinders would have been inspected prior to the installation, and the identified unsafe condition would have been detected and corrected. We have revised paragraph (b) of the final rule and added paragraph (b)(2) to the final rule to give operators an option to "Replace the outer cylinder of the main landing gear with a new or overhauled outer cylinder per Part 2 of the service bulletin."

Request To Refer to Component Maintenance Manual (CMM)

One commenter requests that the reference in paragraph (e) of the proposed AD be changed from the "service bulletin" to "CMM 32–11–40." The commenter notes that the service bulletin does not contain the repair limits; the service bulletin refers to CMM 32–11–40 for repair limits. The commenter concludes that it may be more correct to refer CMM 32–11–40 for repair limits.

We do not agree with the commenter's request to change the reference in paragraph (e) of the proposed AD to CMM 32–11–40. Paragraph (e) of the proposed AD states, "* * * the repair limits specified in the service bulletin," and the service bulletin specifies the repair limits in CMM 32–11–40. Therefore, the repair limits are adequately defined by the wording in the AD. No change to the final rule is necessary in this regard.

Request To Revise "Parts Installation" Paragraph (g) of the Proposed AD

One commenter requests that we revise "Parts Installation" paragraph (g) of the proposed AD to allow operators to install outer cylinders that have been inspected internally during overhaul. The commenter contends that overhauled outer cylinders would have been inspected prior to installation, and the identified unsafe condition would have been detected and corrected. The commenter recommends revising paragraph (g) of the proposed AD to "As of the effective date of this AD, no person may install a MLG on any airplane, unless the outer cylinder of the MLG has been inspected internally during overhaul, or externally per Boeing Service Bulletin 767–32A0196, Revision 2, and follow-on and corrective actions have been accomplished per Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003."

We agree with the commenter that "Parts Installation" paragraph (g) of the proposed AD should be revised. However, we do not agree with the commenter's suggestion to add the phrase "* * * internally during overhaul, or externally per Boeing Service Bulletin 767–32A0196, Revision 2," to paragraph (g) of the proposed AD. Operators may not receive inspection paperwork for overhauled outer cylinders so it may be difficult for operators to show compliance for outer cylinders "inspected internally during overhaul." We do agree with the commenter that overhauled outer cylinders would not have the identified unsafe condition. In addition, new outer cylinders would also not have the identified unsafe condition. Accordingly, we have revised "Parts Installation" paragraph (g) of the final rule by adding "or unless the outer cylinder is new; or unless the outer cylinder has not been installed on any airplane since its last overhaul."

Request To Clarify Details for Gap Measurements

One commenter requests that the details for gap measurements be clarified by revising paragraph (b) of the proposed AD to "* * * do a gap measurement on the upper and lower attach bolts for both drag and side strut downlock fittings in accordance with Figure 1 of Boeing Service Bulletin 767–32A0196 * * *." The commenter notes that the service bulletin specifies that two sets of gap measurements be taken for the side and drag strut downlock fittings.

We do not agree with the commenter's request to clarify the details for gap measurements. The wording in the proposed AD is taken from the steps in Figure 1 of the service bulletin and the actions are to be done "per Part 1 of the service bulletin." Part 1 of the service bulletin contains drawings and notes that show the details for the gap measurements. Therefore, there is not a need for a greater level of detail in the final rule.

Request To Add Text Showing That Gap Measurements Provide Data Supporting the Inspection and That the Manufacturer Can Be Contacted

One commenter requests text be added to the proposed AD that shows gap measurements can be used to provide data to support the inspection and that the manufacturer may be contacted to interpret the gap measurement results.

We do not agree with the commenter's request to add text to show gap measurements can be used to provide data to support the inspection and that the manufacturer may be contacted. Contacting the manufacturer for assistance with the inspection is not a mandatory action and, therefore, is not included in the proposed AD. The service bulletin does state that if operators contact the manufacturer, the manufacturer needs the gap measurement data. There is no need to restate this fact in the proposed AD. Operators should have gap measurement data available if needed, as paragraph (b) of the proposed AD requires operators to take gap measurements. No change is necessary to the final rule.

Conclusion

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

Cost Impact

There are approximately 833 airplanes of the affected design in the worldwide fleet. The FAA estimates that 353 airplanes of U.S. registry will be affected by this AD, that it would take approximately 16 work hours per airplane to accomplish the required gap measurement and inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $367,120, or $1,040 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–09–11 Boeing: Amendment 39–13600. Docket 2002–NM–198–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, line numbers 1 through 883 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the outer cylinder of the main landing gear (MLG), which could result in collapsed MLG and consequent reduced controllability of the airplane during takeoff and landing, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003.

Inspection or Replacement and Corrective Actions

(b) Within 18 months after the effective date of this AD, for both MLG, do the actions in either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform a gap measurement of the upper and lower joint gaps (includes measuring and recording upper and lower joint gaps twice); and an ultrasonic inspection of the outer cylinder of the main landing gear for cracks between the downlock fitting attach lugs, per Part 1 of the service bulletin.

(2) Replace the outer cylinder of the main landing gear with a new or overhauled outer cylinder per Part 2 of the service bulletin.

(c) If no crack is found during the inspection required by paragraph (b)(1) of this AD, before further flight, do the restoration (includes installing shims as applicable, electrical bracket, and cotter pins; and marking the main landing gear) per the service bulletin.

(d) If any crack is found during the inspection required by paragraph (b)(1) of this AD: Before further flight, overhaul the outer cylinder of the MLG or replace the outer cylinder of the MLG with an interchangeable outer cylinder per Part 2 of the service bulletin, except as provided by paragraph (e) of this AD.

(e) If any crack is found in the outer cylinder that cannot be removed within the repair limits specified in the service bulletin, during the overhaul specified in paragraph (d) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 1: When the outer cylinder is re-installed, attach the downlock fittings onto the outer cylinder as specified in the applicable Boeing Component Maintenance Manual (CMM), Document Number 161T1000, Section 32–11–19, Temporary Revision (TR) 32–61, dated March 26, 2002, or Section 32–11–19, pages 712 through 716, dated July 1, 2002, or dated July 1, 2003; or CMM Document Number 161T1000, Section 32–11–20, TR 32–62, dated March 26, 2002, or Section 32–11–20, pages 718 through 722, dated July 1, 2002, or dated July 1, 2003.

Actions Accomplished Per Previous Issue of Service Bulletin

(f) Accomplishment of the applicable actions before the effective date of this AD per Boeing Alert Service Bulletin 767–32A0196, dated August 1, 2002; or Boeing Service Bulletin 767–32A0196, Revision 1, dated September 26, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(g) As of the effective date of this AD, no person may install a MLG on any airplane, unless the outer cylinder of the MLG has been inspected and follow-on and corrective actions have been accomplished per Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003; or unless the outer cylinder is new; or unless the outer cylinder has not been installed on any airplane since its last overhaul.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–32A0196, Revision 2, dated May 15, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on June 4, 2004.

Issued in Renton, Washington, on April 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9590 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–208–AD; Amendment 39–13598; AD 2004–09–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–200C series airplanes, that requires repetitive inspections of the Station 348.2 frame to detect cracking under the stop fittings and intercostal flanges at Stringers 14L, 15L, and 16L; and corrective action if necessary. This action is necessary to prevent rapid decompression of the airplane, and possible separation of the forward entry door from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 4, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–200C series airplanes was published in the **Federal Register** on February 19, 2004 (69 FR 7706). That action proposed to require repetitive inspections of the Station 348.2 frame to detect cracking under the stop fittings and intercostal flanges at Stringers 14L, 15L, and 16L; and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 78 airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be

$17,550, or $1,170 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–09–09 Boeing: Amendment 39–13598. Docket 2003–NM–208–AD.

Applicability: All Model 737–200C series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane, and possible separation of the forward entry door from the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Except as provided by paragraph (b) of this AD: Prior to the accumulation of 46,000 total flight cycles, or within 2,250 flight cycles after the effective date of this AD, whichever occurs later, do detailed and eddy current inspections of the Station 348.2 frame for cracking under the stop fittings and intercostal flanges at Stringers 14L, 15L, and 16L by accomplishing paragraphs 3.A. and 3.B.1. through 3.B.7. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1240, dated April 10, 2003. Do the actions per the service bulletin. Any applicable repair must be accomplished prior to further flight. Repeat the inspections thereafter at intervals not to exceed 4,500 flight cycles.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any crack is found during any inspection required by this AD, and the bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–53A1240, dated April 10, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on June 4, 2004.

Issued in Renton, Washington, on April 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9591 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–341–AD; Amendment 39–13599; AD 2004–09–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. This AD requires a one-time inspection of the potable water and drain lines in the forward and aft cargo compartments for indications of overheating of the heater tape, exposed foam insulation, missing or damaged protective tape, or debris around the potable water fill and drain lines; and corrective action, if necessary. This action is necessary to prevent overheating of the heater tape on potable water fill and drain lines, which may ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 4, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington

98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on April 29, 2003 (68 FR 22639). That action proposed to require a one-time inspection of the potable water and drain lines in the forward and aft cargo compartments for indications of overheating of the heater tape, exposed foam insulation, missing or damaged protective tape, or debris around the potable water fill and drain lines; and corrective action, if necessary.

Comments

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

Request To Allow Deactivation of Heater Tape Prior to Further Flight

Three commenters request that paragraph (b)(1) of the notice of proposed rulemaking (NPRM) be changed so that, after the inspection required by paragraph (b)(1), either replacement or deactivation of the heater tape prior to further flight is allowed. The commenters note that Figure 1 of the service bulletin states that operators may deactivate the heater tape prior to further flight, and replace the heater tape when materials, time, and manpower are available.

One of the commenters states that, due to the proposed 90-day compliance time in the NPRM, it is important not to ground airplanes and to give operators the flexibility to accomplish the heater tape replacement at a more opportune time. Another commenter suggests that a compliance time not to exceed 90 days after the completion of the inspection required by paragraph (b)(1) of the NPRM be allowed so operators can schedule the heater tape replacement at a convenient time.

We agree with the commenters' requests to allow deactivation of the heater tape prior to further flight. We have determined that this action will not affect safety because once the heater tape is deactivated it cannot become overheated. Paragraph (b)(1) of this final rule has been changed accordingly.

We also agree with the commenter's request for a compliance time of within 90 days after the date of the inspection required by paragraph (b)(1) of this AD for operators to replace the heater tape. We find that this is an acceptable amount of time because, as previously mentioned, once the heater tape is deactivated it cannot become overheated. Paragraph (b)(1) of this final rule has been changed accordingly.

Request To Change Wording of Paragraph (b)(2)

One commenter requests either removing the words "prior to further flight" or changing the wording of paragraph (b)(2). This paragraph requires that any exposed foam insulation over the heater tape be covered with a continuous wrap of protective tape, and replacement of any missing or damaged protective tape over the heater tape prior to further flight. We infer that the basis for this request is to give operators the flexibility to accomplish the actions required in paragraph (b)(2) of the AD at a more convenient time.

We agree with the commenter's request to change the wording of paragraph (b)(2) of this AD. We will include a compliance time of within 90 days after the date of the inspection required by paragraph (b)(2) for operators to install or replace protective wrap in areas where the wrap is missing or damaged. We find that this compliance time will not compromise safety because the protective tape is a preventative measure and is not directly related to overheating of the heater tape. Paragraph (b)(2) of this final rule has been changed accordingly.

Request To Allow Deactivation of the Heater Tape for the Potable Water System Per the Operator's Minimum Equipment List (MEL)

One commenter requests the option to deactivate the heater tape for the potable water system per the procedures in the applicable MEL, instead of following the procedures specified in Figure 1 of Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002. The commenter implies that, since the MEL does not require capping and stowing the wires to the heater tape as the service bulletin does, the MEL procedure is more convenient for an operator to accomplish.

We agree with the commenter's request to allow deactivation of the heater tape per the procedures in the applicable MEL as an alternative to accomplishing the procedures specified in the service bulletin. We have determined that this change will not compromise safety. Paragraph (b)(1) of this final rule has been changed accordingly.

Request To Clarify Meaning of "Visually Accessible"

One commenter requests that the term "visually accessible" used in paragraphs (a) and (b) of the NPRM be defined as "only those areas that can be visually accessed and do not require the disassembly of cargo wall liners." The commenter states that Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002, includes the inspection of heater tapes that are located behind cargo wall liners. The areas located behind the cargo wall liners are not visually accessible and are not susceptible to debris collection, therefore they should not be required to be inspected.

We agree with the commenter that the term "visually accessible" should be clarified. The intent of the NPRM was to require inspection of only the visually accessible areas below the cargo floor in the forward and aft cargo compartments. Since publication of the NPRM, Boeing has issued and the FAA has approved Revision 1 of Boeing Service Bulletin 747–30A2079, dated October 16, 2003. Revision 1 of the service bulletin deletes the inspection of areas behind the cargo wall liners and specifies that only areas not covered by floor panel or sidewall panels should be inspected. The term "visually accessible" has been deleted from paragraphs (a) and (b) of this final rule and replaced with "areas not covered by floor panels or sidewall panels." As a result of this change, Note 2 in the body of the NPRM has been omitted from this final rule. Note 2 stated "The inspection of potable water and drain lines in areas not covered by floor panels or sidewall panels areas does not require removal of floor panels." The subsequent Notes in this final rule have been renumbered accordingly.

Request for Distinction Between Fiberglass Insulation and Foam Insulation

One commenter requests that a distinction be made between the types of insulation used in the cargo compartment. The commenter states that the wording of one of the caution

notes in Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002, specifies "a minimum clearance of one inch (2.54 centimeters) between the heater tape and any insulation." The commenter states that some airplanes may have foam insulation surrounding the heater tape, and that the one-inch clearance should be between the heater tape and the floor or fuselage fiberglass insulation, not the foam insulation surrounding the potable water lines.

We agree with the commenter's request to make a distinction between the types of insulation located in the cargo compartment. It was not the intent of the NPRM or the service bulletin to require a one-inch separation between the foam insulation and the heater tape, especially since the foam insulation was designed to be installed directly over the heater tape. Since publication of the NPRM, Boeing has issued and the FAA has approved Revision 1 of Boeing Service Bulletin 747–30A2079, dated October 16, 2003. Revision 1 of the service bulletin deletes the caution note cited by the commenter, which should eliminate the confusion regarding the need for clearance between the heater tape and foam insulation. Revision 1 will be cited in this final rule as the appropriate source of service information; however, paragraph (d) of this AD gives credit to operators who accomplished the actions required by this AD, before the effective date of this AD, per Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002.

Request To Clarify That Foam Insulation Should Only Be Removed If It Exhibits Signs of Overheating

The same commenter also requests that the AD specify that foam insulation should only be removed if it exhibits signs of overheating, or that the AD reference a subsequent service bulletin revision which contains this information. One of the caution notes in Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002, implies that if foam insulation is installed, it must be removed to verify heater tape pitch. The work instructions in Figure 1 of the service bulletin only gives procedures for inspection of the heater tape and foam insulation for signs of overheating. The work instructions do not specify that the foam insulation should be removed to verify heater tape pitch.

We agree with the commenter's request to reference a subsequent revision of the service bulletin. It was not the intent of the NPRM to require removal of undamaged foam insulation to verify the installation pitch of the heater tape. As previously stated, the caution note, which may have caused confusion regarding the intent of the service bulletin, was deleted from Revision 1 of Boeing Service Bulletin 747–30A2079, dated October 16, 2003. Revision 1 will be cited in this final rule as the appropriate source of service information.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

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

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Change to Labor Rate Estimate

After the NPRM was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,129 airplanes (968 passenger and 161 freighter) of the affected design in the worldwide fleet. We estimate that 250 airplanes of U.S. registry will be affected by this AD. We provide the following cost estimates associated with this AD:

COST ESTIMATES

[In dollars]

Type of airplane	Work hours	Hourly labor rate	Parts cost	Cost per airplane	Number of airplanes	Fleet cost
Freighter	10	65	0	650	35	22,750
Passenger	20	65	0	1,300	215	279,500

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

Regulatory Impact

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

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

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–09–10 Boeing: Amendment 39–13599. Docket 2002–NM–341–AD.

Applicability: Model 747 series airplanes, certificated in any category, with lower cargo floors (floors in the lower cargo areas) that are not fully enclosed. A fully enclosed cargo floor is a floor with panels installed between all roller trays in the cargo compartment. A cargo floor that is not fully enclosed is a floor without panels installed between all roller trays in the cargo compartment.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the heater tape on potable water fill and drain lines, which may ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane, accomplish the following:

Debris Removal

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Perform a one-time general visual inspection for foreign object debris (FOD) and contamination on or near potable water and drain lines located below the cargo floor in the forward and aft cargo compartments, in areas not covered by floor panels or sidewall panels. Do the inspection in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–30A2079, Revision 1, dated October 16, 2003. Remove any FOD or contamination observed on or near the potable water or drain lines prior to further flight in accordance with the service bulletin.

(1) Inspect within 18 months since the date of issuance of the original Airworthiness Certificate or within 18 months since the date of issuance of the Export Certificate of Airworthiness, whichever occurs first; or

(2) Inspect within 90 days after the effective date of this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspection for Discrepant Heater Tape

(b) At the applicable time specified in paragraph (c) of this AD: Perform a general visual inspection for discrepancies of potable water and drain lines located below the cargo floor in the forward and aft cargo compartments, in areas not covered by floor panels or sidewall panels, as specified in paragraphs (b)(1) and (b)(2) of this AD. Do the inspection in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–30A2079, Revision 1, dated October 16, 2003.

(1) Inspect potable water and drain lines for indications of overheating of the heater tape, including localized darkening of foam insulation or protective tape. If overheating is observed: Prior to further flight, either replace the defective heater tape, removing floor panels as necessary, in accordance with the service bulletin; deactivate the heater tape in accordance with the provisions and limitations specified in the operator's Minimum Equipment List (MEL); or deactivate the heater tape in accordance with Figure 1 of the service bulletin. If the heater tape is deactivated it must be replaced within 90 days after the date of the inspection required by this paragraph.

(2) Inspect potable water and drain lines for exposed foam insulation and missing or damaged protective tape. If exposed foam insulation is observed: Within 90 days after the date of the inspection required by this paragraph, cover the foam insulation with a continuous wrap of protective tape, in accordance with the service bulletin. If protective tape is missing or damaged: Within 90 days after the date of the inspection required by this paragraph, replace the protective tape in accessible areas in accordance with the service bulletin. It is not necessary to remove floor panels to replace the protective tape.

(c) Do the inspections required by paragraph (b) at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 90 days after the effective date of this AD.

Credit for Actions Accomplished Previously

(d) Actions accomplished before the effective date of this AD, per Boeing Alert Service Bulletin 747–30A2079, dated December 12, 2002, are acceptable for compliance with the corresponding actions required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–30A2079, Revision 1, dated October 16, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on June 4, 2004.

Issued in Renton, Washington, on April 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9592 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") revises Table 1 in section 305.9 of the Commission's Appliance Labeling Rule ("Rule") to incorporate the latest figures for average unit energy costs as published by the Department of Energy

("DOE") in the **Federal Register** on January 27, 2004. Table 1 sets forth the representative average unit energy costs for five residential energy sources, which the Commission revises periodically on the basis of updated information provided by DOE.

DATES: The amendments published in this document are effective April 30, 2004. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the **SUPPLEMENTARY INFORMATION** Section, below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, 202–326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; E-mail: *hnewsome@ftc.gov*.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201. The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in section 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in section 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE. Additional information about the Commission's Appliance Labeling Rule can be found at *www.ftc.gov/appliances*.

I. Representative Average Unit Energy Costs

On January 27, 2004, DOE published the most recent figures for representative average unit energy costs (69 FR 3907). These energy cost figures are for manufacturers to use, in accordance with the guidelines that appear below, to calculate the required secondary annual operating cost figures at the bottom of required EnergyGuides for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. The energy cost figures also are for manufacturers of central air conditioners and heat pumps to use, also in accordance with the below guidelines, to calculate annual operating cost for required fact sheets and in approved industry directories listing these products.[1] The Commission is revising Table 1 to reflect these latest cost figures, as set forth below. The current and future obligations of manufacturers with respect to the use of DOE's cost figures are as follows:

A. Labeling of Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, Water Heaters, and Room Air Conditioners[2]

Manufacturers must continue to use the DOE cost figures that were published and in effect the year the ranges of comparability last changed for the applicable covered product. The cost figures currently applicable to each product category are detailed below. Manufacturers must continue to use these figures until new ranges of comparability for an applicable product are published by the Commission in the future. For example, if the ranges of comparability for a given product last changed in the year 2001, manufacturers should continue to use the 2001 DOE energy cost figures until the Commission announces otherwise.

1. Refrigerators, Refrigerator-Freezers, and Freezers

Manufacturers of refrigerators, refrigerator-freezers, and freezers must continue to derive the operating cost disclosures on labels by using the 2001 Average Representative Unit Costs (8.29 cents per kiloWatt-hour for electricity) published by DOE on March 8, 2001 (66 FR 13917), and by the Commission on May 21, 2001 (66 FR 27856), that were in effect when the current 2001 ranges of comparability for these products were published.[3] Manufacturers must continue to use the foregoing DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

2. Room Air Conditioners

Manufacturers of room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 Average Representative Unit Costs for electricity (8.67 cents per kiloWatt-hour) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296), and that were in effect when the current (1995) ranges of comparability for these products were published.[4] Manufacturers of room air conditioners must continue to use the 1995 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

3. Storage-Type Water Heaters

Manufacturers of storage-type water heaters must continue to derive the operating cost on labels using the 1994 DOE cost figures (8.41 cents per kiloWatt-hour for electricity, 60.4 cents per therm for natural gas, $1.05 per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane), that were in effect when the 1994 ranges of comparability for storage-type water heaters were published.[5] Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for energy then in effect.

4. Heat Pump Water Heaters

Manufacturers of heat pump water heaters must continue to derive the operating cost disclosures on labels by using the 2002 Average Representative

[1] The DOE cost figures are not necessary for making data submissions to the Commission. The required energy use information that manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must submit under section 305.8 of the Rule is no longer operating cost; it is now energy consumption (kilowatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil).

[2] Sections 305.11(a)(5)(i)(H)(2) and (3) of the Rule (16 CFR 305.11(a)(5)(i)(H)(2) and (3)) require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operating cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

[3] The current (2001) ranges for refrigerators, refrigerator-freezers, and freezers were published on November 19, 2001 (66 FR 57867). On November 23, 2003 (68 FR 65631), the Commission announced that the 2001 ranges for these products would remain in effect.

[4] The current (1995) ranges for room air conditioners were published on November 13, 1995 (60 FR 56945). On June 27, 2003 (68 FR 38175), the Commission announced that the 2004 ranges for room air conditioners would remain in effect.

[5] The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On June 27, 2003 (68 FR 38175), the Commission announced that the 1994 ranges for storage-type water heaters would remain in effect.

Unit Costs for electricity (8.28 cents per kiloWatt-hour) that were published by DOE on April 24; 2002 (67 FR 20104), and by the Commission on June 7, 2002 (67 FR 39269), and that were in effect when the current (2002) ranges of comparability for these products were published.[6] Manufacturers of heat pump water heaters must continue to use the 2002 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

5. Gas-Fired Instantaneous Water Heaters

Manufacturers of gas-fired instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1999 Average Representative Unit Costs for natural gas (68.8 cents per therm) and propane (77 cents per therm) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783), and that were in effect when the 1999 ranges of comparability for these products were published.[7] Manufacturers must continue to use the 1999 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for natural gas and propane then in effect.

6. Dishwashers

Manufacturers of compact dishwashers must continue to base the required secondary operating cost disclosures on labels on the 2002 Average Representative Unit Costs for electricity (8.28 cents per kiloWatt-hour) and natural gas (65.6 cents per therm) that were published by DOE on April 24, 2002 (67 FR 20104), and by the Commission on June 7, 2002 (67 FR 39269), and that were in effect when the 2002 ranges of comparability for these products were published. Manufacturers of standard dishwashers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for standard-sized dishwashers on the 2003 Representative Average Unit Costs of Energy for electricity (8.41 cents per kiloWatt-hour) and natural gas (81.6 cents per therm) that were published by DOE on April 9, 2003 (68 FR 17361) and by the Commission on May 5, 2003 (68 FR 23584).[8] Manufacturers of dishwashers must continue to use these cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for electricity and natural gas then in effect.

7. Clothes Washers

Manufacturers of compact clothes washers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels dfor standard-sized dishwashers on the 2003 Representative Average Unit Costs of Energy for electricity (8.41 cents per kilowatt-hour) and natural gas (81.6 cents per therm) that were published by DOE on April 9, 2003 (68 FR 17361) and by the Commission on May 5, 2003 (68 FR 23584). Manufacturers of standard clothes washers must continue to derive the operating cost disclosures on labels by using the 2000 Average Representative Unit Costs for electricity (8.03 cents per kiloWatt-hour) and natural gas (68.8 cents per therm) that were published by DOE on February 7, 2000 (65 FR 5860), and by the Commission on April 17, 2000 (65 FR 20352), and that were in effect when the current (2000) ranges of comparability for these products were published.[9] Manufacturers of clothes washers must continue to use the 2000 DOE cost figures until the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figures for electricity and natural gas then in effect.

B. Operating Cost Information for Central Air Conditioners and Heat Pumps Disclosed on Fact Sheets and in Industry Directories

In the 2004 document announcing whether there will be new ranges of comparability for central air conditioners and heat pumps, the Commission also will announce that operating cost disclosures for these products on fact sheets and in industry directories must be based on the 2003 DOE cost figure for electricity beginning on the effective date of that document.

C. Operating Cost Representations for Products Covered by EPCA But Not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 2004 DOE energy costs in all operating cost representations beginning July 29, 2004.

II. Administrative Procedure Act

The amendments published in this document involve routine, technical and minor, or conforming changes to the Rule's labeling requirements. These technical amendments merely provide a routine change to the cost information in the Rule. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the cost information in the Rule. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In a 1988 document (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[10] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget ("OMB") and assigned OMB Control No.

[6] The current (2002) ranges of comparability for heat pump water heaters were published on June 24, 2002 (67 FR 42478). On June 27, 2003 (68 FR 38175), the Commission announced that the 1994 ranges for heat pump water heaters would remain in effect.

[7] The current ranges for gas-fired instantaneous water heaters were published on December 20, 1999 (64 FR 71019). On June 27, 2003 (68 FR 38175), the Commission announced that the 1999 ranges for gas-fired instantaneous water heaters would remain in effect.

[8] The current ranges for compact dishwashers were published on July 19, 2002 (67 FR 47443). The current ranges for standard dishwashers were published on August 11, 2003 (68 FR 47449).

[9] The current (2003) ranges of comparability for compact clothes washers were published on November 24, 2003 (68 FR 65833). The current (2000) ranges of comparability for standard clothes washers were published on May 11, 2000 (65 FR 30351).

[10] 44 U.S.C. 3501–3520.

3084–0068. OMB has extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305 [AMENDED]

■ Accordingly, 16 CFR Part 305 is amended as follows:

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2004)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.60 ¢/kWh [2,3]	$0.0860/kWh	25.20
Natural Gas	91.0 ¢/therm [4] or $9.35/MCF [5,6]	0.00000910/Btu	9.10
No. 2 heating oil	$1.28/gallon [7]	0.00000923/Btu	9.23
Propane	$1.23/gallon [8]	0.00001346/Btu	13.46
Kerosene	$1.54/gallon [9]	0.00001141/Btu	$11.41

[1] Btu stands for British thermal unit.
[2] kWh stands for kiloWatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–9847 Filed 4–29–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–012]

RIN 1625–AA00

Security and Safety Zone; M/V Spirit of Ontario, Lake Ontario, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security and safety zone for the M/V Spirit of Ontario, the new high-speed ferry that will regularly be transiting the navigable waters of Lake Ontario and the Genesee River, New York. This zone is necessary to protect smaller vessels from the effects of this large passenger vessel's propulsion and maneuvering systems, reduce the risk of collisions, and to protect the M/V Spirit of Ontario from possible terrorist attacks. This security and safety zone is intended to restrict vessels from a portion of Lake Ontario and the Genesee River, NY.

DATES: This rule is effective April 20, 2004, until April 20, 2005. Comments and related material must be received on or before July 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD09–04–012 and are available for inspection or copying at Commanding Officer, Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Craig A. Wyatt, MSO Buffalo, (716) 843–9570.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard vessels and spectators from a new high-speed ferry operating out of Rochester, New York. This is the first high-speed ferry of its kind on the Great Lakes. As such, the general boating public will be unfamiliar with the handling characteristics of such a large high-speed vessel in the area. The Captain of the Port Buffalo has determined that immediate temporary regulations are required to ensure the safety of vessels and spectators in this new environment.

In addition, immediate implementation of this rule is necessary to ensure the protection of the M/V Spirit of Ontario from threats posed by hostile entities and help protect maritime transportation and commerce. The events of September 11, 2001, as well as what has occurred since then, highlight the fact that additional security steps must be taken to protect the public from possible acts of terrorism. This security and safety zone is designed to minimally impact the public while providing a reasonable level of protection and safety.

In addition, after the Coast Guard becomes more familiar during daily operations of the high-speed ferry, the Coast Guard will pursue a permanent rule through normal notice and comment procedures. This will allow the public to give more valuable input after they have the opportunity to see first-hand the impact of hazards such as wake and jet-wash from the high-speed ferry. Furthermore, this temporary rule also allows the public to comment regarding the immediate impact of these

regulations. These comments may also aid in the development of permanent regulations.

Background and Purpose

This temporary final rule is being established to ensure that precautions are taken prior to the initial arrival and initial operations of the M/V Spirit of Ontario in late May. 2004. This safety and security zone will consist of two different exclusionary zones depending on the location of the high-speed ferry. In the Genesee River, the zone will consist of all navigable waters and adjacent shoreline within 25 yards of the vessel. On Lake Ontario, the zone will consist of all navigable waters within 100 yards of the high-speed ferry.

Vessels constrained by their draft are permitted to enter the exclusionary zone for the purposes of safe navigation. When vessels enter the zone under these circumstances, they should only maintain the minimum speed and course necessary for safe navigation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this rule restricts access to a portion of Lake Ontario and the Genesee River, the effect of this rule will not be significant because: (i) the zone is limited in size such that other vessels may pass safety outside the zone; (ii) the Captain of the Port, or the Captain of the Port's designated representative, which is the on-scene patrol commander may authorize vessels to pass within the exclusionary zone on a case by case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate in the vicinity of the M/V Spirit of Ontario in the navigable waters of the United States. This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The security and safety zones are limited in size and vessels may safely pass outside the zone; (ii) the Captain of the Port, or the Captain of the Port's designated representative, which is the on-scene patrol commander may authorize vessels to pass within the exclusionary zone on a case by case basis.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard received no requests for assistance.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lD, that this rule is categorically excluded from further environmental documentation. This rule fits this categorical exclusion because it is a security and safety zone. A Categorical Exclusion Determination is available in the docket for inspection and copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From April 20, 2004, until April 20, 2005, add § 165.T09–012 to read as follows:

§ 165.T09–012 Security and Safety Zone; M/V Spirit of Ontario, Lake Ontario and adjacent waters, New York.

(a) *Location.* (1) *Genesee River.* The following area is designated as a security and safety zone: all navigable waters 25 yards in all directions of the M/V Spirit of Ontario once the vessel is in the Genesee River upstream of line drawn between the Rochester Harbor Light and the East Pier Light.

(2) *Lake Ontario.* The following area is designated as a security and safety zone: all U.S. navigable waters of Lake Ontario 100 yards in all directions of the M/V Spirit of Ontario once the vessel is lake-side (in Lake Ontario) of line drawn between the Rochester Harbor Light and the East Pier Light.

(b) *Definition.* As used in this section, *Captain of the Port* means the Captain of the Port Buffalo. The Captain of the Port may authorize or designate any Coast Guard commissioned officer, warrant, or petty officer to act on his behalf as his representative.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part:

(1) No person or vessel may enter or remain in this zone without the permission of the District Commander or Captain of the Port.

(2) All persons within this zone must obey any direction or order of the District Commander or the Captain of the Port, or the Captain of the Port's designated representative, which will be the on-scene patrol commander.

(3) Vessels constrained by their draft such that they are required to enter the security and safety zone should only operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene patrol commander or the master of the M/V Spirit of Ontario.

(4) When the M/V Spirit of Ontario approaches within 25 yards of any vessel, on the Genesee River, that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Buffalo or the on-scene patrol commander to do otherwise.

Dated: April 20, 2004.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port, Buffalo.

[FR Doc. 04–9774 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–035]

RIN 1625–AA00

Safety Zone; Metro North Railroad Bridge Over the Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters surrounding the Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut. This zone is necessary to protect vessels that wish to transit past the bridge due to an allision that occurred on April 11, 2004, destroying the fendering system under the bridge's western span, thereby exposing the bridge piers to the possibility of direct allision with an unprotected bridge structure. In addition, the damaged fendering system extends into the navigable channel, causing a hazard to navigation. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 12 a.m. April 17, 2004 until 11:59 p.m. on June 15, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–035 and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to restrict and control maritime traffic while transiting in the waters of

the Norwalk River under the Metro North Railroad Bridge, Norwalk, Connecticut. On April 11, 2004, the fendering under the western span of the bridge was completely destroyed by an allision with two stone barges. The bridge piers under the western span of the bridge are now exposed to the possibility of direct allision by traffic passing under the bridge. In addition, the damaged fendering system extends into the navigable channel and presents a hazard to navigation. The delay inherent in the NPRM process is contrary to the public interest and impracticable as immediate action is needed to prevent further allision with the bridge and prevent collision with the damaged fendering system that extends into the channel. A temporary safety zone was implemented (CGD01–04–050) effective from 11 a.m. on April 11, 2004 to 11:59 p.m. April 16, 2004. Due to the extensive damage on the bridge and the need for work to be approved by various State and Federal agencies prior to commencing, an extension of that temporary rulemaking is necessary.

Background and Purpose

On Sunday April 11, 2004 at approximately 2:40 a.m., two barges filled with stone being pushed by a barge hit the pilings of the fendering system on the western span of the Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut. The allision by these barges completely destroyed the fendering system under the western span of the bridge. While the bridge has been determined to be safe for rail traffic, the lack of a fendering system, that is designed to protect bridge piers from direct allision, leaves the bridge piers exposed to the possibility of direct damage. Further damage to the bridge pier could impede rail traffic and the safety of the bridge and public utilizing the rail service. In addition, the fendering system that was damaged extends into the navigable channel and presents a hazard to navigation. The Coast Guard is establishing a safety zone in all waters of the Norwalk River in Norwalk, Connecticut within 100 yards of the Metro North Railroad Bridge. This safety zone is necessary to protect the safety of the bridge, bridge operations and public using the Metro North Railroad from further allision directly with the bridge piers. It is also necessary to prevent vessels from colliding with the damaged fendering system currently extending into the channel.

Discussion of Rule

This regulation establishes a temporary safety zone on the waters of the Norwalk River within 100 yards of the Metro North Railroad Bridge, Norwalk Connecticut. This action is intended to prohibit vessel traffic in a portion of Norwalk River to prevent further damage to the Metro North Railroad Bridge, which may be caused due to lack of a fendering system around bridge piers around the western span of the Bridge. The safety zone is in effect from 12 a.m. on April 17, 2004 until 11:59 p.m. on June 15, 2004. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation of the rest of the Norwalk River except for the portion delineated by this rule. However, recreational vessels may pass on the east side of the channel, and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound. Other entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: the safety zone is only for a temporary period, vessels may transit in all areas of the Norwalk River other than the area of the safety zone, recreational vessels may pass on the east side of the channel, and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of the Norwalk River covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 12 a.m. April 17, 2004 to 11:59 p.m. on June 15, 2004 add temporary § 165.T01–035 to read as follows:

§ 165.T01–035 Safety Zone: Metro North Railroad Bridge over the Norwalk River, Norwalk CT.

(a) *Location.* The following area is a safety zone: All waters of the Norwalk River, Norwalk, Connecticut, within 100 yards of the Metro North Railroad Bridge.

(b) *Regulations.* (1) In accordance with the general regulations in 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound, except:

(i) Recreational vessels are authorized to pass under the bridge's east span.

(ii) All commercial vessels may pass under the bridge's east span upon the request and authorization by the Captain of the Port, Long Island Sound.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: April 17, 2004.

Joseph J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 04–9773 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

RIN 1660–AA29

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Extension of Term of Arrangement

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

ACTION: Interim final rule.

SUMMARY: FEMA is changing the current Financial Assistance/Subsidy Arrangement (the Arrangement) to extend its term of October 1, 2002, through May 1, 2004, to a term of October 1, 2002, through September 30, 2004. The Arrangement defines the duties and responsibilities of insurers that sell and service insurance under the Write Your Own (WYO) program. It also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers.

DATES: Effective May 2, 2004. Comments on this interim final rule should be received on or before June 29, 2004.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the

General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *FEMA-RULES@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, FEMA, 500 C Street, SW., Washington, DC 20472, (phone) 202–646–3429, (facsimile) 202–646–3445, or (e-mail) *Edward.Connor@dhs.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2002, FEMA published in the **Federal Register**, 67 FR 51768, a final rule to revise the effective date of the Arrangement to agree with the new Arrangement year beginning October 1, 2002, and ending September 30, 2003.

FEMA had planned to make significant changes in the Arrangement regarding litigation issues effective October 1, 2003. The proposed rule for these changes was not published until October 14, 2003, 68 FR 59146. As an interim measure, an interim final rule was published September 5, 2003, 68 FR 52700, extending the Arrangement term beginning October 1, 2002, to December 31, 2003. No comments were received on that interim final rule. It was anticipated that comments on the October 14, 2003, proposed rule could be reviewed and a final rule published effective January 1, 2004. This did not happen; rather, a second interim final rule was published on December 31, 2003, 68 FR 75453, extending the Arrangement term beginning October 1, 2002, to May 1, 2004. FEMA received one comment on the second interim final rule: an insurance association commented on the expense allowance. It is not feasible to complete the rulemaking for an effective date of May 2, 2004.

Under this extension of the current Arrangement, the expense allowance provided for in Article III.B of Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement will remain the same for the additional five months, including the additional expense allowance of up to two percentage points for meeting marketing goals. This additional expense allowance will be based on the period May 2, 2004, through September 30, 2004. Please note that there was an error in the supplementary information of the second interim final rule that was published on December 31, 2003. The additional expense allowance was supposed to be provided from October 1, 2002, through May 1, 2004, consistent with the extended term of the Arrangement. It was inadvertently only provided until April 1, 2004. With this interim final rule, FEMA corrects that error and provides the additional expense allowance through September 30, 2004.

National Environmental Policy Act

This interim final rule falls within the exclusion category 44 CFR 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to an OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow, we have concluded that this interim final rule is neither economically significant nor a significant regulatory action under the Executive Order. The interim final rule will not have an annual effect on the economy of $100 million or more nor will it adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. The public benefit of this rule is the continuation of the WYO Arrangement without interruption. Therefore, we believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to be published without prior public comment and without a full 30-day

delayed effective date, so as to allow for the continuation of the Arrangement.

List of Subjects in 44 CFR Part 62

Flood insurance.

■ Accordingly, FEMA amends 44 CFR part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. In Appendix A to part 62, revise the first sentence of Article V, Section A to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

Article V * * *

A. This Arrangement shall be effective for the period October 1, 2002 through September 30, 2004. * * *

* * * * *

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–9827 Filed 4–29–04; 8:45 am]

BILLING CODE 9110–12–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**.

DATES: *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 V				
Illinois: Aubum, City of, Sangamon County.	170944	May 13, 1980, Emerg.; August 19, 1985, Reg.; May 3, 2004; Susp.	5/3/2004	5/3/2004
Chatham, Village of, Sangamon County.	170601	July 25, 1975, Emerg.; September 2, 1981, Reg.; May 3, 2004, Susp.	do*	Do.
Divemon, Village of, Sangamon County.	170949	October 25, 1983, Emerg.; May 15, 1984, Reg.; May 3, 2004, Susp.	do	Do.
Jerome, Village of, Sangamon County.	171004	January 16, 1980, Emerg.; November 16, 1983, Reg.; May 3, 2004, Susp.	do	Do.
Leland Grove, City of, Sangamon County.	170925	March 24, 1977, Emerg.; December 16, 1982, Reg.; May 3, 2004, Susp.	do	Do.
Loami, Village of, Sangamon County.	170795	July 29, 1975, Emerg.; September 4, 1985, Reg.; May 3, 2004, Susp.	do	Do.
Pawnee, Village of, Sangamon County.	170602	July 10, 1975, Emerg.; May 3, 1982, Reg.; May 3, 2004, Susp	do	Do.
Pleasant Plains, Village of, Sangamon County.	170798	February 4, 1976, Emerg.; September 2, 1981, Reg.; May 3, 2004, Susp.	do	Do.
Riverton, Village of, Sangamon County.	170603	November 20, 1981, Emerg.; December 1, 1981, Reg.; May 3, 2004, Susp.	do	Do.
Rochester, Village of, Sangamon County.	170840	March 2, 1976, Emerg.; June 15, 1982, Reg.; May 3, 2004, Susp.	do	Do.
Sangamon County, Unincorporated Areas.	170912	July 29, 1975, Emerg.; January 6, 1983, Reg. May 3, 2004, Susp.	do	Do.
Sherman, Village of, Sangamon County.	170969	April 28, 1983, Emerg.; November 16, 1983, Reg.; May 3, 2004, Susp.	do	Do.
Springfield, City of, Sangamon County.	170604	November 28, 1975, Emerg.; February 2, 1982, Reg.; May 3, 2004, Susp.	do	Do.
Thayer, Village of, Sangamon County.	170804	November 25, 1975, Emerg.; May 3, 1982, Reg.; May 3, 2004, Susp.	do	Do.
Williamsville, Village of, Sangamon County.	171041	September 14, 1995, Emerg.; May 3, 2004, Reg.; May 3, 2004; Susp.	do	Do.
Region II				
New Jersey: Greenwich, Township of, Warren County.	340483	May 19, 1975, Emerg.; August 2, 1982, Reg.; May 17, 2004, Susp.	5/17/2004	5/17/2004
New York: Schuyler Falls, Town of, Clinton County..	360172	January 21, 1977, Emerg.; September 24, 1984, Reg.; May 17, 2004, Susp.	do	Do.
Victor, Village of, Ontario County.	361648	March 12, 1996, Emerg.; May 17, 2004, Reg.; May 17, 2004, Susp.	do	Do.
Woodstock, Town of, Ulster County.	360868	May 28, 1975, Emerg.; September 27, 1991, Reg.; May 17, 2004, Susp.	do	Do.
Region V				
Ohio: Addyston, Village of, Hamilton County.	390205	May 28, 1976, Emerg.; August 15, 1983, Reg.; May 17, 2004, Susp.	do	Do.
Amberley, Village of, Hamilton County.	390206	November 16, 1973, Emerg.; September 30, 1980, Reg.; May 17, 2004, Susp.	do	Do.
Arlington Heights, Village of, Hamilton County.	390207	February 23, 1990, Reg.; May 17, 2004, Susp	do	Do.
Blue Ash, City of, Hamilton County.	390208	November 7, 1973, Emerg.; August 1, 1980, Reg.; May 17, 2004, Susp.	do	Do.
Cincinnati, City of, Hamilton County.	390210	June 27, 1973, Emerg.; October 15, 1982, Reg.; May 17, 2004, Susp.	do	Do.
Cleves, Village of, Hamilton County.	390211	August 19, 1975, Emerg.; February 1, 1984, Reg.; May 17, 2004, Susp.	do	Do.

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
Elmwood Place, Village of, Hamilton County.	390213	February 28, 1975, Emerg.; December 18, 1984, Reg.; May 17, 2004, Susp.	.....do	Do.
Evendale, Villeage of, Hamilton County.	390214	June 27, 1977, Emerg.; September 29, 1986, Reg.; May 17, 2004, Susp.	.....do	Do.
Fairfax, Village of, Hamilton County.	390215	September 12, 1974, Emerg.; November 15, 1979, Reg.; May 17, 2004, Susp.	.....do	Do.
Glendale, Village of, Hamilton County.	390217	October 22, 2003, Emerg.; May 17, 2004, Reg.; May 17, 2004, Susp.	.....do	Do.
Greenhills, Village of, Hamilton County.	390219	May 6, 1975, Emerg.; September 1, 1993, Reg.; May 17, 2004, Susp.	.....do	Do.
Hamilton County, Unincorporated Areas.	390204	July 2, 1973, Emerg.; June 1, 1982, Reg.; May 17, 2004, Susp	.....do	Do.
Harrison, City of, Hamilton County.	390220	July 7, 1975, Emerg.; April 3, 1985, Reg.; May 17, 2004, Susp	.....do	Do.
Indian Hill, Village of, Hamilton County.	390221	July 18, 1975, Emerg.; May 1, 1985, Reg.; May 17, 2004, Susp.	.....do	Do.
Lockland, Village of, Hamilton County.	390223	September 6, 1978, Emerg.; September 4, 1986, Reg.; May 17, 2004, Susp.	.....do	Do.
Loveland, City of, Hamilton County.	390068	November 15, 1974, Emerg.; September 1, 1978, Reg.; May 17, 2004, Susp.	.....do	Do.
Madeira, City of, Hamilton County.	390225	September 19, 1974, Emerg.; November 15, 1979, Reg.; May 17, 2004, Susp.	.....do	Do.
Montgomery, City of, Hamilton County.	390228	October 24, 1975, Emerg.; June 25, 1976, Reg.; May 17, 2004, Susp.	.....do	Do.
Mount Healthy, City of, Hamilton County.	390229	November 28, 1975, Emerg.; December 15, 1978, Reg.; May 17, 2004, Susp.	.....do	Do.
Newtown, Village of, Hamilton County.	390230	August 27, 1975, Emerg.; December 15, 1983, Reg.; May 17, 2004, Susp.	.....do	Do.
North Bend, Village of, Hamilton County.	390231	March 22, 1976, Emerg.; October 18, 1983, Reg.; May 17, 2004, Susp.	.....do	Do.
North College Hill, City of, Hamilton County.	390232	May 6, 1975, Emerg.; September 29, 1986, Reg.; May 17, 2004, Susp.	.....do	Do.
Reading, City of, Hamilton County.	390234	August 27, 1975, Emerg.; December 18, 1986, Reg.; May 17, 2004, Susp.	.....do	Do.
Sharonville, City of, Hamilton County.	390236	May 20, 1975, Emerg.; January 2, 1987, Reg.; May 17, 2004, Susp.	.....do	Do.
Springdale, City of, Hamilton County.	390877	October 1, 1980, Emerg.; December 5, 1990, Reg.; May 17, 2004, Susp.	.....do	Do.
St. Bernard, City of, Hamilton County.	390235	May 13, 1975, Emerg.; September 19, 1984, Reg.; May 17, 2004, Susp.	.....do	Do.
Terrace Park, Village of, Hamilton County.	390633	November 14, 1975, Emerg.; January 5, 1984, Reg.; May 17, 2004, Susp.	.....do	Do.
Woodlawn, Village of, Hamilton County.	390239	September 10, 1975, Emerg.; September 4, 1986, Reg.; May 17, 2004, Susp.	.....do	Do.
Wyoming, City of, Hamilton County.	390240	May 19, 1975, Emerg.; March 2, 1979, Reg.; May 17, 2004, Susp.	.....do	Do.
Region VIII				
North Dakota: Fort Yates, City of, Sioux County.	380111	February 24, 1975, Emerg.; November 5, 1985, Reg.; May 17, 2004, Susp.	.....do	Do.
Sioux County, Unincorporated Areas.	380321	March 21, 1978, Emerg.; January 16, 1987, Reg.; May 17, 2004, Susp.	.....do	Do.
Solen, City of, Sioux County.	380114	March 14, 1978, Emerg.; June 4, 1987, Reg.; May 17, 2004, Susp.	.....do	Do.
Standing Rock Indian Reservation, Sioux County.	380697	March 26, 1997, Emerg.; May 4, 1998, Reg.; May 17, 2004, Susp.	.....do	Do.
South Dakota: Blunt, City of, Hughes County.	460039	April 29, 1975, Emerg.; May 15, 1980, Reg.; May 17, 2004, Susp.	.....do	Do.

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
Corson County, Unincorporated Areas.	460237	February 12, 1997, Emerg.; June 8, 1998, Reg.; May 17, 2004, Susp.	.....do	Do.
Fort Pierre, City of, Stanley County.	465419	May 4, 1972, Emerg.; January 12, 1973, Reg.; May 17, 2004, Susp.	.....do	Do.
Hughes County, Unincorporated Areas.	460271	February 24, 1997, Emerg.; July 1, 1998, Reg.; May 17, 2004, Susp.	.....do	Do.
Pierre, City of, Hughes County.	460040	April 16, 1975, Emerg.; June 4, 1980, Reg.; May 17, 2004, Susp.	.....do	Do.
Standing Rock Indian Reservation, Corson County.	461219	March 26, 1997, Emerg.; May 4, 1998, Reg.; May 17, 2004, Susp.	.....do	Do.
Stanley County, Unincorporated Areas.	460287	February 12, 1997, Emerg.; June 8, 1998, Reg.; May 17, 2004, Susp.	.....do	Do.

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

Dated: April 22, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–9828 Filed 4–29–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[IB Docket No. 98–172, FCC 02–317]

Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rules which were published in the **Federal Register** on April 8, 2003, 68 FR 16962. The rules are related to the 18 GHz band plan, blanket licensing rules, and relocation.

DATES: Effective April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1499.

SUPPLEMENTARY INFORMATION:

Background

The Commission adopted a Second Order on Reconsideration amending several of the Commission's rules regarding the 18 GHz band plan, blanket licensing rules, and relocation rules adopted in an earlier Report and Order, 65 FR 54144, September 7, 2000. On April 8, 2003, the **Federal Register** published a summary of the final rule in the above captioned proceeding.

Need for Correction

As published, the final rules contain an error in § 101.147. Instruction 23 of the rules amended § 101.147 by revising paragraph (r), but the revised text of paragraph (r) was inadvertently set out as the whole section without any subsections. This error resulted in the removal of paragraphs (r)(1) through (r)(10).

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

■ Accordingly, 47 CFR part 101 is corrected by making the following correcting amendments:

PART 101—FIXED MICROWAVE SERVICES

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

■ 2. Revise paragraph (r) of § 101.147 to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz:* Operation of stations using frequencies in these bands is permitted to the extent specified in this paragraph. Until November 19, 2012, stations operating in the band 18.3–18.58 GHz that were licensed or had applications pending before the Commission as of November 19, 2002 shall operate on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. Until October 31, 2011, operations in the band 19.26–19.3 GHz and low power systems operating pursuant to § 101.147(r)(10) shall operate on a co-primary basis. Until June 8, 2010, stations operating in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. Until June 8, 2010, stations operating in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter. After November 19, 2012, stations operating in the band 18.3–18.58 GHz are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After June 8, 2010, operations in the 18.58–19.30 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. After November 19, 2002, no new applications for part 101 licenses will be accepted in the 18.3–18.58 GHz band. After June 8, 2000, no new applications for part 101 licenses will be accepted in the 18.58–19.3 GHz band. Licensees may use either a two-way link or one frequency of a frequency pair for a one-

way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations, consistent with the above conditions related to the 18.58–19.3 GHz band.)

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (received) (MHz)	Receive (transmit) (MHz)
18141.0	N/A.

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (received) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	N/A
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18553.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	19565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0
340 MHz Separation	
18585.0	18925.0
18595.0	18935.0
18605.0	18945.0
18615.0	18955.0
18625.0	18965.0
18635.0	18975.0
18645.0	18985.0
18655.0	18995.0
18665.0	19005.0
18675.0	19015.0
18685.0	19025.0
18695.0	19035.0
18705.0	19045.0
18715.0	19055.0
18725.0	19065.0
18735.0	19075.0
18745.0	19085.0
18755.0	19095.0
18765.0	19105.0
18775.0	19115.0
18785.0	19125.0
18795.0	19135.0
18805.0	19145.0
18815.0	19155.0

(5) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
340 MHz Separation	
18590.0	18930.0
18610.0	18950.0
18630.0	18970.0
18650.0	18990.0
18670.0	19010.0
18690.0	19030.0
18710.0	19050.0
18730.0	19070.0
18750.0	19090.0
18770.0	19110.0
18790.0	19130.0
18810.0	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

(8) 220 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17810.0	18470.0
18030.0	19370.0
18250.0	19590.0

(9) The following frequencies are available for point-to-multipoint DEMS Systems, except that channels 35–39 were available only to existing 18 GHz DEMS licensee as of March 14, 1997 and are now available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the U.S. borders. Systems operating on Channels 25–34 must cease operations as of January 1, 2001, except that those stations on these channels within 150 km of the coordinates 38° 48′ N/76° 52′ W (Washington, DC, area) and 39° 43′ N/101° 46′ W (Denver, Colorado area) must cease operations of June 5, 1997:

Channel No.	Nodal station frequency band (MHz) limits	User station frequency band (MHz) limits
25	18,820–18,830	19,160–19,170
26	18,830–18,840	19,170–19,180
27	18,840–18,850	19,180–19,190
28	18,850–18,860	19,190–19,200
29	18,860–18,870	19,200–19,210
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	19,240–19,250
34	18,910–18,920	19,250–19,260
35	24,250–24,290	25,050–25,090
36	24,290–24,330	25,090–25,130
37	24,330–24,370	25,130–25,170
38	24,370–24,410	25,170–25,210
39	24,410–24,450	25,210–25,250

(i) Each station on channels 25 through 34 will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee. (ii) A frequency pair on channels 25 through 34 may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 101.105 are met. (iii) Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509. Stations must also comply with international coordination agreements.

(10) Special provision for low power systems in the 17700–19700 MHz band: Notwithstanding other provisions in this rule part, and except for specified areas around Washington, DC, and Denver, Colorado, licensees of point-to-multipoint channel pairs 25–29 identified in paragraph (r)(9) of this section may operate multiple low power transmitting devices within a defined service area. New operations are prohibited within 55 km when used outdoor and within 20 km when used indoor of the coordinates 38° 48′ N/76° 52′ W and 39° 43′ N/104° 46′ W. The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are available to private and common carriers and are subject to the following requirements for the low power transmitting devices:

(i) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power,

(ii) A frequency tolerance of 0.001% must be maintained; and

(iii) The mean power of emissions shall be attenuated in accordance with the following schedule:

(A) In any 4 kHz band, the center frequency of which is removed from the center frequency of the assigned channel by more than 50 percent of the channel bandwidth and is within the bands 18,820–18,870 MHz or 19,160–19,210 MHz:

$A = 35 + .003(F - 0.5B)$ dB

or,

80 dB (whichever is the lesser attenuation).

Where:

A=Attenuation (in decibels) below output power level contained within the channel for a given polarization.

B=Bandwidth of channel in kHz.

F=Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the channel in kHz.

(B) In any 4 kHz band the center frequency of which is outside the bands 18.820–18.870 GHz: At least $43 + 10\log_{10}$ (mean output power in watts) decibels.

(iv) Low power stations authorized in the band 18.8–19.3 GHz after June 8, 2000 are restricted to indoor use only. No new licenses will be authorized for applications received after April 1, 2002.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9882 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–4133–10; I.D. 042604C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,084 square nautical miles (nm^2) (3,718 km^2) east of Nantucket, MA for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours May 2, 2004, through 2400 hours May 16, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On April 21, 2004, NMFS Aerial Survey Team reported a sighting of four right whales in the proximity of 41° 13′ N lat. and 69° 24′ W long. This position lies east of Nantucket, MA. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bounded by the following coordinates:

41°3′N, 69°52′W (NW Corner)
41°33′N, 69°38′W
41°00′N, 69°05′W
41°07′N, 68°55′W
40°53′N, 68°55′W
40°53′N, 69°52′W
41°33′N, 69°52′W (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: In April and May, this DAM zone overlaps the year round Northeast multispecies' Closed Area I. In May, this DAM zone overlaps the Northeast multispecies' Georges Bank Seasonal Closure Area. This DAM action does not supersede Northeast multispecies closures found at 50 CFR 648.81.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line,

which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and

5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours May 2, 2004, through 2400 hours May 16, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EAs prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: April 27, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–9843 Filed 4–27–04; 2:55 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 122203A]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) published on April 27, 2004. Because publication of the Amendment 13 final rule followed publication of the Electronic Dealer Reporting (EDR) final rule, § 648.7 of Amendment 13 unintentionally superceded § 648.7 of the EDR final rule, creating confusion as to which set of regulatory changes were, in fact, being implemented. Therefore, this document corrects the error contained in the Amendment 13 final rule as it relates to § 648.7.

DATES: Effective May 1, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, 978–281–9347, fax 978–281–9135; email *thomas.warren@noaa.gov*. Michael Pentony, Senior Fishery Policy Analyst, 978–281–9283, fax 978–281–9135, email *michael.pentony@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS recently published two final rules, EDR (69 FR 13482, March 23, 2004) and Amendment 13 (69 FR 22906, April 27, 2004), both of which implement revised regulatory text for § 648.7. Amendment 13 was under development by the New England Fishery Management Council, in cooperation with NMFS, for several years. It was originally anticipated that publication of the Amendment 13 final rule would precede publication of the implementing regulations for the EDR final rule. The preamble to the Amendment 13 final rule clearly indicates that NMFS would be issuing electronic dealer reporting requirements in a separate, future rulemaking (i.e., the EDR Rule). The Amendment 13 revision to § 648.7 was intended initially only as a place-holder until such time that the EDR final rule was implemented. However, in order to ensure that the EDR final rule became effective by May 1, 2004, and to accommodate the 30–day delay in effectiveness pursuant to the Administrative Procedure Act, NMFS published the EDR final rule first, on March 23, 2004. NMFS inadvertently failed to remove the place-holder language in the Amendment 13 final rule to reflect the new requirements contained in the EDR final rule at § 648.7. Because of this oversight, and unless corrected, the Amendment 13 implementing regulations will supercede the EDR § 648.7 revised text. Therefore, NMFS corrects the final rule implementing Amendment 13 by removing all reference to § 648.7. This section will be implemented as published in the EDR final rule that published on March 23, 2004 (69 FR 13482).

Correction

PART 648—[CORRECTED]

■ The publication on April 27, 2004, at 69 FR 22906, FR Doc. 04–8884 is corrected as follows:

§ 648.7 [Corrected]

■ On page 22946, in the second column, first complete paragraph, remove the entire instruction 4, including the amendatory text in instruction 4 and the corresponding regulatory text, and renumber the remaining instructions accordingly.

Dated: April 27, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–9845 Filed 4–27–04; 2:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031216314–4118–03; I.D. 112803A]

RIN 0648–AR54

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications; Pacific Whiting

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

ACTION: Final rule; 2004 groundfish fishery specifications; request for comments.

SUMMARY: This final rule establishes the 2004 fishery specifications for whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). This **Federal Register** document also serves to announces that the whiting resource is estimated to be above the target rebuilding biomass and will no longer have an overfished species status, and amends the final rule implementing the specifications and management measures for the 2004 fishing year, which were published March 9, 2004. These specifications include the allowable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to establish allowable harvest levels of whiting based on the best available scientific information. NMFS is specifically seeking comments on changes to the ABC in this final rule. These changes are described below in the section of the preamble titled ABC/OY Recommendations.

DATES: Effective April 27, 2004, through December 31, 2004. Comments on the 2004 whiting ABC must be received by June 1, 2004.

ADDRESSES: You may submit comments, identified by [031216314–01 and/or 0648–AR54], by any of the following methods:

- *E-mail: GWhiting2004ABC.nwr@noaa.gov*: identified by [031216314–01 and/or 0648–AR54] in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Fax:* 206–526–6736.
- *Mail:* D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070; Robert Lohn, Administrator.

Copies of the final environmental impact statement (FEIS) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280. These documents are also available online at

the Council's Web site at *http://www.pcouncil.org*. Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from D. Robert Lohn, Northwest Regional Administrator, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6150; or Svein Fougner (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/sustfsh/gdfsh01.htm*.

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires that fishery specifications be evaluated biennially or annually and revised as necessary, that OYs be specified for groundfish species or species groups that need protection, and that management measures designed to achieve the OYs be published in the **Federal Register**. Specifications include ABCs and harvest levels (OYs, harvest guidelines, allocations, or quotas). In anticipation of a new whiting stock assessment that would be available in early 2004 and given the small amount of whiting typically landed under trip limits prior to the April 1 start of the primary season, the Council chose to delay its final whiting recommendation until its March 2004 meeting.

A proposed rulemaking to implement the 2004 specifications and management measures for the Pacific Coast groundfish fishery was published on January 8, 2004 (69 FR 1380). NMFS requested public comment on the proposed rule through February 8, 2004. During that comment period, NMFS received four letters of comment that were addressed in the preamble of the final rule published on March 9, 2004 (69 FR 11064). One comment, comment 9, which is not being repeated in the preamble discussion for this action, addressed the process for establishing a harvest level for whiting. For additional background information on the fishery, see the preamble of the proposed and final rules for the 2004 annual specifications and management measures.

Stock Status

In general, whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) patterns and a relatively short life span when compared to other overfished groundfish species. In 1987, the whiting biomass was at a historical high level due to an exceptionally large number of fish that spawned in 1980 and 1984 (fished spawned during a particular year are referred to as year classes). As these large year classes of fish passed through the population and were replaced by moderate sized year classes, the stock declined. The whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001.

In 2002, a whiting stock assessment was prepared. It estimated the female spawning biomass to be less than 20 percent of the unfished biomass. As a result of the 2002 assessment, the whiting stock was believed to be below the overfished threshold in 2001 and was, therefore, declared overfished on April 15, 2002 (67 FR 18117). Since 2001, the whiting stock has increased substantially as a strong 1999 year class has matured and entered the spawning population.

In 2003, whiting was managed under the 40–10 harvest policy, which appeared to be adequate to achieve rebuilding. The 40–10 policy is intended to prevent species or stocks from becoming overfished. If the stock biomass is larger than the biomass needed to produce MSY, the OY may be set equal to or less than ABC. For further discussion see the preamble of the proposed rule for the 2003 specifications and management measures (68 FR 949, January 7, 2003). An age-structured assessment model was used to prepare a new coastwide stock assessment in 2004. This model was similar to the model used in the previous stock assessment in 2002. New data in this stock assessment included updated catch through 2003, recruitment indices from the juvenile survey in 2003, and the results of the 2003 U.S./Canada acoustic survey. The stock assessment was examined by a joint U.S./Canada Pacific Hake (Whiting) Stock Assessment Review (STAR) panel in early February of 2004.

The STAR panel considered the stock assessment to be complete and suitable for use by the Council and its advisory bodies for ABC projections. However, the amount of whiting that the hydroacoustic survey was able to measure relative to the total whiting in the surveyed area (survey catchability coefficient or q) was identified as a major source of uncertainty in the stock assessment. Therefore, two sets of ABC/OY projections, with different assumptions about the survey catchability, were brought forward for decision making. This range of projections was intended to represent a plausible range of the stock's status. The more optimistic or less risk averse model run assumed that q equaled 0.6, while the less optimistic or more risk averse model run assumed that q equaled 1.0. A catchability coefficient of 1.0 is the value that has been used in the previous assessments. The Council's Scientific and Statistical Committee (SSC) also reviewed the assessment.

As a result of the new whiting stock assessment, the estimated abundance of whiting has increased substantially since the last assessment. However, the pattern of stock growth is very similar to what has been estimated in past assessments. The stock was estimated to be 47 percent of its unfished biomass in 2003 (2.7 million mt of age 3+ fish) when a survey catchability coefficient of 1.0 was applied and at 51 percent (4.2 million mt of age 3+ fish) of its unfished biomass in 2003 when a survey catchability coefficient of 0.6 was applied. Under both scenarios, the whiting biomass in 2003 is estimated to be above the target rebuilding biomass. However, in the absence of a large year class after 1999, the stock is projected to decline again.

Whiting was declared overfished on April 15, 2002 (67 FR 18117) as a result of the 2002 stock assessment which estimated that the female spawning biomass was less than 20 percent of the unfished biomass. In retrospect, the abundance of the whiting stock in 2001, as estimated from the current stock assessment, is now believed to have been at 27 percent of its unfished biomass in 2001 when a survey catchability coefficient of 1.0 is applied, and at 31 percent of its unfished biomass in 2001 when a survey catchability coefficient of 0.6 was applied.

With the publication of this document, NMFS is announcing that the whiting stock is estimated to be above the target rebuilding biomass in 2003 and will no longer be considered an overfished stock. Consequently, the adoption of a whiting rebuilding plan under Amendment 16–4 to the FMP, scheduled to be completed by November 2004, may no longer be necessary.

During 2003, while whiting was under NMFS's overfished designation,

an order was entered in *Natural Resources Defense Council* v. *Evans*, 290 F. Supp. 2d 1051, 1057 (N.D. Calif. 2003), requiring NMFS to approve or adopt a rebuilding plan for whiting by November 30, 2004 pursuant to 16 U.S.C. 1854(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS will move the Court to amend its order on the grounds that a rebuilding plan for whiting is no longer necessary because the stock is no longer in an overfished status.

U.S.-Canada Whiting Negotiations

Since 1977, the U.S. and Canada have periodically held negotiations to address whiting fishery management issues, particularly catch sharing between the two countries. Through 2003, the U.S. fisheries have been managed to take 80 percent of the OY, while the Canadian fisheries have been managed to take 30 percent of the U.S.-Canada coastwide harvest. In the fall of 2002, after the whiting stock had been declared overfished, international negotiations were resumed.

In February 2003, U.S.-Canada negotiations reached a tentative agreement detailing the conservation, research, and catch sharing of whiting. A new process for conducting stock assessments and managing whiting was developed and is described in a treaty which was signed by both countries on November 21, 2003. This treaty is currently awaiting ratification by the U.S. Senate and passage of implementing legislation by the U.S. Congress. Treaty provisions include the use of a default harvest rate of $F_{40\%}$ with a 40/10 adjustment. A rate of $F_{40\%}$ can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing). The treaty's catch sharing plan provides 73.88 percent of the total catch OY to the U.S. fisheries and 26.12 percent to the Canadian fisheries. Although the international agreement and implementing legislation are not expected to be effective until 2005, the negotiators recommended that each country informally implement the agreed upon treaty provisions, to the extent possible, beginning in 2004.

ABC/OY Recommendations

At its September 2003 meeting, the Council considered a range of ABCs and OYs that were consistent with historical values and expected to encompass results of the upcoming 2004 assessment. The four ABC and OY options considered by the Council were: An ABC of 94,000 mt with an OY of 74,100 mt, which represents 50 percent of the 2003 ABC and OY; an ABC of 188,000 mt with an OY of 148,200 mt, which was the 2003 ABC and OY; an ABC of 282,000 mt with an OY of 222,300 mt, which is 50 percent greater than the 2003 ABC and OY; and an ABC of 325,000 mt with an OY of 250,000 mt, which was an intermediate value recommended by the Council.

The Council recommended a preferred OY of 250,000 mt to accommodate any biomass increase that could result from the 2004 stock assessment, while recognizing that incidental catch of widow rockfish could constrain harvest levels of whiting. Widow rockfish, an overfished species, is often caught with whiting. Because the 2004 widow rockfish OY is very low to allow for rebuilding, estimates of incidental widow rockfish catch in the whiting fishery suggested that widow OY might be exceeded if the whiting OY were not constrained. It was announced throughout the specification process that the ABC and OY for whiting would be implemented in a separate final rule from the rest of the groundfish specifications.

At its March 2004 meeting in Tacoma, Washington, the Council reviewed the results of the new stock assessment for whiting. The coastwide ABCs considered by the Council were 514,441 mt (q=1.0) and 780,758 (q=0.6). Both ABCs were based on an F_{MSY} harvest rate of $F_{40\%}$ which is consistent with the U.S./Canada treaty for whiting. F_{MSY} is the default harvest rate that the Council uses as a proxy for the fishing mortality rate.

Because the whiting biomass is estimated to be above 40 percent of its unfished biomass, the 40/10 adjustment was not applied. With the stock above the target rebuilding biomass, the OY could be set as high as the ABC. The SSC recommended that the Council use the decision table presented in the whiting stock assessment (Table 13) to evaluate the consequences of alternate OY options on the whiting biomass. This assessment is available from the Council (*see* **ADDRESSES**). In addition to the two OYs based on different values for the q, 0.6 and 1.0, the consequences of a constant harvest rate of 250,000 mt annually for the U.S. was also considered in the decision table.

The Council's groundfish management team (GMT) considered the 2004 OY alternatives in relation to the impacts of incidental catch of overfished species, particularly widow rockfish. In September 2003, when projecting the impacts of the whiting fishery on widow rockfish, the GMT applied an average bycatch rate for 1998–2002 for each sector. Based on this rate, it was projected that the whiting OY would need to be constrained to 120,000 mt as not to exceed the widow rockfish rebuilding OY.

At the March meeting, the 2003 whiting bycatch data were available. However, the GMT could not reach consensus on the best approach to calculating the widow bycatch projections. The influence of fishers' ability to reduce bycatch rates by changing fishing practices, as compared to the influence on bycatch rates due to the relationship between the two stocks and the frequency of widow rockfish interactions, are not well understood at this time. Therefore, the GMT presented two OYs based on alternative bycatch projections that fixed the widow rockfish take at 220 mt, to the Council. The first whiting OY was 260,343 mt, which was based on a weighted 4-year average with more weight being given to recent years. The second whiting OY was 205,782 mt, and was based on an equally weighted four year average. In addition, the GMT estimated the widow rockfish catch (211 mt) with a fixed OY of 250,000 mt, and with the application of a weighted 4-year average.

Following discussion and public testimony concerning the new 2004 stock assessment, the Council recommended adopting an ABC of 514,441 mt, based on the new assessment with model runs using q=1.0, and an OY of 250,000 mt. As explained above, the Council initially considered a range of ABCs that were expected to encompass the results of the new stock assessment. However, the 514,441 mt ABC based on the new assessment is greater than the range of ABC alternatives (based on the 2002 stock assessment) that were initially considered by the Council, analyzed in the EIS, and presented in the proposed rule.

Because it is the OY harvest level that determines the effects of the fisheries on the environment and not the ABC, there is no functional difference in environmental impacts between the high ABC of 325,000 mt and the ABC of 514,441 mt. The environmental impacts of the 250,000 mt OY, including impacts on overfished species, resulting from the whiting harvest specification were fully considered within the range of alternatives in the EIS and there are no additional environmental impacts on whiting or bycatch species over those already considered.

As in past years, the whiting fisheries are will be managed with near real-time data to achieve, but not exceed the OY. The Council recognized efforts by

fishery participants to avoid bycatch of overfished species and asked that the industry continue to share information and avoid widow rockfish "hot spots".

Economic Impact

The U.S. OY recommended by the Council represents a 68 percent increase from the 2003 whiting OY. When the OY was substantially reduced to allow for rebuilding of the stock, it was not economically feasible for some shoreside or at-sea processors who had historically participated in the fishery to remain in the fishery. The increased OY for 2004 may result in financial improvements and may likely encourage some fishers and processors to return to the fishery. In the short term, the increased OY is expected to have a substantial economic impact on harvesters and processors. It is also expected that the length of the whiting season will increase proportionately with the OY, thereby likely reducing some fishing pressure on already constrained non-whiting fisheries such as flatfish and DTS, in which whiting vessels also participate.

Sector Allocations

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 60 CFR 660.324).

The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.324, allow for the allocation of fish to the tribes through the annual specification and management process. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date only the Makah tribe has participated. It regulates, and in cooperation with NMFS, monitors this fishery so as not to exceed the tribal allocation.

The sliding scale methodology used to determine the treaty Indian share of whiting is the subject of ongoing litigation. In *United States* v. *Washington*, Subproceeding 96–2, the Court held that the methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. *See United States* v. *Washington*, 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002, *Midwater Trawlers Cooperative* v. *Daley*, C96–1808R (W.D. Wash.) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002), and again in April 2003, *id.*, Order Granting Federal Defendants' and Makah's Motions for Summary Judgment and Denying Plaintiffs' Motions for Summary Judgment, April 15, 2003. The latter ruling has been appealed to the Ninth Circuit, but no decision has been rendered as yet. At this time, NMFS remains under a Court order in Subproceeding 96–2 to continue use of the sliding scale methodology unless the Secretary finds just cause for its alteration or abandonment, the parties agree to a permissible alternative, or further order issues from the Court. Therefore, NMFS is obliged to continue to use the methodology unless one of the events identified by the Court occurs. Since NMFS finds no reason to change the methodology, it has been used to determine the 2004 tribal allocation.

Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale allocation method, proposed by the Makah Tribe in 1998. *See*, 64 FR 27928, 27929 (May 29, 1999); 65 FR 221, 247 (January 4, 2000); 66 FR 2338, 2370 (January 11, 2001). Under the sliding scale allocation method, the tribal allocation varies with U.S. whiting OY, ranging from a low of 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to a high of 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. For 2004, using the sliding scale allocation method the tribal allocation will be 32,500 mt. The Makah are the only Washington Coast tribe that requested a whiting allocation for 2004.

The 2004 non-tribal commercial OY for whiting is 215,500 mt. This is calculated by deducting the 32,500 mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 250,000 mt total catch OY. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery. The catcher/processor sector is comprised of vessels that harvest and process whiting. The mothership sector is comprised of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is comprised of vessels that harvest whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (73,270 mt), motherships getting 24 percent (51,720 mt), and the shore-based sector getting 42 percent (90,510 mt).

All whiting caught in 2004 before the effective date of this action will be counted toward the new OY. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

NMFS Actions

For the reasons stated here, NMFS is amending the 2004 annual specifications and management measures in the preamble of the final rule (69 FR 11064, March 9, 2004) with the following changes:

1. Tables 1a and 1b (69 FR 11074) are revised to include the Pacific whiting ABC and OYs and to correct footnote x/ to add the term "harvest guideline" to clarify that the black rockfish OY subdivisions between the States of Washington, Oregon and California.

BILLING CODE 3510–22–P

Table 1a. 2004 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (Oys), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch) and Harvest guidelines	Allocations total catch			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	1,385					1,385	735	180.7	--	81.0	--	19.0
Pacific Cod	3,200		c/			3,200	3,200	3,200	--	--	--	--
Pacific Whiting d/	514,441					514,441	250,000	215,500	--	--	--	--
Sablefish e/ (north of 36°)	8,185				--	8,185	7,510	6,687	6,059	90.6	629	9.4
Sablefish f/ (south of 36°)	--				302	302	276	276	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,380	--	--	--	--
English sole	2,000		1,100			3,100	na	-	-	-	-	-
Petrale sole h/	1,262		500	800	200	2,762	na	-	-	-	-	-
Arrowtooth flounder	5,800					5,800	na	-	-	-	-	-
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	-	-	-	-	-

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch) and Harvest guidelines	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	ABC			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	980					980	444	117.7	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,460					3,460	284	280.4	--	97.0	--	3.0
Canary m/	256					256	47.3	24.2	--	87.7	--	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			400		400	250	108.5	--	52.7	--	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	4,320			c/		4,320	4,320	4,291	3,935	91.7	356	8.3
Shortspine thornyhead r/ north of 34°27'	1,030					1,030	983	974	971	99.7	3	0.27
Longspine thornyhead s/ north of 36°	2,461				--	2,461	2,443		--	--	--	--
south of 36° t/	--				390	390	195	195	--	--	--	--
Cowcod u/	c/			19	--	19	2.4	0	--	--	--	--
	c/			--	5	5	2.4	0	--	--	--	--
Darkblotched v/	240					240	240	122.1		--		--
Yelloweye w/	53					53	22	5.8		--		-
Black x/	540	775			--	1,315	1,315					

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch) and Harvest guidelines	Allocations total catch			
	Vancouver	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish North y/	3,680			--		3,680	2,250	2,128	1,979	91.7	179	8.3
Minor Rockfish South z/	--			3,412		3,412	1,968	1,390	774	55.7	616	44.3
Remaining Rockfish	1,612			854		--	--	--	--	--	--	--
bank aa/	c/			350		350	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--
bocaccio - north	318					318	--	--	--	--	--	--
chilipepper-north	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99	--	--	--	--	--	--
yellowtail-south				116		116	--	--	--	--	--	--
Other rockfish cc/	2,068			2,558		--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	na	-	--	--	--	-

Table 1b. 2004 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
					Limited Entry		Open Access	
		Total Catch OY	Recreational Estimate	Commercial OY for minor rockfish and HG for depth sub-groups	Mt	%	Mt	%
Minor Rockfish North x/	3,680	2,250 x/	78	2,158	1,979	91.7	179	8.3
Nearshore		122 x/	68	40				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish South y/	3,412	1,968 y/	435	1,390	774	55.7	616	44.3
Nearshore		615 y/	375	97				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A stock assessment, that included parts of Canadian waters, was done in 2000 and updated for 2001. Lingcod was believed to be at 15 percent of its unfished biomass coastwide in 2000, 17 percent in the north and 15 percent in the south. The U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total for that area. The ABC projection for 2004 is 1,385 mt and was calculated using an F_{MSY} proxy of F45%. The total catch OY of 735 mt is based on a rebuilding plan with a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2009 (T_{MAX}). The harvest control rule will be 0.0531 in the north and 0.0610 in the south. The total catch OY is reduced by 473.6 mt for the amount that is estimated to be taken by the recreational fishery, 3 mt for the amount estimated to be taken during research fishing, 2.8 mt for the amount estimated to be taken in non-groundfish fisheries, and 49.8 mt which will be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), the resulting commercial harvest guideline of 205.8 mt. The tribes do not have a specific allocation at this time but are expected to take 25.5 mt of the commercial OY.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial OY of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific whiting -The most recent stock assessment was prepared in early 2004, and was estimated to be above 40 percent of its unfished biomass. The U.S. ABC of 514,441 mt is based on the 2004 assessment results with the application of an Fmsy proxy harvest rate of 40%. The U.S. ABC is 73.88 percent of the coastwide ABC. Because the unfished biomass is believed to be above 40 percent the default OY could be set equal the ABC. However, the OY which is being set at 250,000 mt was constrained because of widow rockfish. The total catch OY is further reduced by 32,500 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 215,500 mt. The commercial OY is allocated between the sectors with 42 percent (90,510 mt) going to the shore-based sector, 34 percent (73,270 mt) going to the catcher/processor sector, and 24 percent (51,720 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N lat. - A new sablefish assessment was done in 2001 for the area north of Point Conception (34°27'N lat.) and updated for 2002. Following the assessment update, sablefish north of 34° 27'N lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,487 mt is based on environmentally driven projections with the F_{MSY} proxy of F45%. The ABC for the management area north of 36° N lat. is 8,185 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,786 mt is based on the density-dependent model and the application of the 40-10 harvest policy. The total catch OY for the area north of 36° N lat is 7,510 mt and is 96.05 percent of the coastwide OY of 7,786 mt. The total catch OY is reduced by 10 percent (751 mt) for the tribal set aside, 53.0 mt for the amount estimated to be taken as research catch, and 18.5 mt for the amount estimated to be taken in non-groundfish fisheries. The remainder (6,687 mt) is the commercial total catch OY. The open access allocation is 9.4 percent of the commercial OY, resulting in an open access total catch OY of 629 mt. The limited entry total catch OY is 6,059 mt. The limited entry total catch OY is further divided with 58 percent (3,514 mt) allocated to the trawl fishery and 42 percent (2,545 mt)

allocated to the non-trawl fishery. To provide for bycatch in the at-sea whiting fishery 15 mt of the limited entry trawl allocation will be set aside.

f/ Sablefish south of 36° N lat. - The ABC of 302 mt is 3.55 percent of the ABC from the 2002 coastwide assessment update. The total catch OY of 276 mt is 3.55 percent of the OY from the 2002 coastwide assessment update. There are no limited entry or open access allocations in the Conception area at this time.

g/ Dover sole north of 34° 27'N lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,510 mt is based on an F_{MSY} proxy of F40%. The total catch QY of 7,440 mt is the three year average OY for 2002-2004 as forecast in the 2001 stock assessment. Because the biomass is estimated to be in the precautionary zone, the 40-10 harvest rate policy was applied to the total catch OY. The OY is reduced by 58 mt for the amount estimated to be taken as research catch, and 2 mt for estimated catch in non-groundfish fisheries resulting in commercial OY of 7,380 mt.

h/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 assessment. For 2004, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000-2003 with a F40% F_{MSY} proxy. Management measures to constrain the harvest of overfished species, have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2004 was considered to be conservative and based on the best available data. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2003.

i/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was declared as overfished on March 3, 1999. A new stock assessmet was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 980 mt was projected from a new assessment and is based on an F_{MSY} proxy of F50%. The OY of 444 mt is based on a 70 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule will be 0.0257. The OY is reduced by 3 mt for the amount estimated to be taken during research fishing and 323.3 mt which will be placed in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers) resulting in a commercial harvest guideline of 117.7 mt.

k/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). A new assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass. The ABC of 3,460 mt is based an F50% F_{MSY} proxy. The OY 284 mt is based on a 60.1 percent probability of rebuilding the stock to B_{MSY} by the year 2042 (T_{MAX}). The harvest control rule is 0.0093. The OY is reduced by 2 mt for the amount estimated to be taken as recreational catch, 1.5 mt for the amount estimated to be taken during research fishing, 0.1 mt for the amount estimated to be taken in non-groundfish fisheries resulting in a commercial OY of 280.4 mt. Specific open access/limited entry allocations have been suspended during the rebuilding

period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2004, but do not have a specific allocation at this time. Set asides for widow rockfish taken in the Pacific whiting fisheries will be announced in 2004 with the whiting specifications.

m/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A new assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide. The coastwide ABC of 256 mt is based on a F_{MSY} proxy of F50%. The coastwide OY of 47.3 mt is based on the rebuilding plan which has a 60 percent probability of rebuilding the stock to B_{MSY} by the year 2076 (T_{MAX}) and a catch sharing arrangement which has 64.5 percent going to the commercial fisheries and 35.5 percent going to the recreational fishery. The harvest control rule will be 0.0220. The OY is reduced by 15.5 mt for the amount estimated to be taken in the recreational fishery, 1 mt for the amount estimated to be taken during research fishing, 2.1 mt for the amount estimated to be taken in non-groundfish fisheries, and 4.6 mt to be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), resulting in a commercial harvest guideline of 24.2 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 3.6 mt of canary rockfish under the commercial OY, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a F50% F_{MSY} proxy. Because the unfished biomass is believed to be above 40 percent the default OY could be set equal the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio rockfish. Management measures to constrain the harvest of overfished species, have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2004 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Open access is allocated 44.3 percent (879 mt) of the commercial OY and limited entry is allocated 55.7 percent (1,106 mt) of the commercial OY.

o/ Bocaccio rockfish was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis was prepared for bocaccio rockfish in 2003. The bocaccio rockfish stock is believed to be at 7.4 percent of its unfished biomass. The ABC of 400 mt is based on a F50% F_{MSY} proxy. The OY of 250 mt is based on the rebuilding analysis and has a >70 percent probability of rebuilding the stock to B_{MSY} by the year 2032 (T_{MAX}). The harvest control rule is 0.041. The OY is reduced by 2.0 mt for the amount estimated to be taken during research fishing and 1.3 mt for the amount estimated to be taken in the non-groundfish fisheries. Of the remaining 246.7 mt, 56 percent (138.2 mt) will be applied to the recreational fishery and 44 percent (108.5 mt) will be applied to the commercial harvest guideline. The recreational fishery is estimated to take 62.8 mt, leaving a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers) of 75.4 mt and the commercial fishery is estimated to take to take 70.8 mt, leaving a buffer of 37.7 mt.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY.

q/ Yellowtail rockfish - A new yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish is

believed to be at 46 percent of its unfished biomass. The ABC of 4,320 mt is based on the 2003 stock assessment with the F_{MSY} Proxy of F50%. The OY of 4,320 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 8 mt for the amount estimated to be taken during research fishing, and 5.8 mt for the amount taken in non-groundfish fisheries, resulting in a commercial OY of 4,291 mt. The open access allocation (356 mt) is 8.3 percent of the commercial OY. The limited entry allocation (3,935 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 300 mt is subtracted from the limited entry allocation. Tribal vessels are estimated to land about 407 mt of yellowtail rockfish in 2003, but do not have a specific allocation at this time.

r/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,030 mt) for the area north of Pt. Conception (34° 27'N lat.) is based on a F50% F_{MSY} proxy. The OY of 983 mt is based on the 2001 survey with the application the 40-10 harvest policy. The OY is reduced by 9 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 974 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (971 mt) of the commercial OY. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 3 mt of shortspine thornyhead in 2004, but do not have a specific allocation at this time.

s/ Longspine thornyhead is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at a F50%. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 18 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 2,443 mt.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on the rebuilding plan which has a 55 percent probability of rebuilding the stock to B_{MSY} by the year 2099 (T_{MAX}). The harvest control rule is 0.0136. Cowcod retention will not be permitted in 2004. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

v/ Darkblotched rockfish was assessed in 2000 and an assessment update was prepared in 2003. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 assessment update, the Darkblotched rockfish stock is believed to be at 11 percent of its unfished biomass. The ABC is projected to be 240 mt and is based on an F_{MSY} proxy of F50%. The OY of 240 mt is based on the rebuilding analysis and has a >80% probability of rebuilding the stock to B_{MSY} by the year 2047 (T_{MAX}). The harvest control rule will be 0.032. The OY is reduced by 1.6 mt and 116.3 mt to be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), resulting in a 122.1 mt commercial harvest guideline. For anticipated bycatch in the at-sea whiting fishery, 6.7 mt is set aside.

w/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 53 mt coastwide ABC is based on an F_{MSY} proxy of F50%. The OY of 22 mt is based on a revised rebuilding analysis (August 2002) with a 50% probability of rebuilding to B_{MSY} by the year 2050 (T_{MID}), which can also be expressed as 92 percent probability of rebuilding to B_{MSY} by the year 2071 (T_{MAX}). The harvest control rule is 0.0139. The OY is reduced by 7.7 mt for the amount estimated to be taken in the recreational fishery, 1.1 mt for the amount estimated to be taken during research fishing, 0.8 mt for the amount taken in non-groundfish fisheries, and 6.6 mt to be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), resulting in a commercial harvest guideline of 5.8 mt. Tribal vessels are estimated to land about 2.3 mt of yelloweye rockfish of the commercial OY in 2004, but do not have a specific allocation at this time.

x/ Black rockfish - the ABC of 1,315 mt is the sum of the ABC (775 mt) from the 2003 Columbia and Eureka area assessment plus the ABC (540 mt) for the Vancouver area from the 2000 assessment. Because the two assessments overlap in the area between Cape Falcon and the Columbia river, projections from the 2000 assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an F_{MSY} proxy of F50%. Because the unfished biomass is believed to be above 40 percent, the the OY was set equal to the ABC. The black rockfish OY is subdivided between the three states and results in the following harvest guidelines: 540 mt will be attributed to the area north of 46°16' N. lat. (Washington/Oregon border), 450 mt will be attributed to the area between 46°16' N. lat. and 42°00' N. lat. (Oregon/California border), and 326 mt will be attributed to the area south of 42°00' N. lat. Of the 326 mt attributed to the area south of 42°00' N. lat., 194 mt of black rockfish will be applied to the area north of 40°10 min N. lat. and 131 mt to the area south of 40°10 min N. lat. Black rockfish was included in the minor rockfish north category until 2004.

y/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs are further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery and 2,158 mt the amount estimated to be taken in the commercial fishery, leaving 14 mt in a buffer. Open access is allocated 8.3 percent (179 mt) of the commercial OY and limited entry is allocated 91.7 percent (1,979 mt) of the commercial OY. Tribal vessels are estimated to land about 14 mt of minor rockfish (10 mt of shelf rockfish, and 4 mt of slope rockfish) in 2004, but do not have a specific allocation at this time.

z/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC of 3,412 is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY of 1,968 mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. This was a

precautionary measure due to limited stock assessment information. The OY is reduced by 435 mt for the amount estimated to be taken in the recreational fishery and 1,390 mt the amount estimated to be taken in the commercial fishery, leaving 143 mt in a buffer. Open access is allocated 44.3 percent (616 mt) of the commercial OY and limited entry is allocated 55.7 percent (774 mt) of the commercial OY.

aa/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

bb/ Blackgill rockfish is believed to be at 51 percent of its unfished biomass. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an F_{MSY} proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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2. Section IV *NMFS Actions*, B. *Limited Entry Fishery*, (3) *Whiting* (69 FR 11114) is revised; and Section V *Washington Coastal Tribal Fisheries*, E. *Pacific Whiting* (69 FR 11121) is revised.

B. Limited Entry Fishery

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(3) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) *Allocations.* The non-tribal allocations, based on percentages that are applied to the commercial OY of 215,500 mt in 2004 (*see* 50 CFR 660.323(a)(4)), are as follows:

(i) Catcher/processor sector—73,270 mt (34 percent);

(ii) Mothership sector—51,720 mt (24 percent);

(iii) Shore-based sector—90,510 mt (42 percent). No more than 5 percent (4,526 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2004.

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V. Washington Coastal Tribal Fisheries

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E. *Pacific Whiting.* The tribal allocation is 32,500 mt.

Classification

The final whiting specifications and management measures for 2004 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are in accordance with 50 CFR parts 660, the regulations implementing the Pacific Coast groundfish FMP.

The Pacific Coast Groundfish FMP requires that fishery specifications be evaluated biennially or annually using the best scientific information available. A stock assessment for whiting was prepared in early 2004, using the most recent survey data. Because of the timing of the resource survey upon which the assessment is based, the stock assessment could not be completed and ready for use in the June-September management cycle when the rest of the groundfish specifications were set. The Council and NMFS decided it was best to delay the adoption of the 2004 ABC and OY in order to use the newest data, rather than use old data from the prior survey. Preliminary indications from catch and survey data were that the biomass had increased in recent years and the ABC and OY recommended for 2004 would be substantially higher than those in 2003. For the most socio-economic benefits to harvesters and communities relying on the harvest of whiting, it was particularly important to delay the ABC and OY adoption in order to use the most recent data. Finally, since the major fishery for whiting does not start until April 1, there was time to delay the adoption of the new ABC and OY, until the new information was available to the Council in March.

The proposed rulemaking to implement the 2004 specifications and management measures, published on January 8, 2004 (69 FR 1380), addressed the delayed in adopting the whiting ABC and harvest specifications. NMFS requested public comment on the proposed rule through February 8, 2004. The final rule was published on March 9, 2004 (69 FR 11064). In this rule, NMFS responded to one public comment regarding the process for establishing a harvest level for Pacific whiting by stating that the specification would be adjusted following the Council's March meeting and announced in the **Federal Register** as a final rule. This action has been publicized widely through the Council process.

The proposed and final rules for the 2004 specifications and management measures contained a range of ABCs and OYs for whiting. The specifications announced here are within the scope of the proposed and final rules. Implementing these specifications as soon as possible is necessary because the 2004 whiting fishery is already underway and is operating under the lower 2003 OYs.

For the reasons described above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness, so that this final rule may become effective as soon as possible after the April 1, 2004, fishery start date.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action were considered in the final environmental impact statement for the 2004 specification and management measures. Copies of the FEIS and the ROD are available from the Council (*see* **ADDRESSES**) Because the impacts of this action were already considered in the FEIS, it is categorically excluded under NAO 216–6 and NEPA from both further analysis and the requirements to prepare additional environmental documents.

The Council prepared an Initial Regulatory Flexibility Analysis and NMFS prepared a FRFA for the 2004 harvest specifications and management measures which included the impacts of this action. A summary of the FRFA analysis was published in the final rule on March 9, 2004 (69 FR 11064). A copy of the FRFA is available from NMFS Northwest Region (*see* **ADDRESSES**)

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation with tribal officials during the Council process. This final rule has been determined to be not significant for purposes of Executive Order 12866.

Dated: April 27, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–9844 Filed 4–27–04; 4:54 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030922237–4111–02; I.D. 082503D]

RIN 0648–AQ98

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Purchase

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), and an amendment to the Pacific halibut (halibut) commercial fishery regulations for waters in and off of Alaska. Amendment 66 to the FMP and the regulatory amendment modify the Individual Fishing Quota (IFQ) Program by revising the eligibility criteria to receive halibut and sablefish IFQ and quota share (QS) by transfer to allow eligible communities in the Gulf of Alaska (GOA) to establish non-profit entities to purchase and hold QS for lease to, and use by, community residents as defined by specific elements of the proposed action. This action improves the effectiveness of the IFQ Program by providing additional opportunities for residents of fishery dependent communities and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

DATES: Effective June 1, 2004, except for §§ 679.5(l)(8), 679.41(d)(1), (l)(3), and (l)(4), which will be effective after approval of the collection-of-information request submitted to Office of Management and Budget (OMB) under OMB approval number 0648–0272 and notification of the effective date is published in the **Federal Register**.

ADDRESSES: Copies of Amendment 66 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule and final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, (907) 586–7247.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or email at *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The groundfish fisheries in the Exclusive Economic Zone of the GOA are managed under the FMP. The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (Pub. L. 94–265, 16 U.S.C. 1801). The FMP was approved by the Secretary of Commerce and became effective in 1978. Fishing for halibut (*Hippoglossus stenolepis*) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. The IFQ Program, a limited access management system for the fixed gear halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in January 1993. Initial implementing rules were published on November 9, 1993 (58 FR 59375). Fishing under the IFQ Program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management areas. The IFQ Program for the sablefish fishery is implemented by the FMP and Federal regulations at 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program originally was designed to resolve conservation and management problems that are endemic to open access fisheries. The background issues leading to the Council's initial action recommending the adoption of IFQs are described in the preamble to the proposed rule establishing the IFQ Program published December 3, 1992 (57 FR 57130).

A central concern of the Council in developing the IFQ Program was that QS, from which IFQ is derived, would become increasingly held by corporate entities instead of independent fishermen who typically own and operate their own vessels. To prevent this outcome, the Council designed the IFQ Program such that QS could, in most cases, be held only by individuals or natural persons, and not by corporate entities. The Council provided limited exemptions to this basic approach to accommodate existing corporate ownership of vessels at the time of implementation and to recognize the participation by corporately owned freezer vessels. However, the overall intent of the IFQ Program was for catcher vessel QS eventually to be held only by individual fishermen. The IFQ Program is designed to limit corporate holding of QS and increase holdings of QS by individual fishermen as corporate owners divest themselves of QS. This provision is implemented through the QS and IFQ transfer regulations at 50 CFR 679.41.

This final rule revises the existing IFQ Program regulations and policy to explicitly allow a new group of non-profit entities to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. This change would allow a non-profit corporate entity that meets specific criteria to receive transferred halibut or sablefish QS on behalf of an eligible community and to lease the resulting IFQ to fishermen who are residents of

the eligible community. This change is intended to provide additional opportunities to these fishermen, and may indirectly address concerns about the economic viability of those communities. The objectives for this action are described in detail in the proposed rule, which was published on October 16, 2003 (68 FR 59564), and are summarized here.

Since initial issuance of QS, and as a result of voluntary transfers of QS, the amount of QS and the number of resident QS holders has declined substantially in most of the GOA communities affected by this action. This trend may have had an effect on employment and may have reduced the diversity of fisheries to which fishermen in rural communities have access. The ability of fishermen in small rural communities to purchase QS or maintain existing QS may be limited by a variety of factors unique to those communities. Although the specific causes for decreasing QS holdings in rural communities may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries.

In June 2000, representatives of several GOA communities presented the Council with a proposal to allow communities to purchase QS. The Council approved several alternatives for analysis in June 2001, reviewed an initial analysis in December 2001, and took final action in April 2002. The problem statement adopted by the Council in June 2001 recognized the fact that a number of small coastal communities "are struggling to remain economically viable." The Council stated that "[a]llowing qualifying communities to purchase halibut and sablefish quota share for use by community residents will help minimize adverse economic impacts on these small, remote, coastal communities in Southeast and Southcentral Alaska, and help provide for the sustained participation of these communities in the halibut and sablefish IFQ fisheries."

A Notice of Availability of the FMP amendment was published on September 2, 2003 (68 FR 52173) inviting comments on the FMP amendment through November 3, 2003. One written comment was received that specifically addressed the FMP amendment. This comment is addressed in the Response to Comment section of this rule. A proposed rule to implement the Council's recommendation was published on October 16, 2003 (68 FR 59564) inviting comments on the proposed rule through December 1, 2003. Twenty-two written comments were received addressing the proposed rule (see Response to Comments). The Secretary of Commerce approved the FMP amendment on December 3, 2003.

This action addresses these concerns by modifying the IFQ Program to allow non-profit entities that represent small rural communities in the GOA with a historic participation in the halibut and sablefish fisheries to hold QS. The Council's recommendations also reflect the most recent amendments to the Magnuson-Stevens Act, and IFQ policy recommendations by the National Research Council.

The Council considered the range of comments from the public, NMFS, and the State of Alaska (State), and incorporated various suggestions in developing the policy implemented by this rule. The basic provisions of this rule are described in the preamble to the proposed rule published October 16, 2003 (68 FR 59564). Key provisions are summarized here.

Community QS Provisions

1. Community Quota Entities

Community quota entities (CQEs) are non-profit entities incorporated under the laws of the State, or tribal regulations in the case of one of the communities, to represent eligible communities. The CQEs obtain QS by transfer and hold the QS and lease the resulting annual IFQ to individual community residents. Unless otherwise specified, the restrictions that apply to any current QS holder apply to a CQE. CQEs, however, are subject to additional regulatory requirements beyond those applying to existing QS holders.

A CQE could represent more than one eligible community. However, no community can be represented by more than one CQE. This provision minimizes confusion and ensures effective and efficient administration of the program.

To be considered eligible to hold QS on behalf of a community, a CQE must have been incorporated after April 10, 2002, the date of final Council action. The Council stated that the purpose of designating a new non-profit entity to hold QS is that existing administrative structures such as municipal governments, tribal councils, or other community organizations may be focused on other priorities.

The Council also recommended that a non-profit organization provide proof of support from the community that it is seeking to represent. This support must be demonstrated in the application by a non-profit organization to become eligible as a CQE. The specific mechanism for the community to demonstrate its support for a CQE is described in the Administrative Oversight section of this preamble.

Once an application to become a CQE has been approved, then that CQE is eligible to hold and receive QS, and lease IFQ to eligible community residents under the mechanisms established by this rule. If a CQE does not remain in compliance with the regulations applying to CQEs or IFQ holders generally, then NMFS can initiate administrative proceedings to deny the transfer of QS or IFQ to or from the CQE. As with other administrative determinations under the IFQ Program, any such determination could be appealed under the procedures set forth in regulations (50 CFR 679.43). The Council recommended regulatory measures, described below, as a means to monitor the ability of the non-profit entities to meet the goals of distributing IFQ among residents in these GOA communities.

2. Eligible Communities

Gulf of Alaska communities eligible to participate in this program must meet all the following criteria: (a) have a population of less than 1,500 persons based on the 2000 United States Census; (b) have direct saltwater access; (c) lack direct road access to communities with a population greater than 1,500 persons; (d) have historic participation in the halibut and sablefish fisheries; and (e) be specifically designated on a list adopted by the Council and included in this rule (see Table 21 to part 679).

If a community appears to meet the eligibility criteria but is not specifically designated on the list of communities adopted by the Council, then that community must apply directly to the Council to be included. In this event, the Council may modify the list of eligible communities adopted by the Council through a regulatory amendment. Under this action, a total of 42 communities in the GOA qualify as eligible to purchase QS. These eligible communities may designate a new non-profit entity to hold QS on behalf of that community.

(a) Population of Less Than 1,500 Persons

The 2000 United States Census was chosen as the standard for measuring total population because it is considered to be a more accurate measure of population than annual estimates conducted by the State. Additionally, at the time that the Council took final action to modify the IFQ Program to accommodate communities, the 2000 Census was the best available demographic data.

This proposed rule establishes that a community with not less than 20 persons and not more than 1,500 persons that is defined as a Census Designated Place under the U.S. Census fulfills the requirement for the definition of a community for the purposes of this program. If communities seek inclusion as an eligible community in the future, then the Council and NMFS would review those communities using the definitions of a community as defined by this rule.

(b) Have Direct Saltwater Access

A community would be defined as adjacent to saltwater if it is located on the GOA coast of the North Pacific Ocean.

(c) Lack of Direct Road Access

The Council recommended limiting eligibility to communities without direct surface road access to communities larger than 1,500 persons because such communities may lack access to markets for fishery products and could be disadvantaged relative to other communities with better transportation infrastructure. Communities that are served by the Alaska Marine Highway System are not considered to have surface road access and would be considered to lack surface road access for purposes of this action.

(d) Have Historic Participation in the Halibut and Sablefish Fisheries

Historic participation is defined as communities for which a resident has recorded a commercial landing of either halibut or sablefish between 1980–2000 according to Commercial Fisheries Entry Commission (CFEC) data for permit and fishing activity. The year 1980 was chosen because it represents the first year of widely collected and reliable data from the CFEC, and the year 2000 was chosen because it was the last year of data available prior to the Council's decision to recommend this program.

(e) Be Specifically Designated on a List Adopted by the Council

The Council adopted a specific list of eligible communities to limit the entry of new communities into the Community QS Program (see Table 21 to part 679). Any change to the list of eligible communities requires Council action to recommend such a change and Secretarial approval of the change.

3. Use Caps for Individual Communities

Each eligible community as represented by a CQE is subject to the same use limitations on QS and IFQ currently established for QS holders as described under 50 CFR 679.42(e) for sablefish and 50 CFR 679.42(f) for halibut. Therefore, for each community it represents, a CQE is limited to using:

No more than: 599,799 units of halibut QS	in IFQ regulatory area 2C.
No more than: 1,502,823 units of halibut QS combined	in IFQ regulatory areas 2C, 3A, and 3B.
No more than: 688,485 sablefish QS units	in the IFQ regulatory Area East of 140° W. long. (Southeast Outside District).
No more than 3,229,721 sablefish QS units combined	in the Southeast Outside District West Yakutat, Central Gulf Regulatory Area, and Western Gulf Regulatory Area.

A CQE representing an eligible community located within Areas 3A or 3B is prohibited from purchasing QS in Area 2C (Southeast Alaska) on behalf of that community. The Council noted that 21 of the 42 communities eligible to participate in this program are located in Area 2C. Allowing CQEs in Areas 3A and 3B to purchase QS in Area 2C would increase the competition of QS and could adversely affect the price and availability of QS among Area 2C communities.

Likewise, a CQE representing an eligible community within Area 2C is prohibited from purchasing and using QS in Area 3B (Western GOA) on behalf of that community. This limitation applies because residents from communities located in Area 2C traditionally did not fish in Area 3B.

Although the use of halibut QS is limited to those areas that are adjacent to the eligible communities, a similar provision does not apply to sablefish. The sablefish fishery occurs in deeper waters than much of the halibut fishery and typically requires larger vessels that can travel longer distances for harvesting fish.

This limit provides an adequate opportunity for communities to purchase and hold sufficient QS for leasing the resulting IFQ among community residents. This level is not to be so restrictive as to discourage communities from purchasing and holding quota.

4. Cumulative Use Caps for All Communities

Communities represented by CQEs cumulatively are limited to holding a maximum of 3 percent of the total halibut QS and 3 percent of the total sablefish QS in each IFQ regulatory area in the first year after implementation of this program. In each subsequent year, the percentage is increased by an additional 3 percent until, after 7 years, a maximum of 21 percent of the total halibut QS, and 21 percent of the total sablefish QS could be held in each IFQ regulatory area in which CQEs are eligible to hold QS.

5. Transfer and Use Restrictions

(a) Block Limits

The purchase of blocked QS by CQEs would be restricted. The number of blocks that can be held by a person is limited under the IFQ Program. These limits were established to prevent the consolidation of blocked QS and to ensure that smaller aggregate units would be available on the market. Blocked QS typically is less expensive and more attractive to new-entrants.

This rule modifies the consolidation limits for blocked QS for communities represented by CQEs. Each community represented by a CQE is limited to holding, at any point in time, a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each IFQ regulatory area for halibut and sablefish. The CQE could not subdivide blocked QS.

To accommodate the interests of prospective individual new entrants, this rule prohibits CQEs from purchasing:

Halibut QS blocks less than or equal to 19,992 units (e.g., 2,850 lb (1,292.8 kg) of IFQ in 2003)	in Area 2C.
Halibut QS blocks less than or equal to 27,912 units (e.g., 3,416 lb (1,549.5 kg). of IFQ in 2003)	in Area 3A.
Sablefish QS blocks less than or equal to 33,270 units (e.g., 4,003 lb (1,815.8 kg) of IFQ in 2003)	in the Southeast Outside District.
Sablefish QS blocks less than or equal to 43,390 units (e.g., 3,638 lb (1,650.2 kg) of IFQ in 2003)	in the West Yakutat District.
Sablefish QS blocks less than or equal to 46,055 units (e.g., 4,684 lb (2,124.7 kg) of IFQ in 2003)	in the Central GOA regulatory area.
Sablefish QS blocks less than or equal to 48,410 units (e.g., 6,090 lb (2,762.4 kg) of IFQ in 2003	in the Western GOA regulatory area.

These QS limits are specified in 50 CFR 679.41(e) as the "sweep up" limit, or the number of QS units initially issued as blocks that could be combined to form a single block.

CQEs are not eligible to purchase or hold these smaller "sweep-up" blocks because these smaller QS blocks typically are purchased by individuals entering the IFQ fisheries. This measure minimizes a potentially unfair competition in the QS market between CQEs and individuals for these small QS blocks. Similar restrictions on QS in the halibut fishery for Area 3B do not exist because fewer "sweep-up" blocks exist in Area 3B and few new entrants in Area 3B have sought these "sweep-up" blocks.

(b) Transfer and IFQ Leasing

CQEs can only receive and use halibut QS assigned to vessel category B (greater than 60 feet length overall) and vessel category C (greater than 35 feet and less than or equal to 60 feet length overall) in Areas 2C and 3A.

This provision prohibits CQEs from holding QS assigned to vessel category D (less than or equal to 35 feet (10.7 m) length overall) in Areas 2C and 3A.

This rule does not prohibit CQEs from holding D category halibut QS in Area 3B. A relatively small amount of D category QS exists in Area 3B, and traditionally few prospective buyers exist for this category of QS. Existing D category QS holders in Area 3B indicated that allowing CQEs to purchase D category QS in Area 3B would increase the marketability of their QS.

This rule does not establish catcher vessel category restrictions for CQEs holding sablefish QS. Only B and C vessel categories exist for sablefish QS and sablefish are typically harvested from larger vessels.

So that the annual IFQ derived from the QS held on behalf of a community can be fished, a CQE will be allowed to lease (i.e., transfer the annual IFQ) to one or more residents of the community, or communities, it represents. Each IFQ lease must be made on annual basis, as is currently the requirement in existing regulations. IFQ so transferred can be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision applies only while the QS is held by the CQE. The vessel category requirements for use of the QS will be applied once again after the QS is transferred from a CQE to a qualified recipient that is not a CQE. This provision facilitates the use of the IFQ on the wide range of vessel types that is present in many rural communities.

The amount of IFQ that may be leased annually to an eligible community resident is limited so that no such lessee can hold IFQ permits authorizing the harvest of more than 50,000 lb (22.7 mt) of halibut and no more than 50,000 lb (22.7 mt) of sablefish IFQ, inclusive of any IFQ derived from any source.

This limitation ensures a broad distribution of IFQ among community residents and limits the amount of IFQ that may be leased to those residents who already hold QS or lease IFQ from another source.

Similarly, during any fishing year, no vessel on which IFQ leased from the community QS program is fished can harvest an amount of IFQ greater than 50,000 lb (22.7 mt) of halibut and greater than 50,000 lb (22.7 mt) of sablefish, inclusive of all IFQ fished aboard that vessel. This limitation on the amount of IFQ that can be fished on any one vessel using IFQ from community-held QS encourages the use of a broad distribution of community-held IFQ on vessels that may otherwise have limited or no participation in the IFQ Program.

Only permanent residents of the community represented by the CQE are eligible to lease IFQ derived from community-held QS. This provision explicitly ties the potential benefits of QS held by a CQE on behalf of a community to the residents of that community. A resident who wishes to lease IFQ is required to affirm that he or she maintains a permanent domicile in that specific community and is qualified to receive QS and IFQ by transfer under the existing regulations (i.e., that he or she holds a Transfer Eligibility Certificate issued by NMFS).

For purposes of this program, an eligible resident is an individual that affirms that he or she has maintained a domicile in the community from which the IFQ is leased for 12 consecutive months immediately preceding the time when the assertion of residence is made, and has not claimed residency in another community, state, territory, or country for that period.

An individual who receives IFQ derived from QS held by a CQE may not designate a skipper to fish the community IFQ.

Individuals who hold leases of IFQ from communities are considered to be IFQ permit holders and are subject to the regulations that govern other permit holders unless specified otherwise in this rule. This includes the payment of annual fees as required under 50 CFR 679.45.

(c) Sale Restrictions

To avoid certain restrictions, a CQE may not sell its QS unless that sale will generate revenues to improve, sustain, or expand the opportunities for community residents to participate in the IFQ halibut and sablefish fisheries. NMFS will approve the transfer of QS held by a CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer. This authorization must be in the form of a signature on the Approval of Transfer form by an authorized representative of the governing body of the community. The purpose of this authorization is to ensure that the community is fully aware of the transfer because certain restrictions apply to future transfers if the transfer of QS is for a reason other than to sustain, improve, or expand the program (i.e., the CQE would be prohibited from holding QS on behalf of that community for a period of three years and the CQE must divest itself of all QS held on behalf of that community).

This rule allows a CQE to transfer QS to dissolve the CQE; or as a result of a court order, operation of law, or as part of a security agreement. These provisions account for those cases in which a CQE is no longer capable of representing an eligible community and seeks either: (1) to divest itself of QS holdings voluntarily in order to provide an opportunity for another non-profit to form and seek approval as a CQE for a community or (2) to meet the legal requirements requiring divestiture of QS. These forms of transfers are authorized under the existing IFQ Program.

If subsequent information is made available to NMFS that confirms that the transfer of QS is made for reasons other than to sustain, improve, or expand the opportunities for community residents, then NMFS will withhold annual IFQ permits on any remaining QS held by the CQE on behalf of that community and will disqualify that CQE from holding QS on behalf of that community for three calendar years following the year in which final agency action adopting that determination is made.

NMFS would not impose this restriction until the CQE had received full administrative due process, including notice of the potential action and the opportunity to be heard. An initial administrative determination (IAD) proposing an adverse action would only become final agency action if the CQE failed to appeal the IAD within 60 days, or upon the effective date of the decision issued by the Office of Administrative Appeals. The

procedures for appeal are provided at 50 CFR 679.43.

The 3–year restriction is intended to discourage speculating in the QS market or using potential assets to fund other unrelated projects, and encourage the long-term participation of fishery dependent communities in the IFQ Program.

6. Joint and Several Liability for Violations

Both the CQE and the individual fisherman to whom the CQE leases its IFQ will be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is in the process of fishing the leased IFQ. This joint and several liability is analogous to the joint and several liability currently imposed on IFQ permit holders and any hired skippers fishing the permit holders' IFQ.

7. Administrative Oversight

Implementing this proposal requires that NMFS: (1) review applications of eligibility for non-profit entities seeking to be qualified as a CQE for a particular community and certify eligible CQEs and (2) review an annual report detailing the use of QS and IFQ by the CQE and community residents. If a CQE fails to provide a completed annual report to NMFS for each community that it represents, then that CQE will be deemed ineligible to use the IFQ resulting from that QS on behalf of that community until a complete annual report is received. Before becoming a Final Agency Action, any such determination by NMFS may be appealed through the administrative appeals process described under the IFQ Program (50 CFR 679.43).

Each non-profit entity applying to become a CQE must provide NMFS with the following:

1. Its articles of incorporation as a non-profit entity under the laws of the State;
2. A statement designating the community, or communities, represented by that CQE;
3. Management organization;
4. A detailed statement describing the procedures that will be used to determine the distribution of IFQ to residents of each community represented by that CQE; and
5. A statement of support and accountability of the non-profit entity to that community(ies) from a governing body representing each community represented by the CQE.

NMFS will provide the State with a copy of the applications. After receiving the copies, the State will have a period of 30 days to provide comments to NMFS. NMFS will consider these comments before certifying a non-profit entity as a CQE. NMFS will review all applications for completeness. Incomplete applications will be returned to the applicant for revision. This rule does not establish a limit on the amount of time that a non-profit would have to correct deficiencies in an application.

To minimize potential conflicts that may exist among non-profit entities seeking qualification as a CQE, NMFS will not consider a recommendation from a community governing body supporting more than one non-profit entity to hold QS on behalf of that community. The specific community governing body that would be relied on to make a recommendation varies depending on the governance structure of the particular community as specified below.

Establishing a requirement that a specific governing body within a community provide a recommendation supporting a CQE creates a clear link between the governing body that represents that community and the CQE. Allowing multiple non-profits to apply as CQEs for a single community requires additional review by NMFS to ensure accountability. The linkage to specific recognized governing bodies within a community minimizes the need for additional administrative oversight to ensure accountability to a community and provides a clear nexus between the CQE and the community members it is intended to represent by holding QS on behalf of that community.

The specific governing body that provides the recommendation is based on the principle that those communities that choose to incorporate as cities have established a cohesive central government structure in which all community residents can participate, and is therefore most representative of the largest number of individuals. In cases where a community is not incorporated, and a tribal government is present, the tribal government is relied on to provide representation, with an understanding that non-tribal members may have more limited representation in such communities. However, many of these communities are populated by a relatively large percentage of tribal members and the tribal government is likely to represent the overall interests of the communities. In communities lacking either of these governance structures, but with an association that has a recognized relationship with the State for purposes of governmental functions, that association is deemed best suited to serve as a representative of that community's interests. Establishing this priority eliminates the need to require multiple governance structures within a community to come to a consensus to recommend a CQE. This method would effectively provide a veto power to a smaller and likely less representative governance structure within the community.

Communities incorporated as municipalities. For a community that is incorporated as a municipality under State statutes, the City Council recommends the non-profit entity to serve as the CQE for that community.

Communities represented by tribal governments. For those communities that are not incorporated as municipalities but that are represented by a tribal government recognized by the Secretary of the Interior, the tribal governing body recommends the non-profit entity to serve as the CQE for that community.

Communities represented by a non-profit association. For those communities that are not incorporated as a municipality, and that are not represented by a tribal government, the community non-profit association that has an established relationship as the governmental body recognized by the State for purposes of governmental functions recommends the non-profit entity to serve as the CQE for that community.

Communities without governing bodies. Those communities that are not incorporated as a municipality, or are not represented by a tribal government recognized by the Secretary of the Interior, and do not have a community non-profit association recognized by the State for purposes of governmental functions, are not eligible to recommend a non-profit entity to hold QS on its behalf until a representative governing entity is formed (e.g., incorporation as a municipality, representation by a tribal government recognized by the Bureau of Indian Affairs, or formation of a community non-profit association recognized by the Alaska Department of Community and Economic Development). NMFS will consult with the State to determine whether a community non-profit association has been formed, and whether it adequately represents the interests of the community before that community non-profit association can recommend a CQE to hold QS on behalf of that community.

This requirement ensures that communities that do not have a governmental structure form such a structure prior to being allowed to recommend a specific non-profit entity as a CQE. This requirement is expected to affect only two of the 42 eligible communities: Halibut Cove and Meyers

Chuck. Neither of these communities possess any of the governmental bodies described above.

8. Annual Report

Each CQE must submit an annual report by January 31 to NMFS and to the governing body for each community represented by the CQE, detailing the use of QS and IFQ by the CQE and community residents during the previous year's fishing season. That annual report must contain the following information for the preceding fishing season:

1. Identification of the eligible community, or communities, represented by the CQE ;
2. Total amount of halibut QS and sablefish QS held by the CQE at the start of the calendar year and at the end of the calendar year;
3. Total amount of halibut and sablefish IFQ leased from the CQE;
4. Names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ;
5. The name, ADF&G vessel registration number, USCG documentation number, length overall, and home port of each vessel from which the IFQ leased from the CQE was fished;
6. The names, and business addresses of those individuals employed as crew members when fishing the IFQ derived from the QS held by the CQE.
7. A detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents;
8. A description of efforts made to employ crew members who are residents of the eligible community;
9. A description of the process used to solicit lease applications from residents of the eligible community on whose behalf the CQE is holding QS;
10. The names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE;
11. Any changes in the bylaws of the CQE, board of directors, or other key management personnel;
12. Copies of minutes and other relevant decision making documents from CQE board meetings; and
13. The number of vessels on which IFQ derived from QS held by a CQE is fished.

The purpose of the annual report is to assist NMFS and the Council to assess the performance of the CQEs in meeting the objectives of providing for community-held QS. The Council expressed its intent to review the use of community QS 5 years after the effective date of implementing the regulations.

Submitting the annual report by January 31 provides NMFS adequate time to review the annual report for deficiencies that may exist and provides the CQE with time to make corrections before issuing annual IFQ to the CQE at the beginning of the IFQ fishing season.

NMFS routinely collects specific information on the transfer of QS as part of transfer applications. Specifically, NMFS can provide items 1 through 4 and item 13, as described above, to the CQEs so that they can include such information in their annual reports. The CQEs do not have to collect this information separately.

If a CQE fails to submit a timely and complete annual report, then NMFS would initiate an administrative action to suspend the ability of that CQE to transfer QS and IFQ, and to receive additional QS by transfer. This action would be implemented consistent with the administrative review procedures provided at 50 CFR 679.43. Also, a CQE would be subject to enforcement actions for violating regulations.

Changes from the Proposed Rule

This final rule implements the regulations established in the proposed rule with two minor changes. First, this action clarifies that residents of the Village of Seldovia would be considered eligible to receive IFQ by transfer from the CQE established to represent the City of Seldovia. Second, this action clarifies that the CQE which is designated to represent the Indian Village of Metlakatla could be incorporated under tribal authority due to its status as an Indian Reservation, which is incorporated under Federal law. These changes respond to concerns raised in public comment. A description of the need for this change is provided in the "Response to Comments" section.

Response to Comments

The proposed rule was published in the **Federal Register** on October 16, 2003 (68 FR 59564), and invited public comments until December 1, 2003. NMFS received 22 public comment letters containing a total of 20 unique comments. Thirteen of the comments received were letters supporting the proposed rule and requesting Secretarial approval of Amendment 66 to the FMP.

During the public comment period, the Council convened a committee to review the proposed rule. This committee was charged with reviewing the proposed rule, but was not specifically tasked with providing formal comments to NMFS. This forum provided an opportunity for affected coastal communities and other members of the public to review the proposed rule and could serve as a basis for additional comments from individual committee members. Although no formal comments were submitted, several members of the committee did submit written comments independently.

Comment 1: This rule will have an adverse effect on the marine environment, and more specifically halibut and sablefish fishery stocks.

Response: This rule is not expected to adversely affect the marine environment. NMFS prepared an EA/RIR/FRFA for this action that examined its potential effects on the marine environment and found that no significant impact on the human environment would result from this action. Specifically in reference to halibut and sablefish fishery stocks, this rule does not increase the overall amount of halibut or sablefish that can be harvested. The total amount of halibut and sablefish that can be harvested is determined by a scientific review of the stock status on an annual basis. Neither the halibut nor the sablefish stocks are considered overfished, nor is there any indication that these stocks are subject to overfishing. Nothing in this rule diminishes the ability of the IPHC or NMFS to set conservative catch limits for these stocks based on the best available scientific information to ensure their biological conservation.

Comment 2: Existing regulations at 50 CFR 679.41, which require that an individual must have a minimum of 150 days of experience working onboard a vessel as a member of a harvesting crew in any U.S. commercial fishery in order to receive IFQ by transfer, could prevent individuals participating in the salmon setnet fisheries, who typically operate from a skiff, from qualifying as an "IFQ crew member."

Response: Regulations at 50 CFR 679.2 define an "IFQ crew member" as "any individual who has at least 150 days experience working as part of a harvesting crew in any U.S. commercial fishery." In order to receive QS or IFQ by transfer, one of the qualifications is that an individual must be an IFQ crew member. Harvesting is defined as "work that is related to the catching and retaining of fish" for the purposes of this definition. If the salmon set net fishery is a U.S. commercial fishery, then nothing within the existing regulations would disqualify a member of a harvesting crew in that fishery from using the time that they have accrued in that work toward the 150–day requirement to receive IFQ by transfer from a CQE.

Comment 3: For individuals to receive IFQ from the CQE, they must affirm that they have maintained a domicile in the community on whose behalf the CQE is holding QS from which the IFQ is leased for at least 12 consecutive months. Individuals living outside the city limits of Seldovia, one of the communities qualified to have a CQE hold QS on its behalf, would be ineligible to receive IFQ under this program. Residents of Seldovia Village, which is adjacent to the City of Seldovia, however, have historically participated in commercial fisheries operating out of Seldovia.

Response: This rule establishes the City of Seldovia as a community on whose behalf a CQE may hold QS. The Council did not specify whether the residency requirement would allow individuals living outside of the established boundaries of a community to participate. The City of Seldovia has distinct boundaries from the Village of Seldovia and a strict interpretation of this rule would exclude residents outside the City of Seldovia from participating in this program. Based on information provided by the commenter and additional information from State records, however, a historic linkage between the City of Seldovia and the Village of Seldovia is apparent in terms of participation in commercial fisheries.

In light of the historic linkage between the City of Seldovia and the Village of Seldovia, NMFS is clarifying the rule so that residents of the Village of Seldovia could participate as potential recipients of any IFQ derived from QS held on behalf of the City of Seldovia. The final rule has been modified accordingly at 50 CFR 679.2.

Comment 4: The Village of Seldovia should be designated as a community eligible to designate a CQE to hold QS on its behalf.

Response: The Village of Seldovia may meet many of the requirements necessary to qualify as an eligible community under the criteria established by the proposed rule except that it was not specifically designated by the Council. As is noted in the preamble of the proposed rule, the Council adopted a specific list of eligible communities to limit the entry of new communities into the Community QS Program (see Table 21 to part 679). The Council expressed a desire to review the addition of any communities not listed. This review reduces potential disruption in administration of the Community QS Program due to a sudden and unanticipated increase in competition for QS among eligible communities. This Council review also would provide an additional public review process before modifying the Community QS Program.

Public input into the Council process did not indicate that the Village of Seldovia sought inclusion into this program and the Council did not recommend its inclusion into the list of initially eligible communities. However, nothing in this final rule prevents the Village of Seldovia from petitioning the Council to be included into the list of eligible communities through a possible amendment to the FMP at some point in the future. However, residents of the Village of Seldovia may participate in the program as explained in the response to Comment 3.

Comment 5: Establishing a program which limits the individual use cap of halibut and sablefish that each CQE may hold on behalf of a community is not responsive to the needs of individual communities with larger populations relative to many of the rural communities eligible to recommend a CQE. Larger communities should have a larger use cap in proportion to their population.

Response: In the development of its policy, the Council considered an individual use cap for the communities as an equitable basis for establishing the distribution of shares. Alternative mechanisms for limiting QS among communities were not further developed. The commenter indicates that the potential amount of IFQ available for each individual fisher is lower in larger communities. The potential amount is the same (same limits) but the competition for that IFQ would be greater. However, the impetus for this program is not to supplement ownership by individuals within communities, but to provide an opportunity for improving the likelihood of community residents to receive IFQ leases. The proposed rule noted that residents of larger communities typically have improved access to financial markets and alternative fishery and non-fishery employment opportunities. Establishing the same individual use cap for all communities may result in less IFQ available per qualified resident in larger communities, but an alternative use cap mechanism based on the population of the community would create an advantage for larger communities relative to smaller communities. Applying an equal individual use cap among the communities was considered to be an equitable measure for limiting the holdings of an individual community without providing an allocative advantage to larger communities.

Comment 6: The Commenter believes that the 50,000 lb (22.7 mt) limit on the amount of halibut or sablefish IFQ that can be leased and fished on board an individual vessel is not sufficient to meet the needs of the offshore fishery, particularly for sablefish, which typically require larger vessels and more harvests to be profitable. The 50,000 lb (22.7 mt) IFQ vessel lease cap may not provide adequate halibut and sablefish product to support the operations of newer vessels.

Response: The 50,000 lb (22.7 mt) limit on halibut and 50,000 lb (22.7 mt) limit on sablefish was established as a measure to ensure a broader distribution of IFQ among potentially qualified residents. Although a larger upper limit on the amount of IFQ that can be used aboard an individual vessel would provide an opportunity for larger vessels to participate in IFQ fisheries using IFQ derived from QS held by CQEs, the 50,000 lb (22.7 mt) limit was established to limit consolidation and to accommodate smaller QS holder and new entrants that may benefit from an IFQ lease. The 50,000 lb (22.7 mt) limit was developed through the Council's deliberative process and is responsive to public concerns raised during the development of the program.

Comment 7: The commenter raises concerns that the proceeds that may be generated by this program could be used to fund general community projects.

Response: The final rule restricts the use of funds derived from the sale of QS to projects that are intended to sustain, expand, or improve the ability of community residents to participate in the IFQ fisheries. These restrictions are detailed in the preamble to the proposed rule. As the QS holding entity, the CQE would maintain the authority to administer funds within the guidelines established by this rule. This rule does not establish restrictions on the use of funds generated from revenues obtained by the lease of IFQ to community residents. The specific use of any funds generated by leasing IFQ could be used at the discretion of the CQE.

Comment 8: The State of Alaska should be allowed to provide the recommendation necessary for the approval of a CQE for a particular community in those communities where internal issues may prohibit a legitimate CQE from obtaining support from the governing body, as established by this rule.

Response: The mechanism for establishing support for a CQE was intended to provide a linkage between the community and the governing body of that community. Although an alternative mechanism for providing

support to a CQE is possible through a State approval mechanism, establishing such a mechanism at this time would require establishing criteria for establishing when a community is not capable of meeting the requirements for recommending a CQE to hold QS on its behalf, and an appeal mechanism for those governing bodies that wish to challenge an adverse finding. The commenter states that certain governing bodies may not be well-suited or capable of providing the support required to recommend a CQE. However, at this time it is not clear which governing bodies are not capable of providing the type of support that this program would require. Establishing a separate mechanism at this time could address a potential future concern about the ability of governing bodies to recommend a CQE, but it is unclear that the need for a separate approval mechanism is required at this time. If after the implementation of this program it becomes apparent that certain community governing structures are not capable of providing the support and oversight required then the Council could recommend additional regulatory changes to address these concerns with a more detailed understanding of the issues. The regulations could be modified at that time to accommodate any changes that may be necessary for specific communities.

Comment 9: NMFS should review the cumulative impacts of the restrictions on QS purchase by CQEs and provide additional analysis on the amount of QS that is available for purchase in each IFQ regulatory management area.

Response: The EA/RIR/IRFA prepared for this action reviews of the cumulative impacts of limits and restrictions on QS purchase. NMFS does not maintain a database listing all QS available for purchase since QS transfer is governed by private contractual agreements and the amount of QS available on the market is dependent on the choices of individual QS holders. NMFS maintains a list of all QS holders, but the status of those shares is unknown.

Comment 10: The CQE should be required to verify an IFQ lessee's residency.

Response: The CQE will be one party to the IFQ transfer form that is required for each vessel lease. The IFQ lessee will have to affirm his or her residency on this form. Presumably, the CQE can verify the prospective lessee's residency independently of any regulatory requirement. Requiring that the CQE verify the prospective lessee's residency and requiring the lessee to affirm his or her residency on the QS/IFQ transfer application is redundant and not required to meet the intent of this program.

Comment 11: The CQE should be defined to include multipurpose operational functions such as buying and selling seafood products.

Response: Nothing in this final rule limits the ability of the CQE to participate in other business operations. NMFS requires that a CQE meet the criteria established in this rule for its formation, but does not limit the ability of the CQE to engage in other activities.

Comment 12: The regulations should require that primary processing occur within the community on whose behalf the CQE holds QS.

Response: The Council did not recommend and this rule does not implement specific processing requirements based on public testimony concerning the lack of processing capacity in many of the smaller communities that would be eligible to participate in this program. The intent of the program is not to limit delivery requirements to specific communities, but to provide an additional opportunity to the fishermen of eligible communities to access halibut and sablefish IFQ fisheries. Limiting processing to specific communities does not meet the intent of this program and would limit the ability of an IFQ lessee to effectively seek the best ex-vessel value.

Comment 13: The proof of support for a CQE from the governing body of an eligible community should be a standardized form.

Response: The regulations established by this rule require that a resolution recommending a CQE be provided by the appropriate governing body at § 679.41(l)(v). The same procedure is required for all governing bodies. A standardized form is not required for the governing body to pass a resolution to indicate its support for a CQE.

Comment 14: Tribal governments in Southeast Alaska should be provided with the authority to participate as community governing bodies that recommend the CQE.

Response: As noted in the preamble to the proposed rule (68 FR 59564) and the preamble to this final rule, the Council recommended this program, and the Secretary of Commerce approved the FMP amendment, as a measure to provide additional opportunities for rural residents in remote communities throughout the Gulf of Alaska. This rule implements measures that provide an opportunity for all rural residents to participate in this program and is not intended to limit participation only to tribal members or require the approval of tribal governments to recommend a CQE in all communities.

The commenter suggests that "Southeast Tribes" participate in the process of recommending a CQE in addition to the governing body of the community. As noted in the preamble, this rule is designed so that only one governing body would provide the recommendation for a CQE. This is intended to reduce potential conflicts that could exist with multiple governing bodies providing differing recommendations. The rule is structured to accommodate the governing bodies of the communities and is based on the principle that those communities that have chosen to incorporate as cities have established a cohesive central government structure in which all community residents can participate, and is therefore the most representative of the largest number of individuals. In cases where a community is not incorporated, and a tribal government is present, the tribal government is relied on to provide representation. Many of these communities are populated by a relatively large percentage of tribal members and the tribal government is likely to represent the overall interests of the communities.

If tribal governments were required to approve the recommendation for a CQE in all circumstances, than they effectively would control the recommendation process by the ability to refuse to approve a CQE recommended by a city government that did not receive a recommendation from the tribe. This would limit the roll of the municipality and its ability to represent the broad range of constituents that a municipality is supposed to represent.

Comment 15: The Articles of Incorporation and bylaws for a CQE should be consistent among the non-profit entities seeking recognition as a CQE.

Response: The specific articles of incorporation and bylaws may differ from community to community depending on the specific needs of the CQE, requests of the governing body of that community, and specific financial considerations that may exist on a case-by-case basis. This rule does not establish specific requirements because the conditions that may be necessary for a CQE in one community may differ from other communities. All prospective CQEs are required to be incorporated through the State of Alaska (except in the case of Metlakatla), but no specific requirements exist on the specific form of non-profit incorporation to provide greater flexibility to those

communities. Uniform requirements would reduce that flexibility.

Comment 16: The fishing seasons for the halibut and sablefish IFQ Programs should be 12 months.

Response: This rule is not intended to modify the existing IFQ fishing seasons, but is intended to expand the ability of non-profit entities to hold QS on behalf of specific communities. Modifying the IFQ fishing seasons would require a separate regulatory action not intended under this rule.

Comment 17: There is no discussion of the use of holding pens as a means of preserving live product in this rule.

Response: This rule is not intended to modify fish handling practices. Nothing in this rule would limit the use of holding pens or other methods to hold fish for use in processing and marketing to the extent those techniques are allowed under other State and Federal regulations.

Comment 18: Local governments, specifically borough governments, should be allowed to be eligible as CQEs. Additional measures to develop a separate non-profit entity are not necessary to meet the objectives of this program.

Response: Although a number of municipalities may be well-suited to holding QS on behalf of specific communities, the FMP amendment that this final rule would implement states that a separate non-profit entity should be formed for the express purpose of holding QS on behalf of a community. The commenter correctly notes that municipalities may have an established financial capacity that would enable them to access capital markets. However, nothing in this rule would limit the ability of municipalities to participate in the formation of the non-profit entities, assist them in securing capital, or assist communities within a borough to incorporate a CQE. While it is possible that some of the functions of a CQE would duplicate functions of a borough government, the Council was explicit in their recommendations that a new non-profit entity would be best suited to serve as a CQE rather than relying on existing governing structures. During public deliberations the Council considered alternative mechanisms for establishing a CQE. At that time, the Council considered the potential advantages to establishing a separate body to hold QS on behalf of the community. The Council recommended that newly established CQEs be formed so that all communities would have a uniform application process, and so that all communities would be on an equal footing.

Comment 19: The CQE established to represent Metlakatla should be allowed to incorporate under the laws of the Metlakatla Indian Community.

Response: The Council recommended incorporation under the laws of the State of Alaska to provide consistency in the certification of non-profit entities. Incorporating a non-profit entity is typically performed through the State although specific provisions for incorporating through tribal governments is possible. The community of Metlakatla is unique among the other communities in that it is incorporated under Federal law as an Indian Reservation and is not subject to incorporation as a municipality under regulations of the State of Alaska. Given the unique status of Metlakatla under Federal law, this rule is modified to allow the non-profit entity which will represent the community of Metlakatla as a CQE to incorporate as a non-profit entity under Federal law. Any non-profit entity incorporated under Federal law would still need to meet the other requirements established in this rule under 50 CFR 679.41(l) to be authorized to serve as the CQE for the community of Metlakatla.

Comment 20: The commenter requests assurance that this program may be modified in the future based on continuing formal consultation.

Response: This program can be modified in the future based on recommendations made by the Council or NMFS. The annual report provides a periodic opportunity to review the progress of the CQEs in meeting the goals and objectives of this program. The Council stated its intent to review this program five years after its implementation.

Classification

Included with this final rule is the Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule contained a detailed summary of the analyses conducted in the IRFA, and that discussion is not repeated in its entirety here.

Summary of the FRFA

The proposed rule was published in the **Federal Register** on October 16, 2003 (68 FR 59564). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. No comments were received on the IRFA.

The implementation of Amendment 66 and the associated regulations for halibut would potentially affect all individuals, corporations or partnerships, or other collective entities holding QS. At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS (NMFS/RAM 2002). An examination of limits on quota share holdings indicates that the halibut and sablefish fishing operations are small. Additionally, 42 communities are to designate Community Quota Entities (CQEs) to hold QS on behalf of these communities. All of these communities would be considered to be small entities.

This regulation imposes new recordkeeping or reporting requirements on the regulated small entities. Specifically, this rule requires that CQEs provide an application, an annual report, information concerning the use of funds derived from the sale of QS, and submit a QS/IFQ transfer form. The governing body of an eligible community is required to provide a resolution supporting a CQE to represent that community and to provide an authorization for the sale of any QS by the CQE. This collection-of-information requirement was submitted to OMB for approval on July 29, 2003, under the OMB approval number 0648–0272. This request is currently under review. Those sections of the regulation that will be effective after OMB approval are noted in the **DATES** section of this rule.

This rule incorporates revisions to the existing IFQ Program regulations and policy to explicitly allow a new group of non-profit entities to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. This change allows a non-profit corporate entity that meets specific criteria to receive transferred halibut or sablefish QS on behalf of an eligible community and to lease the resulting IFQ to fishermen who are residents of the eligible community. This change is intended to provide additional opportunities to these fishermen, and may indirectly address concerns about the economic viability of those communities. The objectives for this action are described in detail in the proposed rule which was published on October 16, 2003 (68 FR 59564).

The status quo was considered as an alternative, but was rejected. That alternative would have resulted in no action to address the concerns that since the initial issuance of QS the amount of

QS and the number of resident QS holders has substantially declined in most of the GOA communities affected by this action. This trend may have had an effect on employment and may have reduced the diversity of fisheries to which fishermen in rural communities have access. The ability of fishermen in small rural communities to purchase QS or maintain existing QS may be limited by a variety of factors unique to those communities. Although the specific causes for decreasing QS holdings in rural communities may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries.

Within the preferred alternative, numerous elements and options were analyzed that considered a range of measures for establishing eligibility, use caps, transfer provisions, and other aspects of this program. Combinations of elements and options were analyzed as part of the preferred alternative to provide an adequate contrast and range of alternative approaches to status quo management.

The preferred alternative modified the IFQ Program to allow non-profit entities that represent small rural communities in the GOA with a historic participation in the halibut and sablefish fisheries to hold QS. The Council's recommendations also reflect the most recent amendments to the Magnuson-Stevens Act, and IFQ policy recommendations by the National Research Council (NRC). The status quo alternative would not have addressed these concerns or the recommendations of the NRC.

Statement and Objective and Need

A description of the reasons why this action is being considered and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Steps Taken to Minimize Economic Impacts on Small Entities

This rule revises the eligibility criteria to receive QS and IFQ by transfer to allow eligible communities in the GOA to establish non-profit entities to purchase and hold halibut and sablefish QS for lease to, and use by, community residents as defined by specific elements of the rule. This action is intended to improve the effectiveness of the IFQ Program and is necessary to promote the objectives of the Magnuson-Stevens Act and the Halibut Act with respect to the IFQ fisheries. The potential economic impacts of these measures are described in detail in the FRFA.

Analysis of this rule indicates no adverse impact on small entities from this action. This action may have an economic benefit for small entities, to the extent that this action provides additional fishing opportunities to rural fishermen. The benefit is largely due to the redistribution of fishing opportunities, and is primarily a social benefit, not a strictly economic benefit. However, the potential economic benefits of this possibility can not now be measured or estimated.

Net benefits cannot be quantified because of the importance of non-market social costs and benefits in the proposed action. However, qualitatively, the sale of QS to the CQEs will increase the revenues of some community members who may wish to exit the fishery, or redirect capital into other industries within the larger communities incurring a net loss of QS. To the extent that residents within larger communities currently hold proportionally more quota shares, these residents, and presumably the communities where they live, will benefit from the compensation received by the sale of quota shares; otherwise, they would not voluntarily choose to sell.

No measures were taken to reduce impacts on small entities beyond those already taken with the development of alternatives in the IRFA. The IRFA considered an alternative that would have maintained the status quo in addition to this alternative.

NMFS is not aware of any alternatives in addition to those considered in this action that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes while further minimizing the economic impact of the rule on small entities. The impact on small entities under this action is not more adverse than the status quo for the small entities in the halibut and sablefish IFQ fisheries. This action could provide additional benefits to a number of small entities that would not occur under the status quo option.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS will publish a small entity compliance guide during the implementation phase of this program to assist the governing bodies of the eligible communities identified in this rule by posting it on the NMFS Alaska Region website at: *http://www.fakr.noaa.gov/*. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the website above.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule complies with the Halibut Act and the Council's authority to implement allocation measures for the management of the halibut fishery.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 26, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons discussed in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq* , Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.2, the definition for "Eligible community" is revised and definitions for "Community quota entity (CQE)" and "Eligible community resident" are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Community quota entity (CQE): (for purposes of the IFQ Program) means a non-profit organization that:

(1) Did not exist prior to April 10, 2002;

(2) Represents at least one eligible community that is listed in Table 21 of this part; and,

(3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community.

* * * * *

Eligible community means:

(1) For purposes of the CDQ program, a community that is listed in Table 7 to this part or that meets all of the following requirements:

(i) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured

along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea;

(ii) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (P.L. 92–203) to be a native village;

(iii) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI; and

(iv) That has not previously deployed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investment. The community of Unalaska is excluded under this provision.

(2) For purposes of the IFQ program, a community that is listed in Table 21 to this part, and that:

(i) Is a municipality or census designated place, as defined in the 2000 United States Census, located on the GOA coast of the North Pacific Ocean;

(ii) Has a population of not less than 20 and not more than 1,500 persons based on the 2000 United States Census;

(iii) Has had a resident of that community with at least one commercial landing of halibut or sablefish made during the period from 1980 through 2000, as documented by the State of Alaska Commercial Fisheries Entry Commission; and

(iv) Is not accessible by road to a community larger than 1,500 persons based on the 2000 United States Census.

* * * * *

Eligible community resident means, for purposes of the IFQ Program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and

(3) Is an IFQ crew member.

* * * * *

■ 3. In § 679.5, paragraph (l)(8) is added to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(8) *CQE annual report for an eligible community.* By January 31, the CQE shall submit a complete annual report on halibut and sablefish IFQ activity for the prior fishing year for each community represented by the CQE to the Regional Administrator, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, and to the governing body of each community represented by the CQE as identified in Table 21 to this part.

(i) A complete annual report contains the following information:

(A) Name, ADF&G vessel registration number, USCG documentation number, length overall, and home port of each vessel from which the IFQ leased from QS held by a CQE was fished;

(B) Name and business addresses of individuals employed as crew members when fishing the IFQ derived from the QS held by the CQE;

(C) Detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents;

(D) Description of efforts made to ensure that IFQ lessees employ crew members who are eligible community residents of the eligible community aboard vessels on which IFQ derived from QS held by a CQE is being fished;

(E) Description of the process used to solicit lease applications from eligible community residents of the eligible community on whose behalf the CQE is holding QS;

(F) Names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE;

(G) Any changes in the bylaws of the CQE, board of directors, or other key management personnel; and

(H) Copies of minutes and other relevant decision making documents from CQE board meetings.

(ii) Additional information may be submitted as part of the annual report based on data available through NMFS. This includes:

(A) Identification of the eligible community, or communities, represented by the CQE;

(B) Total amount of halibut QS and sablefish QS held by the CQE at the start of the calendar year and at the end of the calendar year;

(C) Total amount of halibut and sablefish IFQ leased from the CQE;

(D) Names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ; and

(E) Number of vessels that fished for IFQ derived from QS held by a CQE.

* * * * *

■ 4. In § 679.7, paragraphs (f)(16) and (f)(17) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(16) Hire a master to fish for IFQ halibut or IFQ sablefish that is derived from QS held by a CQE.

(17) Process IFQ halibut or IFQ sablefish onboard a vessel on which a person is using IFQ derived from QS held by a CQE.

* * * * *

■ 5. In § 679.41, paragraphs (d)(1) and (g)(1) are revised, and paragraphs (c)(10), (e)(4), (e)(5), (g)(5) through (g)(8), and paragraph (l) are added to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(10) If the person applying to transfer or receive QS or IFQ is a CQE, the following determinations are required for each eligible community represented by that CQE:

(i) An individual applying to receive IFQ from QS held by a CQE is an eligible community resident of the eligible community in whose name the CQE is holding QS;

(ii) The CQE applying to receive or transfer QS, has submitted a complete annual report(s) required by § 679.5 (l)(8);

(iii) The CQE applying to transfer QS has provided information on the reasons for the transfer as described in paragraph (g)(7) of this section;

(iv) The CQE applying to receive QS is eligible to hold QS on behalf of the eligible community in the halibut or sablefish regulatory area designated for that eligible community in Table 21 to this part; and

(v) The CQE applying to receive QS has received notification of approval of eligibility to receive QS/IFQ for that community as described in paragraph (d)(1) of this section.

(d) * * *

(1) *Application for Eligibility.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) containing accurate information to the Regional Administrator, except that an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) is not required for a CQE if a complete application to become a CQE, as described in paragraph (l)(3) of this

section, has been approved by the Regional Administrator on behalf of an eligible community. The Regional Administrator will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility form to any person on request.

* * * * *

(e) * * *

(4) A CQE may not purchase or use sablefish QS blocks less than or equal to the number of QS units specified in (e)(2)(i) through (e)(2)(iv) of this section.

(5) A CQE may not purchase or use halibut QS blocks less than or equal to the number of QS units specified in (e)(3)(i) and (e)(3)(ii) of this section.

* * * * *

(g) * * *

(1) Except as provided in paragraph (f), paragraph (g)(2), or paragraph (l) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

* * * * *

(5) A CQE may not hold QS in halibut IFQ regulatory areas 2C or 3A that is assigned to vessel category D.

(6) IFQ derived from QS held by a CQE on behalf of an eligible community may be used only by an eligible community resident of that eligible community.

(7) A CQE may transfer QS:

(i) To generate revenues to provide funds to meet administrative costs for managing the community QS holdings;

(ii) To generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries;

(iii) To generate revenue to purchase QS to yield IFQ for use by community residents;

(iv) To dissolve the CQE; or

(v) As a result of a court order, operation of law, or as part of a security agreement.

(8) If the Regional Administrator determines that a CQE transferred QS for purposes other than those specified in paragraph (g)(7) of this section, then:

(i) The CQE must divest itself of any remaining QS holdings and will not be eligible to receive QS by transfer for a period of three years after the effective date of final agency action on the Regional Administrator's determination; and

(ii) The Regional Administrator will not approve a CQE to represent the eligible community in whose name the CQE transferred quota for a period of three years after the effective date of final agency action on the Regional Administrator's determination.

* * * * *

(l) *Transfer of QS to CQEs.* (1) Each eligible community must designate a CQE to transfer and hold QS on behalf of that community.

(2) Each eligible community may designate only one CQE to hold QS on behalf of that community at any one time.

(3) Prior to initially receiving QS by transfer on behalf of a specific eligible community, a non-profit entity that intends to represent that eligible community as a CQE must have approval from the Regional Administrator. To receive that approval, the non-profit entity seeking to become a CQE must submit a complete application to become a CQE to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802. The Regional Administrator will provide a copy of the complete application to the Alaska Department of Community and Economic Development, Commissioner, P.O. Box 110809, Juneau, AK 99811–0809. NMFS will consider comments received from the Alaska Department of Community and Economic Development when reviewing applications for a non-profit entity to become a CQE. The Alaska Department of Community and Economic Development must submit comments on an application to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, within 30 days of receipt of the application in order for those comments to be considered by the Regional Administrator during the approval process. If an application is disapproved, than that determination may be appealed under the provisions established at 50 CFR 679.43. A complete application to become a CQE consists of:

(i) The articles of incorporation under the laws of the State of Alaska for that non-profit entity, except that a non-profit entity that is representing the Metlakatla Indian Village may provide articles of incorporation under Federal Law;

(ii) A statement indicating the eligible community, or communities, represented by that non-profit entity for purposes of holding QS;

(iii) Management organization information, including:

(A) The bylaws of the non-profit entity;

(B) A list of key personnel of the managing organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(C) A description of how the non-profit entity is qualified to manage QS on behalf of the eligible community, or communities, it is designated to represent, and a demonstration that the non-profit entity has the management, technical expertise, and ability to manage QS and IFQ; and

(D) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, resumes of management personnel, name of community or communities represented by the CQE, name of contact for the governing body of each community represented, date, name and notarized signature of applicant, Notary Public signature and date when commission expires.

(iv) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the community represented by that CQE, including:

(A) Procedures used to solicit requests from residents to lease IFQ; and

(B) Criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(v) A statement of support from the governing body of the eligible community as that governing body is identified in Table 21 to this part. That statement of support is:

(A) A resolution from the City Council or other official governing body for those eligible communities incorporated as first or second class cities in the State of Alaska;

(B) A resolution from the tribal government authority recognized by the Bureau of Indian Affairs for those eligible communities that are not incorporated as first or second class cities in the State of Alaska; but are represented by a tribal government authority recognized by the Secretary of the Interior; or

(C) A resolution from a non-profit community association, homeowner association, community council, or other non-profit entity for those eligible communities that are not incorporated as first or second class cities in the State of Alaska, and is not represented by a tribal government authority recognized by the Bureau of Indian Affairs. The non-profit entity that provides a statement of support must:

(*1*) Have articles of incorporation as a non-profit community association, homeowner association, community council, or other non-profit entity; and

(*2*) Have an established relationship with the State of Alaska Department of Community and Economic Development for purposes of representing that community for governmental functions.

(D) If an eligible community is not incorporated as a first or second class city in the State of Alaska, is not represented by a tribal government authority recognized by the Secretary of the Interior, and does not have a non-profit community association, homeowner association, community council, or other non-profit entity within that community with an established relationship with the Alaska Department of Community and Economic Development for purposes of representing that community for purposes of governmental functions, then the Regional Administrator, NMFS, will not consider any statement from a non-profit entity representing that community until that community:

(*1*) Is incorporated as a first or second class city in the State of Alaska;

(*2*) Establishes a tribal government authority recognized by the Secretary of the Interior; or

(*3*) Establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community that meets the requirements established in paragraph (E) of this section.

(E) If a community described under paragraph (l)(3)(v)(D) of this section establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community, then the Regional Administrator, NMFS, will consider any recommendations from this entity to support a particular applicant after reviewing:

(*1*) Petitions from residents affirming that the non-profit community association, homeowner association, community council, or other non-profit entity within that community represents the residents within that community; and

(*2*) Comments from the State of Alaska Department of Community and Economic Development on the articles of incorporation for that non-profit entity and the ability of that non-profit entity to adequately represent the interests of that community for purposes of governmental functions.

(*3*) If the Regional Administrator determines that this statement of support is not adequate, than that determination may be appealed under the provisions established at 50 CFR 679.43.

(4) The governing body of an eligible community as that governing body is identified in Table 21 to this part, must provide authorization for any transfer of QS by the CQE that holds QS on behalf of that eligible community prior to that transfer of QS being approved by NMFS. This authorization must be submitted as part of the Application for Transfer. That authorization consists of a signature on the Application for Transfer by a representative of the governing body that has been designated by that governing body to provide such authorization to approve the transfer of QS.

■ 6. In § 679.42, paragraphs (a), (f), (g)(1), and (h)(1) through (h)(3) are revised, and paragraphs (e)(3) through (e)(8), and (i)(4) are added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area.

(2) The QS or IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category, except:

(i) As provided in paragraph (k) of this section (processing fish other than IFQ halibut and IFQ sablefish);

(ii) As provided in § 679.41(i)(1) of this part (CDQ compensation QS exemption);

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length.

(3) Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

* * * * *

(e) * * *

(3) No CQE may hold sablefish QS in the IFQ regulatory areas of the Bering Sea subarea and the Aleutian Islands subareas.

(4) No CQE may hold more than 3,229,721 units of sablefish QS on behalf of any single eligible community.

(5) In the IFQ regulatory area east of 140° W. long., no CQE may hold more than 688,485 units of sablefish QS for this area on behalf of any single eligible community.

(6) In the aggregate, all CQEs are limited to holding a maximum of 3 percent of the total QS in those IFQ regulatory areas specified in § 679.41(e)(2)(l) through (e)(2)(iv) of this part for sablefish in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all CQEs shall increase by an additional 3 percent in each IFQ regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part up to a maximum limit of 21 percent of the total QS in each regulatory area specified in §§ 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(7) No individual that receives IFQ derived from sablefish QS held by a CQE may hold, individually or collectively, more than 50,000 lb (22.7 mt) of IFQ sablefish derived from any sablefish QS source.

(8) A CQE receiving category B, or C sablefish QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held.

(f) *Halibut QS use.* (1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(i) *IFQ regulatory area 2C.* 599,799 units of halibut QS.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(iii) *IFQ regulatory area 4A, 4B, 4C, 4D, and 4E.* 495,044 units of halibut QS.

(2) No CQE may receive an amount of halibut QS on behalf of any single eligible community which is more than:

(i) *IFQ regulatory area 2C.* 599,799 units of halibut QS.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E.

(4) A CQE representing an eligible community may receive by transfer or use QS only in the IFQ regulatory areas designated for that species and for that eligible community as described in Table 21 to this part.

(5) In the aggregate, all CQEs are limited to holding a maximum of 3 percent of the total QS in those IFQ regulatory areas specified in §§ 679.41(e)(3)(i) through (e)(3)(iii) for halibut in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all community quota entities shall increase by an additional 3 percent in each IFQ regulatory area specified in §§ 679.41(e)(3)(i) through (e)(3)(iii). This

limit shall increase up to a maximum limit of 21 percent of the total QS in each regulatory area specified in §§ 679.41(e)(3)(i) through (e)(3)(iii) for halibut.

(6) No individual that receives IFQ derived from halibut QS held by a CQE may hold, individually or collectively, more than 50,000 lb (22.7 mt) of IFQ halibut derived from any halibut QS source.

(7) A CQE receiving category B or C halibut QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(g) * * *

(1) *Number of blocks per species.* Except as provided in paragraphs (g)(1)(i) and (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks of each species in any IFQ regulatory area.

(i) A person, individually or collectively, who holds unblocked QS for a species in an IFQ regulatory area, may hold only one QS block for that species in that regulatory area; and

(ii) A CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area and no more than five blocks of sablefish QS in any IFQ regulatory area on behalf of any eligible community.

* * * * *

(h) * * *

(1) *Halibut.* No vessel may be used, during any fishing year, to harvest more than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that:

(i) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ halibut from any halibut QS source if that vessel is used to harvest IFQ halibut derived from halibut QS held by a CQE.

(2) *Sablefish.* No vessel may be used, during any fishing year, to harvest more than one percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas, except that:

(i) In the IFQ regulatory area east of 140 degrees W. long., no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ sablefish from any sablefish QS source if that vessel is used to harvest IFQ sablefish derived from sablefish QS held by a CQE.

(3) A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel, except that this provision does not apply if that IFQ allocation includes IFQ derived from QS held by a CQE. However, two or more persons may not catch and retain their IFQ in excess of these limitations.

* * * * *

(i) * * *

(4) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

* * * * *

■ 7. Table 21 to part 679 is added to read as follows:

TABLE 21 TO PART 679.—ELIGIBLE GOA COMMUNITIES, HALIBUT IFQ REGULATORY USE AREAS, AND COMMUNITY GOVERNING BODY THAT RECOMMENDS THE COMMUNITY QUOTA ENTITY

Eligible GOA Community	Community Governing Body that recommends the CQE
May use halibut QS only in halibut IFQ regulatory areas 2C, 3A	
Angoon	City of Angoon.
Coffman Cove	City of Coffman Cove.
Craig	City of Craig.
Edna Bay	Edna Bay Community Association.
Elfin Cove	Community of Elfin Cove.
Gustavus	Gustavus Community Association.
Hollis	Hollis Community Council.
Hoonah	City of Hoonah.
Hydaburg	City of Hydaburg.
Kake	City of Kake.
Kasaan	City of Kasaan.
Klawock	City of Klawock.
Metlakatla	Metlakatla Indian Village.
Meyers Chuck	N/A.
Pelican	City of Pelican.
Point Baker	Point Baker Community.
Port Alexander	City of Port Alexander.
Port Protection	Port Protection Community Association.
Tenakee Springs	City of Tenakee Springs.
Thorne Bay	City of Thorne Bay.
Whale Pass	Whale Pass Community Association.
May use halibut QS only in halibut IFQ regulatory areas 3A, 3B	
Akhiok	City of Akhiok.
Chenega Bay	Chenega IRA Village.
Chignik	City of Chignik.
Chignik Lagoon	Chignik Lagoon Village Council.
Chignik Lake	Chignik Lake Traditional Council.
Halibut Cove	N/A.
Ivanof Bay	Ivanof Bay Village Council.
Karluk	Native Village of Karluk.
King Cove	City of King Cove.
Larsen Bay	City of Larsen Bay.
Nanwalek	Nanwalek IRA Council.
Old Harbor	City of Old Harbor.
Ouzinkie	City of Ouzinkie.
Perryville	Native Village of Perryville.
Port Graham	Port Graham Village Council.
Port Lyons	City of Port Lyons.
Sand Point	City of Sand Point.
Seldovia	City of Seldovia.
Tatitlek	Native Village of Tatitlek.
Tyonek	Native Village of Tyonek.
Yakutat	City of Yakutat.

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BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040115020–4124–02; I.D. 010204B]

RIN 0648–AR07

Fisheries of the Exclusive Economic Zone (EEZ) Off the Coast of Alaska; Recordkeeping and Reporting

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise port codes (Tables 14a and 14b) used in data collection for the Federal groundfish fisheries in the EEZ off the coast of Alaska and the Pacific halibut Individual Fishing Quota (IFQ) Program. This action removes unnecessary or potentially conflicting regulations. This action is necessary to facilitate enforcement activities and standardize the collection of port-of-landing information, and is intended to meet the conservation and management requirements of the Northern Pacific

Halibut Act of 1982 (Halibut Act) with respect to halibut and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to groundfish and to further the goals and objectives of the Alaska groundfish fishery management plans.

DATES: Effective June 1, 2004.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this final regulatory action are available by writing to Sue Salveson, NMFS, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Durall, or by calling the Alaska Region, NMFS, at (907) 586–7228.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region at the address above, or to the Office of Management and Budget (OMB) by e-mail *David_Rostker@omb.eop.gov*, or fax (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008 or e-mail *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the GOA in the EEZ off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Act. The FMPs are implemented by regulations at 50 CFR part 679. NMFS manages the IFQ Program for Pacific halibut under the Halibut Act; implementing regulations are at 50 CFR 300.60 through 300.66. General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

This action revises the list of port codes in Tables 14a and 14b to 50 CFR part 679. The numerical codes identify ports where IFQ landings are made and are entered by participants when filing an IFQ prior notice of landing (PNOL). The background regarding this action is detailed in the preamble to the proposed rule (69 FR 4285 January 29, 2004). Public comments on the proposed rule were invited through March 1, 2004. No public comments were received on the proposed rule.

In brief, Tables 14a and 14b are revised as follows:

1. Numerical codes that are no longer used for IFQ landings and that do not have a corresponding alphabetical code have been removed, and

2. Numerical codes for ports that are geographically close enough to be reported as one port have been combined.

Changes from the Proposed Rule

The numerical codes identify ports where IFQ landings are made. These port codes are entered by participants when filing an IFQ prior notice of landing (PNOL) and when electronically reporting an IFQ landing (see 50 CFR 679.5(l)). The alphabetical codes identify ports where groundfish landings are made. Alphabetical codes are entered by participants completing a State of Alaska, Department of Fish and Game fish ticket and also are entered by shoreside processor participants entering data into the NMFS groundfish shoreside processor electronic logbook report (SPELR) (see 50 CFR 679.5(c)).

In Table 14a to part 679 port code 102 (Akutan Bay) is combined into port code 101 (Akutan), because these two locations are geographically close.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not duplicate, overlap, or conflict with other Federal regulations.

This action does not impose new reporting, recordkeeping or other compliance requirements on regulated small entities.

The Chief Counsel for Regulation of the Department of Commerce certified that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. No comments were received regarding the economic impact of this final rule. Therefore, no FRFA is required, and none has been prepared.

This final rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the OMB. Under control number 0648–0272, public reporting burden for the Prior Notice of Landing is estimated to average 12 minutes per response; for the IFQ landing report, 18 minutes per response is estimated. Under control number 0648–0401, public reporting burden for the Shoreside Processor Electronic Logbook Report is estimated at 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 26, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105 277, Title II of Division C; Pub. L. 106 31, Sec. 3027; and Pub. L. 106 554, Sec. 209.

■ 2. Tables 14a and 14b to part 679 are revised to read as follows:

TABLE 14a TO PART 679.—PORT OF LANDING CODES: [1] ALASKA (MARCH 2004)

Port Name	NMFS code	ADF&G code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	n/a	ANI
Anvik	n/a	ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	n/a	BET
Captains Bay	119	DUT
Chefornak	189	N/A
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska	119	DUT
Egegik	122	EGE

TABLE 14a TO PART 679.—PORT OF LANDING CODES: [1] ALASKA (MARCH 2004)—Continued

Port Name	NMFS code	ADF&G code
Ekuk	N/A	EKU
Elfin Cove	123	ELF
Emmonak	N/A	EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks	N/A	FBK
Galena	N/A	GAL
Glacier Bay	N/A	GLB
Glennallen	N/A	GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	N/A
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	N/A	HYD
Hyder	134	HDR
Juneau	136	JNU
Kake	137	KAK
Kaltag	N/A	KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	N/A
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	N/A	KOT
La Conner	N/A	LAC
Mekoryuk	147	N/A
Metlakatla	148	MET
Moser Bay	N/A	MOS
Naknek	149	NAK
Nenana	N/A	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	N/A	NUN
Old Harbor	153	OLD
Other Alaska[1]	499	UNK

TABLE 14a TO PART 679.—PORT OF LANDING CODES: [1] ALASKA (MARCH 2004)—Continued

Port Name	NMFS code	ADF&G code
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	N/A	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	N/A	LIO
Port Moller	N/A	MOL
Port Protection	161	N/A
Quinhagak	187	N/A
Sand Point	164	SPT
Savoonga	165	N/A
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna	N/A	SOL
St. George	170	STG
St. Mary	N/A	STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	N/A
Tununak	178	N/A
Ugashik	N/A	UGA
Unalakleet	N/A	UNA
Valdez	181	VAL
Wasilla	N/A	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska which currently has no code assigned, use code "499" for "Other AK."

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, CANADA, OREGON, WASHINGTON) (APRIL 2004)

Port Name	NMFS Code	ADF&G Code
CALIFORNIA		
Eureka	500	EUR
Other California[1]	599	N/A
CANADA		
Other Canada[1]	899	N/A
Port Edward	802	PRU
Prince Rupert	802	PRU
OREGON		
Astoria	600	AST
Newport	603	NPT
Olympia	N/A	OLY
Other Oregon[1]	699	N/A
Portland	N/A	POR
Warrenton	604	N/A
WASHINGTON		
Anacortes	700	ANA
Bellingham	702	N/A
Blaine	717	BLA
Everett	704	N/A
La Conner	708	LAC
Other Washington[1]	799	N/A
Seattle	715	SEA
Tacoma	N/A	TAC

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Vancouver, which currently has no code assigned, use code "899" for "Other Canada."

[FR Doc. 04–9857 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 84
Friday, April 30, 2004

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572–AB74

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs is amending its regulations to update the seismic safety requirements of the agency. These amendments will provide RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers, and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB.

In the final rules section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than June 1, 2004.

ADDRESSESS: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Agency Web Site: http://www.usda.gov/rus/index2/Comments.htm.* Follow the instructions for submitting comments.
- *E-mail: RUSComments@usda.gov.* Include in the subject line of the message "Seismic Safety".
- *Mail:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- *Hand Delivery/Courier:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168 South Building, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading "Seismic Safety." All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION: *See* the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the Rules and Regulations direct final rule section of this **Federal Register** for the applicable **SUPPLEMENTARY INFORMATION** on this action.

Dated: April 15, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–9612 Filed 4–29–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0575–AC57

Servicing of Delinquent Community and Business Programs Loans—Workout Agreements

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS) proposes to amend the regulations utilized to service the Community Facilities and Business Programs loan program by adding requirements for servicing delinquent Community Facilities in conformance with the Debt Collection Improvement Act of 1996. The intended effect of this action is to establish a workout agreement with delinquent borrowers to collect delinquent loans prior to referral for treasury offset.

DATES: Written or e-mail comments must be received on or before June 29, 2004.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Agency Web site: http://rdinit.usda.gov/regs/.* Follow instructions for submitting comments on the Web site.
- *E-Mail: comments@usda.gov.* Include the RIN Number in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department

of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor, address listed above.

FOR FURTHER INFORMATION CONTACT: Dan Spieldenner, Community Programs Senior Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, telephone: (202) 720–9700.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance Program impacted by this action is 10.766, Community Facilities Loans and Grants.

Intergovernmental Review

This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in the manner delineated in 7 CFR part 3015, subpart V.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. chapters 17A and 25, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS 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. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Federalism

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall comply with 5 U.S.C. 553, notwithstanding the exemption of that section with respect to such rules.

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0066 in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The revisions in this rulemaking for part 1951 will require an amendment to the burden package and this modification will be made when the final rule is promulgated.

Discussion

The Debt Collection Improvement Act of 1996 requires transfer of accounts that are more than 180 days delinquent to the Department of Treasury for collection by offset of Federal payments unless a suitable agreement for collection of the delinquent amount is negotiated between the borrower and the Federal agency. This change to regulation establishes requirements for negotiation of a "Workout Agreement" and the reporting requirements that are necessary to monitor the borrower's progress in resolving the delinquency. It also incorporates some administrative corrections.

List of Subjects in 7 CFR Part 1951

Accounting servicing, Grant programs—housing and community development, Reporting requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is proposed to be amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

2. Section 1951.203 is amended by revising paragraph (a) to read as follows:

§ 1951.203 Definitions.

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of Exhibits A and B of subpart A of part 1901 of this chapter.

* * * * *

3. Section 1951.222 is amended by revising paragraph (a)(1) to read as follows:

§ 1951.222 Subordination of security.

* * * * *

(a) * * *

(1) The request must be for subordination of a specific amount of the Rural Development indebtedness, and the amount must be within the approval official's authority as set forth in exhibits A and B of subpart A of part 1901 of this chapter (available in any Rural Development office).

* * * * *

4. Section 1951.226 is amended in paragraph (b)(4)(ii) by removing the word "below" and adding in its place the phrase "of this subpart."

5. Section 1951.230 is amended in paragraph (f)(2) by removing the phrase "Form FmHA or its successor agency under Public Law 103–354 442–46" and adding in its place the phrase "Form RD 1942–46."

6. Section 1951.242 is added to read as follows:

§ 1951.242 Servicing delinquent Community Facility loans.

(a) For the purpose of this section, a loan is delinquent when a borrower fails to make all or part of a payment by the due date.

(b) The delinquent loan borrower and the Agency, at its discretion, may enter into a written workout agreement.

(c) For loans that are delinquent, the borrower must provide, monthly comparative financial statements in a format that is acceptable to the Agency by the 15th day of the following month. The Agency may waive this requirement if it would cause a hardship for the borrower or the borrower is actively marketing the security property.

7. Section 1951.250 is amended by removing the last sentence.

Dated: April 15, 2004.

James E. Selmon, III,

Acting Administrator, Rural Housing Service.

[FR Doc. 04–9787 Filed 4–29–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability.

SUMMARY: The Department of Energy (DOE or Department) will hold an informal public meeting to discuss the priorities of the existing program and any possible expansion of the scope of the program to include additional consumer products and commercial and industrial equipment for either standards or voluntary programs. The Department is interested in receiving suggestions on the criteria, data, and analysis methods it should use to reach decisions on these issues, and comments on the FY 2005 Preliminary Priority-Setting Summary Report and Actions Proposed which includes data sheets for potential new products, revised data sheets for existing products, the FY 2005 Technical Support Document (TSD), and actions proposed.

DATES: The Department will hold a public meeting on Wednesday, June 9, 2004, from 9 a.m. to 4 p.m. Please submit written comments by Friday, July 9, 2004.

ADDRESSES: The meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 to complete the necessary procedures.)

The Department placed on the DOE Web site at *http://www.eere.energy.gov/buildings/appliance_standards/* the FY 2005 Preliminary Priority-Setting Summary Report and Actions Proposed containing the new data sheets, the FY 2005 TSD, and a letter discussing the proposed prioritization for FY 2005 which lists the priority for standards and test procedure rulemakings for products that are currently mandated by statute and possible new products that have been identified by various stakeholders or included in proposed legislation.

Written comments are welcome, especially following the meeting. The Department will accept comments, data, and information regarding this priority-setting no later than the date provided in the **DATES** section.

You may submit comments, identified for the FY 2005 Appliance Standards Prioritization, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: prioritysetting2005@ee.doe.gov.* Include FY 2005 Appliance Standards Prioritization in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, FY 2005 Appliance Standards Prioritization, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC, 20585.

Instructions: All submissions received must include the agency name and reference the FY 2005 Appliance Standards Prioritization. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) format file; avoid the use of special characters or any form of encryption; and, wherever possible, include the electronic signature of the author. If you don't include an electronic signature, you must authenticate comments by thereafter submitting the signed original paper document. No telefacsimiles (telefaxes) will be accepted.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611, e-mail: *Barbara.Twigg@ee.doe.gov*; or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Francine.Pinto@hq.doe.gov*, or *Thomas.DePriest@hq.doe.gov*, respectively.

SUPPLEMENTARY INFORMATION: In May 2001, the National Energy Policy Development Group reported a National

Energy Policy (NEP) to the President. One of the NEP's recommendations called for the President to direct the Secretary of Energy to take steps to improve the energy efficiency of appliances. The recommendation included supporting the existing appliance standards program, setting higher standards where technologically feasible and economically justified, and expanding the scope of the program to include additional consumer products and commercial and industrial equipment where technologically feasible and economically justified.

The Department reevaluates program priorities on an annual basis. On October 1, 2003, DOE completed and distributed the Fiscal Year 2004 priorities based on stakeholder comments regarding priorities drawn from appliance energy data sheets updated from the original FY 2003 Priority-Setting Summary Report and Actions Proposed, dated August 22, 2002. This year, the Department has conducted a more comprehensive updating of the FY 2003 report and has posted the new report, FY 2005 Preliminary Priority-Setting Summary Report and Actions Proposed, on its website for stakeholder comment. This includes draft data sheets on potential new covered products. The Department requests comments on these new products.

The June 9, 2004, public meeting will provide an opportunity to discuss the Department's draft priorities for FY 2005, the new and revised data sheets which support those draft priorities, potential new covered products, and the factors, data, and analysis methods that DOE uses, or might use in its decision-making process. The Department will consider these comments as it determines which products do not merit further consideration at this time for either a standard or a voluntary program, and as DOE assigns existing and new products a priority ranking. Prioritization will by necessity reflect funding and staffing constraints which limit how many rulemakings DOE can pursue.

The meeting will be conducted in an informal, conference style. There will not be any discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the meeting and expiration of the period for submitting written statements, the Department will consider the comments received.

If you would like to participate in the meeting or be added to the DOE mailing list to receive future notices and information regarding the energy conservation program for consumer products and commercial and industrial equipment, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on April 27, 2004.

Douglas L. Faulkner,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 04–9830 Filed 4–29–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket Number 040408109–4109–01]

RIN 0607–AA41

Amendment to the Age Search Fee Structure

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) is proposing to amend Title 15, § 50.5, of the Code of Federal Regulations (CFR) to increase the fee for conducting an Age Search from $40.00 to $65.00. The Census Bureau also is proposing to add an additional charge of $20.00 per case for expedited requests requiring search results within one day. These changes are being made to recover the increase in operating costs associated with processing an Age Search request.

DATES: Written comments must be submitted on or before June 1, 2004.

ADDRESSES: Direct all written comments on this proposed rule making to Mark T. Grice, Acting Chief, National Processing Center, U.S. Census Bureau, 1201 East 10th Street, Room 247, Building 66, Jeffersonville, IN 47132, by telephone on (812) 218–3344, or by fax on (812) 218–3293. You may also submit comments, identified by RIN number 0607–AA41, to the Federal e-rulemaking Portal: *http:/www.regulations.gov.* Please follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Eileen Little, Chief, Survey Processing Branch, National Processing Center, U.S. Census Bureau, 1201 East 10th Street, Building 64C, Jeffersonville, IN 47132, by telephone on (812) 218–3796, or by fax on (812) 218–3081.

SUPPLEMENTARY INFORMATION:

Background

The age and citizenship searching service is a self-supporting operation of the Census Bureau, conducted in accordance with 13 U.S.C. 8(a). Under this statute, all expenses incurred in the retrieval of personal information from decennial census records and the preparation of census transcripts are covered by fees paid by individuals who request this service. The Age Search census transcript provides proof of age to qualify individuals for social security or other retirements benefits, proof of citizenship to obtain passports, proof of family relationships for rights of inheritance, or to satisfy other situations where a birth certificate is required but not available. Individuals request the Age Search service to qualify for social security/retirement benefits, obtain passports, documentation for court litigation or insurance settlements, and genealogical research. The 1910 through 2000 censuses in custody of the Census Bureau are confidential and protected from disclosure by 13 U.S.C. 9. No transcript of any record will be furnished that would violate statutes requiring that information furnished to the Census Bureau be held confidential and not used to the detriment of the person to whom it relates.

Program Requirements

There has not been an Age Search fee increase since February 1, 1993. Due to an increase in operating costs over this 11-year period and in order to help maintain the self-supporting financial status, the Census Bureau proposes the following amendment to 15 CFR part 50:

- Amend § 50.5 to update the fee structure and add a fee charge for expedited requests. The Census Bureau proposes increasing the fee structure from $40.00 to $65.00 on searches of one census for one person and one transcript. The Census Bureau also is proposing to add an additional charge of $20.00 per case for expedited requests requiring search results within one day. The additional $20.00 charge for expedited cases represents the estimated cost to the Census Bureau for this service.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Most, if not all, respondents affected by the proposed fee increase are

individuals, not small or large businesses.

A unique characteristic of the Age Search service is its self-supporting status. Congress passed a law in 1952 that stipulated that this service be funded by the individuals requesting the service. By enactment of this law, the National Processing Center does not receive any federal appropriations or tax monies for the Age Search service. Consequently, the searching process of the census records and associated operating costs are funded by the fees received with the applications.

Due to an increase in operating costs since the last Age Search fee increase on February 1, 1993, and in order to help maintain the self-supporting financial status, it has become necessary to propose a fee increase from $40 to $65 per search of one census year for one person only. The projected number of individual Age Search cases is 2,620 for fiscal year 2004. Most, if not all, of these requests are authorized and initiated by individuals. In addition, we are requesting an additional charge of $20 for expedited cases (results within one day), typically for a small percentage of individuals requesting proof of citizenship for passports. The additional $20.00 charge for expedited cases represents the estimated cost to the Census Bureau for this service.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current Office of Management and Budget (OMB) control number. The Census Bureau proposes to increase the fee structure from $40.00 to $65.00 on searches of one census for one person and one transcript, and to add an additional charge of $20.00 per case for expedited requests requiring search results within one day. The form used to request age searches, Form BC–600, has been cleared under OMB Control Number 0607–0117.

On March 24, 2004, the Census Bureau published in the **Federal Register** (69 FR 13810) a proposed collection and comment request on the change. As discussed in that notice, the estimated total number of respondents affected by this proposed change is 2,620 individuals. The estimated time per response is estimated at 12 minutes.

List of Subjects in 15 CFR Part 50

Census data, Population census, Statistics.

For reasons set out in the preamble, part 50 is proposed to be amended as follows:

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR Part 50 is revised to read as follows:

Authority: 15 U.S.C. 1525–1527; and 13 U.S.C. 3 and 8.

2. Revise §50.5 to read as follows:

§ 50.5 Fee structure for age search and citizenship information.

Type of service	Fee
Searches of one census for one person and one transcript	$65.00
Each additional copy of census transcript	2.00
*Each full schedule requested	10.00

*The $10.00 for each full schedule requested is in addition to the $65.00 transcript fee.

Note: An additional charge of $20.00 per case is charged for expedited requests requiring search results within one day.

Dated: April 23, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–9661 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–07–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing a Notice of Proposed Rulemaking ("NPRM") to amend the Telemarketing Sales Rule ("TSR") to revise the fees charged to entities accessing the National Do Not Call Registry, and invites written comments on the issues raised by the proposed changes.

DATES: Written comments must be submitted on or before June 1, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "TSR Fee Rule, Project No. P034305," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov*; (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Comment," and "Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: David M. Torok, Staff Attorney, (202) 326–3075, Division of Marketing Practices, Bureau of Consumer

Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 2002, the Commission issued final amendments to the Telemarketing Sales Rule, which, *inter alia,* established the National Do Not Call Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls. 68 FR 4580 (Jan. 29, 2003) ("Amended TSR"). Under the Amended TSR, most telemarketers are required to refrain from calling consumers who have placed their numbers on the registry. 16 CFR 310.4(b)(1)(iii)(B). Telemarketers must periodically access the registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered. 16 CFR 310.4(b)(3)(iv).[1]

Shortly after issuance of the Amended TSR, Congress passed The Do-Not-Call Implementation Act, Public Law 108–10 (2003) ("the Implementation Act"). The Implementation Act gave the Commission the specific authority to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]. * * * No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available * * * to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement." *Id.* at section 2.

On July 29, 2003, pursuant to the Implementation Act and the Consolidated Appropriations Resolution of 2003, Public Law 108–7 (2003), the Commission issued a Final Rule further amending the TSR to impose fees on entities accessing the National Do Not Call Registry. 68 FR 45134 (July 31, 2003) ("the Original Fee Rule"). Those fees were based on the FTC's best estimate of the number of entities that would be required to pay for access to the national registry, and the need to raise $18.1 million in Fiscal Year 2003 to cover the costs associated with the implementation and enforcement of the "do-not-call" provisions of the Amended TSR. The Commission determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The Original Fee Rule established an annual fee of $25 for each area code of data requested from the national registry, with the first five area codes of data provided at no cost.[2] The maximum annual fee was capped at $7,375 for entities accessing 300 area codes of data or more. *Id.* at 45141.

In the Consolidated Appropriations Act of 2004, Public Law 108–199 (Jan. 23, 2004) ("the 2004 Appropriations Act"), Congress permitted the FTC to collect offsetting fees in Fiscal Year 2004 to implement and enforce the TSR. *Id.* at Division B, Title V. Pursuant to the 2004 Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 ("the Telemarketing Act"), the FTC is issuing this NPRM to amend the fees charged to entities accessing the National Do Not Call Registry.

II. Calculation of Proposed Revised Fees

In the Original Fee Rule, the Commission estimated that 10,000 entities would be required to pay for access to the National Do Not Call Registry. The Commission based its estimate on the "best information available to the agency" at that time. 68 FR at 45140. It noted that this estimate was based on "a number of significant assumptions," about which the Commission had sought additional information during the comment period. The Commission noted, however, that it received virtually no comments providing information supporting or challenging these assumptions. *Id.* As a result, the Commission anticipated "that these fees may need to be reexamined periodically and adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry." *Id.* at 45142.

Since the opening of the National Do Not Call Registry to entities engaged in telemarketing on September 2, 2003, through early March, 2004, over 52,000 entities have accessed all or part of the information in the registry. More than 45,500 of those entities have accessed five or fewer area codes of data at no charge. Approximately 900 "exempt" entities have accessed the registry, also at no charge.[3] As a result, approximately 6,000 entities have paid for access to the registry, with slightly over 1,100 entities paying for access to the entire registry.

As previously stated, the Commission can collect offsetting fees in Fiscal Year 2004 to implement and enforce the Amended TSR.[4] *See* the 2004 Appropriations Act, Division B, Title V. The Commission is proposing a revised Fee Rule to raise $18 million of fees to offset costs it expects to incur in this Fiscal Year for the following purposes related to implementing and enforcing the "do-not-call" provisions of the Amended TSR. First, funds are required to operate the national registry. This includes items such as handling consumer registration and complaints, telemarketer access to the registry, state access to the registry, and the management and operation of law enforcement access to appropriate information. Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and consumer and business education efforts, which are critical to securing compliance with the Amended TSR. Third, funds are required to cover agency infrastructure and administration costs, including information technology structural supports and distributed mission overhead support costs for staff and

[1] The Commission recently amended the TSR to require telemarketers to access the national registry at least once every 31 days, effective January 1, 2005. *See* 69 FR 16368 (Mar. 29, 2004).

[2] Once an entity requested access to area codes of data in the national registry, it could access those area codes as often as it deemed appropriate for one year (defined as its "annual period"). If, during the course of its annual period, an entity needed to access data from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period was divided into two semi-annual periods of six months each. Obtaining additional data from the registry during the first semi-annual, six month period required a payment of $25 for each new area code. During the second semi-annual, six month period, the charge for obtaining data from each new area code requested during that six-month period was $15. These payments for additional data would provide the entity access to those additional area codes of data for the remainder of its annual term.

[3] The Original Fee Rule stated that "there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required to under this Rule, 47 CFR 64.1200, or any other federal law." 16 CFR 310.8(c). Such "exempt" organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to 16 CFR 310.4(b)(1)(iii)(B)(i) or (ii), and who do not access the national registry for any other purpose.

[4] The 2004 Appropriations Act permitted the Commission to collect offsetting fees of $23.1 million for those purposes. This $23.1 million includes collections of $5.1 million from the Fiscal Year 2003 Original Fee Rule that were actually collected in Fiscal Year 2004 and $18 million to be raised from this year's Amended Fee Rule.

non-personnel expenses such as office space, utilities, and supplies.

The Commission proposes to revise the fees charged for access to the national registry based on the assumption that approximately the same number of entities will access similar amounts of data from the national registry during their next annual period.[5] Based on that assumption, and the continued allowance for free access to "exempt" organizations and for the first five area codes of data, the proposed revised fee would be $45 per area code. The maximum amount that would be charged to any single entity would be $12,375, which would be charged to any entity accessing 280 area codes of data or more.[6] The fee charged to entities requesting access to additional area codes of data during the second six months of their annual period would be changed from $15 to $25.

The Commission proposes to continue allowing all entities accessing the national registry to obtain the first five area codes of data for free.[7] The Commission allowed such free access in the Original Fee Rule "to limit the burden placed on small businesses that only require access to a small portion of the national registry." 68 FR at 45140. The Commission noted that such a fee structure was consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact. As stated in the Original Fee Rule, "the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the national registry, on one hand, and providing appropriate relief for small businesses, on the other." *Id.* at 45141. In addition, requiring over 45,000 entities to pay a small fee for access to five or fewer area codes from the national registry would place a significant burden on the registry, requiring the expenditure of even more resources to handle properly that additional traffic. Nonetheless, the Commission continues to seek comment on this issue.

The Commission also proposes to continue allowing "exempt" organizations, as discussed in footnote 3, above, to obtain free access to the national registry. The Commission believes that any exempt entity, voluntarily accessing the national registry to avoid calling consumers who do not wish to receive telemarketing calls, should not be charged for such access. Charging such entities access fees, when they are under no legal obligation to comply with the "do-not-call" requirements of the TSR, may make them less likely to obtain access to the national registry in the future, resulting in an increase in unwanted calls to consumers. As with free access to five or fewer area codes, the Commission seeks comment on this issue as well.

[5] Telemarketers were first able to access the national registry on September 2, 2003. As a result, the first year of operation will not conclude until August 31, 2004. The Commission realizes that a small number of additional entities may access the national registry for the first time prior to September 1, 2004, and should be considered in calculating the revised fees. However, the Commission believes that most, if not virtually all, of those new entrants will be smaller entities accessing five or fewer area codes, and thus will have no effect on the calculation of the revised fees. Should this assumption prove incorrect, the Commission will adjust the assumption to reflect the actual number of entities that have accessed the registry, and make the appropriate reductions to the fees, at the time of issuance of the Final Rule.

[6] The proposed fee structure would reduce the maximum number of area codes for which an entity would be charged from 300 to 280. The Commission is proposing this revision to more closely correlate the charges for access to the registry with the number of active area codes in use in the country today. There are approximately 317 available area codes in the nation, virtually all of which include registered telephone numbers. However, approximately 35 of those area codes are not currently in active service, but are reserved for use in the future. (Telephone numbers from those area codes that have been added to the national registry include numbers to be activated in the future and numbers that are currently active for billing or other purposes.) As a result, there are currently approximately 280 active area codes, with additional area codes scheduled to become active in the future.

[7] If all entities accessing the national registry were charged for the first five area codes of data, the cost per area code would be reduced to $32, while the maximum amount charged to access the entire national registry would be $8960.

III. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be submitted on or before June 1, 2004. Comments should refer to "TSR Fee Rule, Project No. P034305," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [8] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

An electronic comment can be filed by (1) clicking on *http://www.regulations.gov;* (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Comment," and "Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed

[8] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

on the public record. *See* 16 CFR 1.26(b)(5).

V. Paperwork Reduction Act

The proposed revised fee provision does not create any new recordkeeping, reporting, or third-party disclosure requirements. However, the Commission now has data based on the operation of the National Do Not Call Registry indicating that 52,000 entities will access the registry each year. The Commission's staff has increased its estimate of the total paperwork burden accordingly, and the Office of Management and Budget ("OMB") has adjusted the existing clearance, OMB Control No. 3084–0097.

Any entity that accesses the National Do Not Call Registry, regardless of whether it is paying for access, must submit the minimal identifying information that the Commission deems necessary. The proposed rule does not change the information to be collected from these entities or the frequency of collection. The staff continues to estimate, as it did in the Original Fee Rule NPRM, that it should take no longer than two minutes for each entity to submit this basic information, and that each entity would have to submit the information annually.[9] Because of the increased estimate of the number of entities accessing the registry, this requirement will result in 1,733 burden hours (52,000 entities × 2 minutes per entity = 104,000 minutes, or 1,733 hours). In addition, the staff continues to estimate that possibly one-half of those entities may need, during the course of their annual period, to submit their identifying information more than once in order to obtain additional area codes of data. This would result in an additional 867 burden hours (26,000 entities × 2 minutes per entity = 52,000 minutes, or 867 hours). Thus, the staff estimates that the revised fee provision will impose a total paperwork burden of approximately 2,600 hours per year. This is an increase of 2,225 hours from the previous estimate of 375 hours.

The Commission's staff anticipates that clerical employees (or other low-level administrative personnel) of affected entities will fulfill the function of supplying company-identifying information to the registry contractor. Assuming a clerical hourly wage of $10 per hour, the cumulative annual labor cost to respondents to provide the requisite information is $26,000 (2,600 hours × $10 per hour). This is an increase of $22,250 from the previous estimate of $3,750.

[9] 68 FR 16238, 16245 (April 3, 2003). As stated in the Original Fee Rule NPRM, this estimate is likely to be conservative for Paperwork Reduction Act purposes. The OMB regulation defining "information" generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the rule concerning revised fees will have the threshold impact on small entities. As discussed in section III, above, this NPRM specifically proposes charging no fee for access to data included in the registry from one to five area codes. As a result, the Commission anticipates that many small businesses will be able to access the national registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed revised fees. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of this proposed rule on small entities. Therefore, the Commission has prepared the following analysis.

A. Reasons for the Proposed Rule

As outlined in section II, above, the Commission is proposing to amend the fees charged to entities accessing the national registry in order to raise sufficient amounts to offset the current year costs to implement and enforce the Amended TSR.

B. Statement of Objectives and Legal Basis

The objective of the current proposed rule is to collect sufficient fees from entities that must access the National Do Not Call Registry. The legal authority for this NPRM is the 2004 Appropriations Act, the Implementation Act, and the Telemarketing Act.

C. Description of Small Entities To Which the Rule Will Apply

The Small Business Administration has determined that "telemarketing bureaus" with $6 million or less in annual receipts qualify as small businesses. *See* 13 CFR 121.201. Similar standards, *i.e.*, $6 million or less in annual receipts, apply for many retail businesses which may be "sellers" and subject to the proposed revised fee provisions outlined in this NPRM. In addition, there may be other types of businesses, other than retail establishments, that would be "sellers" subject to the proposed rule.

As described in section II, above, more than 45,500 entities have accessed five or fewer area codes of data from the national registry at no charge. While not all of these entities may qualify as small businesses, and some small businesses may be required to purchase access to more than five area codes of data, the Commission believes that this is the best estimate of the number of small entities that would be subject to the proposed revised fee rule. The Commission invites comment on this issue, including information about the number and type of small business entities that may be subject to the revised fees.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection activities at issue in this NPRM consist principally of the requirement that firms, regardless of size, that access the national registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees. The cost impact of that requirement and the labor or professional expertise required for compliance with that requirement are discussed in section V, above.

As for compliance requirements, small and large entities subject to the revised fee rule will pay the same fees to obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the national registry. As noted earlier, however, compliance costs for small entities are not anticipated to have a significant impact on small entities, to the extent the Commission believes that compliance costs for those entities will be largely minimized by their ability to obtain data for up to five area codes at no charge.

E. Duplication With Other Federal Rules

None.

F. Discussion of Significant Alternatives

The Commission recognizes that alternatives to the proposed revised fee are possible. For example, instead of a fee based on the number of area codes that a telemarketer accesses from the national registry, access could be provided on the basis of a flat fee regardless of the number of area codes accessed, or on a fee that does not permit free access for one to five area codes. The Commission believes, however, that those alternatives would likely impose greater costs on small

businesses, to the extent they are more likely to access fewer area codes than larger entities. Accordingly, the Commission believes its current proposal is likely to be the least burdensome for small businesses, while achieving the goal of covering the necessary costs to implement and enforce the Amended TSR.

Despite these conclusions, the Commission welcomes comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the 2004 Appropriations Act, and the Implementation Act.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Proposed Rule

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

2. Amend § 310.8 by revising paragraphs (c) and (d) to read as follows:

§ 310.8 Fee for access to do-not-call registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $45 per area code of data accessed, up to a maximum of $12,375; *provided,* however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $45 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $25 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–9848 Filed 4–29–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Privacy Act of 1974, Proposed Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a new Internal Revenue Service (IRS) system of records entitled "IRS 42.031—Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records" from certain provisions of the Privacy Act.

DATES: Comments must be received no later than June 1, 2004.

ADDRESSES: Please submit comments to the Office of Governmental Liaison and Disclosure, 1111 Constitution Avenue, N:ADC:C, NW., Washington, DC 20224. Comments will be made available for inspection at the IRS Freedom of Information Reading Room also located at 1111 Constitution Avenue, NW. The telephone number for the Reading Room is (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: IRS National Anti-Money Laundering Program Manager, S: C: CP:RE:AML, SBSE TEC , 19th Floor, 1601 Market Street, Philadelphia, PA 19106, phone (215) 861–1547

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 552a(k)(2), 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 investigatory material compiled for law enforcement purposes. The IRS is hereby giving notice of a proposed rule to exempt IRS 42.031-the Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records, from certain provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2). The proposed exemption is from provisions 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a(c)(3). These provisions of the Privacy Act provide for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requested access to records, the agency procedures relating to access to records and the content of the information contained in such records and the civil remedies available

to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting this system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of an investigative file pertaining to such individual or to grant access to an investigative file pertaining to such individual could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and, disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing are as follows:

(i) The IRS will limit the Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records to those relevant and necessary for identifying, monitoring, and responding to complaints, allegations and other information received concerning violations or potential violations of the anti-money laundering provisions of Title 31 and Title 26 laws. However, an exemption from the foregoing is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(4) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons an exemption from this provision has been claimed, are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

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 proposed 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 proposed 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 proposed rule would not impose new recordkeeping, 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 and 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 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

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

* * * * *

(g) * * *

(1) * * *

(viii) * * *

Number	Name of system
*	* * * *
IRS 42.031	Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records.
*	* * * *

* * * * *

Dated: April 21, 2004.

Jesus Delgado-Jenkins,

Acting Assistant Secretary for Management.

[FR Doc. 04–9813 Filed 4–29–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7654–9]

Designation of the Rhode Island Region Dredged Material Disposal Site in Rhode Island Sound

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing today to designate the Rhode Island Sound Disposal Site (RISDS) in Rhode Island Sound offshore of Rhode Island. This action is necessary to provide a long-term dredged material disposal site for the current and future disposal of dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors (hereinafter referred to as the Rhode Island Region). The proposed site designation is for an indefinite period of time. The RISDS will be subject to continuing monitoring to ensure that significant unacceptable, adverse environmental impacts do not occur. The proposed action is described in the Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project Draft Environmental

Impact Statement (DEIS), and the monitoring plan is described in the RISDS Site Management and Monitoring Plan (SMMP). The SMMP is provided as Appendix C of the DEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site are subject to project—specific reviews and authorization and still must satisfy the criteria for ocean dumping.

DATES: Comments must be received by 5 p.m. on June 21, 2004.

Public Hearing: The public hearings are as follows:

1. June 15, 2004 at 1 p.m., Galilee, Rhode Island
2. June 15, 2004 at 7 p.m., Galilee, Rhode Island

ADDRESSES: *Comments:* Comments may be submitted by mail or electronically as follows:

1. By mail: Submit written comments on this document to: Ms. Olga Guza, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. To ensure proper identification of your comments, include in the subject line the name, date and **Federal Register** citation of this document.

2. Electronically: Submit your comments electronically to: *R1_RISEIS@EPAMAIL.EPA.GOV*. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect or ASCII file format sent or delivered to the addresses above. All comments and data in electronic form must be identified by the name, date and **Federal Register** citation of this notice. No confidential business information should be sent via e-mail.

Public Hearings: Both public hearings will take place at:

1. Galilee, Rhode Island: Lighthouse Inn, 307 Great Island Road, Galilee, Rhode Island, 02882.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Guza, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023, telephone (617) 918–1542, electronic mail: *guza.olga@epa.gov*.

SUPPLEMENTARY INFORMATION: General Information:

A. Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters of Rhode Island Sound, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA) and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the Corps to transport dredged material for the purpose of disposal into the waters of Rhode Island Sound and (b) to the Corps itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed RIR dredged material disposal site may include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and Other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that could potentially be regulated should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with the Purpose and Scope of 40 CFR 220.1, and you wish to use the site subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

In 1972, the Congress of the United States enacted MPRSA to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized EPA and the Corps to regulate dumping in ocean waters. Regulations implementing MPRSA are set forth at 40 CFR parts 220 to 229. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit or authorization (in the case of Corps projects) issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the Corps. Under section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (*e.g.*, vessels, fish wastes, burial at sea). Under section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits and authorizations (in the case of Corps projects) for the ocean dumping of dredged material. This permitting authority has been delegated to the District Engineer of the Corps New England District. Determinations to issue permits and authorizations (in the case of Corps projects) for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites and times where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. Section 103(b). Further provides that the Corps should use such EPA designated sites to the maximum extent feasible. EPA's ocean dumping regulations provide that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation in 40 CFR part 228 specifying the site. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The RISDS site is located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dumping sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at 40 CFR 228.15. This rule proposes to designate a site for open water disposal of dredged material. This site is currently being used under the

authority of MPRSA section 103 as site 69B and is located in ocean waters of Rhode Island Sound approximately 9 nautical miles (nmi) south of Point Judith, Rhode Island.

The RISDS is being proposed in this action to provide a long-term disposal option for the Corps to maintain deep-draft, international commerce and navigation through authorized Federal navigation projects and to ensure safe navigation for public and private entities.

The RISDS will be subject to continuing site management and monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The management of the RISDS is further described in the draft SMMP (Appendix C of the DEIS). Documents being made available for public comment by EPA at this time include this proposed rule, DEIS, and Draft SMMP (Appendix C of DEIS).

The designation is being proposed in accordance with 40 CFR 228.4(e) of the Ocean Dumping Regulations, which allow EPA to designate ocean sites for disposal of dredged materials.

C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decisionmaking process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations. (*See* 63 FR 58045 (October 29, 1998), "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.") Consistent with this policy, EPA, in cooperation with the Corps, has prepared a DEIS entitled, "Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project" which considers the environmental aspects of site designation in ocean waters of Rhode Island Sound. A Notice of Availability of the DEIS for public review and comment is being published concurrently with this proposed rule in today's **Federal Register**. Anyone wishing to review a copy of the DEIS may do so in one of the ways described above (*see* **ADDRESSES**). The public comment period for the DEIS will close on June 21, 2004. The public comment period on the proposed rule publication will also close on June 21, 2004. Comments may be submitted by one or more of the methods described above.

The purpose of the proposed action is to designate an ocean disposal site that will meet the long-term dredged material disposal needs in the RIR. The appropriateness of ocean disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit and authorization (in the case of Corps projects) process under MPRSA.

Designation of an ocean disposal site under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean disposal activity is permitted and/or authorized (in the case of Corps projects) under 40 CFR part 227, then such disposal should normally be consolidated at the designated sites (*See* 33 U.S.C. 1413(b)). Designation of an ocean disposal site does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for ocean disposal under the applicable regulatory criteria. Nevertheless, EPA has determined that it is appropriate to designate an ocean disposal site for dredged material in the ocean waters of Rhode Island Sound now, because it appears unlikely that feasible alternative means of managing dredged material will be available to accommodate the projected dredged material of this region in the future.

Proposals for the ocean disposal of dredged materials from individual projects are evaluated by EPA New England and the Corps' New England District on a case-by-case basis, taking into account all the alternatives available at the time of permitting. Beneficial reuse alternatives will be preferred over ocean disposal whenever they are practicable.

The DEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential ocean disposal sites for dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors, as well as potential alternative means of managing these dredged materials other than ocean disposal. As described in the DEIS, the initial screening effort was established to consider the most environmentally sound, economically and operationally feasible area for site designation. Alternatives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the ocean disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries and shellfisheries, natural resources, shipping and navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following alternative sites: Site E and Site W (the proposed RISDS). These sites were evaluated and the RISDS was selected as the preferred alternative for potential ocean disposal site designation. Management strategies were developed for the preferred alternative and are described in the draft SMMP (Appendix C of the DEIS).

To obtain public input during the process, EPA and the Corps held public scoping meetings, meetings with local fishermen, as well as convened an EIS working group. The purpose of the working group was to assist in identifying and prioritizing initial screening criteria that assisted in the evaluation of the best long-term dredged material disposal options for the RIR. Representatives from state, local, tribal and Federal agencies were invited to participate in the working group as well as individuals representing other interests. The working group assembled for a series of 7 meetings between September 26, 2002 and November 19, 2003. Comments received were factored into the development of the DEIS. The NEPA process led to the current proposal that RISDS be designated as an ocean dredged material disposal site.

D. Proposed Sites Description

Today's proposal would designate the RISDS. A DEIS and draft SMMP have been prepared for the RISDS and are available for review and comment by the public. Copies may be obtained by request from the **FOR FURTHER INFORMATION CONTACT** listed in the introductory section to this proposed rule. Use of the RISDS would be subject to any restrictions included in the site designation and the approved SMMP. These restrictions will be based on a,

thorough evaluation of the proposed sites pursuant to the Ocean Dumping Regulations and potential disposal activity as well as consideration of public review and comment.

The RISDS proposed for long-term designation by EPA is currently being used by the Corps' under their short-term site selection authority as Site 69B. Overall, Site 69B has received approximately 2.8 million cubic yards since 2003. The RISDS is in the exact same location and the same size as Site 69B. The site is a square area, approximately 1 nautical mile by 1 nautical mile, for a size of 1-nmi^2. The RISDS is located approximately 9 nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to128 feet (35 to 39 m). The sediments at the site range from glacially derived till to soft, silty sand. The coordinates (North American Datum 1983: NAD 83) for the proposed RISDS site, are as follows: 41°14′21″ N, 71°23′29″ W; 41°14′21″ N, 71°22′09″ W; 41°13′21″ N, 71°23′29″W; 41°13′21″ N, 71°22′09″ W.

E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Five general criteria are used in evaluating possible dredged material disposal sites for long-term use under the MPRSA (*see* 40 CFR 228.5).

General Criteria (40 CFR 228.5)

1. Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas (40 CFR 228.5(a)). The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this proposed rule, a determination was made to overlay individual uses and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Areas that would interfere with other activities, particularly fishing and navigation, were eliminated from further consideration. Sites E and W were the only areas left for consideration. The RISDS (Site W) showed minimum interference with other activities and was thus selected for this proposal. The proposed site is not in an area of distinctive lobster, shellfish, or finfish resources and thus will not interfere with lobster or fishing activities. The proposed site is not located in shipping lanes or major navigation areas, is not in a geographically limited fishery area, and has been selected to minimize interference with fisheries, shellfisheries and regions of commercial or recreational navigation.

2. Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site (40 CFR 228.5(b)). The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The proposed site will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA criteria. Based on data evaluated as part of the DEIS, disposal of either sandy or fine-grained material would have no long-term impact on water quality at the proposed site. In addition, dredged material deposited at the RISDS will not reach any marine sanctuary, beach, or other important natural resource area. Further, disposal at the RISDS will be managed and monitored in accordance with the SMMP (Appendix C of the DEIS) such that there will be no temporary perturbations in water quality anywhere outside the site or within the site after allowance for initial mixing.

3. Interim Sites Which Do Not Meet Criteria (40 CFR 228.5 (c)). There are no interim sites to be considered under this criterion. The RISDS (formerly known as Site 69B) is not an interim site as defined under the Ocean Dumping regulations.

4. Size of sites (40 CFR 228.5(d)). The fourth general criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration and location is to be determined as part of the disposal site evaluation. For this proposed rule, EPA has determined, based on the information presented in the DEIS, that the RISDS (formerly known as Site 69B) has been sized to provide sufficient capacity to accommodate material dredged from within the RIR. The site management and monitoring plan is described in the RISDS SMMP (Appendix C of the DEIS).

5. EPA must, wherever feasible, designate dumping sites beyond the edge of the continental shelf and where historical disposal has occurred (40 CFR 228.5(e)). The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other such sites that have historically been used. Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the proposed site, if designated, encompasses the footprint of Site 69B, currently in use. Thus, the proposed disposal site is consistent with this criterion.

As discussed briefly above, EPA has found that the RISDS satisfies the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these criteria can be found in the DEIS and SMMP.

In addition to the general criteria discussed above, 40 CFR 228.6(a) lists eleven specific factors to be used in evaluating a proposed disposal site under the MPRSA to assure that the five general criteria are met. The RISDS, as discussed below, is also acceptable under each of the 11 specific criteria. The evaluation of the preferred disposal site relevant to the 5 general and 11 specific criteria is discussed in substantially more detail in the DEIS and SMMP.

Specific Criteria (40 CFR 228.6)

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)). The RISDS is in the same location and is the same size as Site 69B. The RISDS will replace Site 69B. The site is a square area, approximately 1 nautical mile by 1 nautical mile, for a size of 1-nmi^2. The RISDS is located approximately 9 nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to 128 feet (35 to 39 meters). The sediments at the site range from glacially derived till to soft, silty sand. Water depths in the surrounding areas are between 110 and 118 feet to the north, east, and south of the site. The southeastern portion of the site shoals more rapidly than the northern area. The coordinates (North American Datum 1983: NAD 83) for the proposed RISDS site, are as follows: 41° 14′21″ N, 71°23′29″ W; 41° 14′21″ N, 71°22′09″ W; 41°13′21″ N, 71° 23′29″ W; 41°13′ 21″ N, 71°22′09″ W.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)). The Corps and EPA initiated informal Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultation in January 2003 and formal consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). Additional coordination was conducted with the Commonwealth of Massachusetts and State of Rhode Island. Through these efforts, data has been obtained on current threatened or endangered species in the RIR. The plankton community at the RISDS includes zooplankton (copepods, larval forms of many species of invertebrates and fish, Foraminifera, and Radiolara) and phytoplankton (diatoms and dinoflagellates). These organisms display a range of abundance by season. The populations at or near the proposed site are not unique to the site and are present over most of the RIR. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at the RISDS is comprised primarily of Annelida, Crustacea, and Mollusca. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur. Recovery to levels similar to predisposal is expected within a few years after disposal.

The RISDS is located in the ocean waters of Rhode Island Sound, which is occupied by more than 116 fish species. Seven species appear consistently dominant among all trawl surveys. These were scup, butterfish, longfin squid, little skate, winter flounder, silver hake, and red hake. Atlantic herring, Atlantic mackerel, and ocean pout were also very abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain non-migratory species. Most of the finfish species are migratory. Several commercially harvestable species of shellfish occur in the RIR. They are Atlantic surf clams, blue mussels, lobster, northern quahogs, ocean quahogs, sea scallops, razor clams, and whelks. It is expected that impacts to shellfish within the RISDS will be short-term and associated with disposal, burial and loss of habitat or food. No impacts to shellfish or finfish resources are anticipated outside of the RISDS.

Many different types of resident, migratory, and coastal birds may potentially use the RIR as a feeding habitat or resting area. Dozens of marine and coastal birds migrate through Rhode Island Sound annually. In addition, the RIR provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the RIR are harbor porpoises, white-sided dolphins, minke whales, seals (harbor, hooded, and harp) and sea turtles (green, Kemp's ridley, loggerhead, leatherback and hawksbill).

There are 16 federally listed threatened and endangered species and 5 species of "special concern" which may occur within the area of the RISDS. The Threatened and endangered species are: Whales (humpback, fin, northern right, sperm, blue and sei), turtles (loggerhead, green, Kemp's ridley, leatherback, and hawksbill), birds (bald eagle, piping plover and roseate tern), and insects (American burying beetle and northeastern beach tiger beetle). The species of "special concern" are: common loon, common tern, artic tern, least tern, and Leach's storm-petrel. Occurrence of these species varies by season. Use of the site by whales and birds would be incidental. The presence of sea turtles may occur in the RISDS during the summer and fall. It is not expected that disposal activities would have any significant adverse effect on these species or their critical habitat. With respect to endangered and threatened species, informal consultation was conducted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). In 2001 EPA prepared a Biological Assessment (BA) for selection of Site 69B, which is in the exact same location as the RISDS. The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect the threatened and endangered species. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The BA is available upon request by contacting the person listed in the **FOR FURTHER INIFORMATION CONTACT** section.

The RIR provides Essential Fish Habitat (EFH) for 33 finfish and 5 invertebrate species, mostly for adults and juveniles. All of the species occur along the northeastern Atlantic Coast of the United States and have EFH designated for waters other than those within the RIR. In 2001, an EFH assessment was prepared for the selection of Site 69B. The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the proposed action is not likely to effect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated NMFS recommendations into the draft SMMP (Appendix C of the DEIS). The EFH assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The RISDS is not located in areas that provide limited or unique breeding, spawning, nursery, feeding, or passage areas.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3). The RISDS is located approximately 8.3 nmi from the nearest beach or other amenity area. Modeling and sediment transport studies indicate a very low probability of that any dredged material remaining in the water column following disposal would be transported more than 1 nmi. Plumes would be reduced to background concentrations shortly after disposal. Given the rapid dissipation characteristics of dredged material plumes and that the vast majority of released materials settle to the bottom near the release point, dredged material placed at the RISDS would not adversely affect beaches or similar amenities. As such, it is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are either land-based or farther than 8.3 nmi from the proposed disposal site. There are also no marine sanctuaries or limited fisheries or shellfisheries at or near the RISDS. Therefore, EPA has determined that dredged material disposal at the RISDS disposal site location should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including

Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)). The RISDS has an expected capacity of approximately 20 million cubic yards. However, there is no disposal site capacity volume restriction. The composition of dredged material to be disposed at the site is expected to be typical estuarine sediments dredged from channels, berths, and marinas from harbors and Federal navigation areas within the RIR. The disposal of this material shall occur at designated buoys or coordinates and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. EPA will make a suitability determination prior to the USACE issuing any MPRSA permit or authorization (in the case of Corps projects) for disposal at the RISDS. The site proposed to be designated will receive dredged materials determined to be suitable for ocean disposal that are transported by either government or private contractor hopper dredges or ocean-going bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface. Dredged material placed at the RISDS would not be containerized or packaged.

Furthermore, it should be emphasized that the RISDS is being proposed for designation only to receive dredged material; disposal of other types of material at these sites will not be allowed. It should also be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (*e.g.*, industrial waste, sewage sludge, chemical warfare agents). *See, e.g.*, 33 U.S.C. 1414b; 40 CFR 227.5(b). For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the RISDS.

5. *Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))*. Surveillance of the site can be accomplished by boat, helicopter, disposal inspectors aboard barges, scows, and tugboats, or through radar or satellite. This effort would be conducted jointly by the EPA, Corps–New England District, and the U.S. Coast Guard. Monitoring and surveillance are expected to be feasible at the RISDS. The site is readily accessible for bathymetric surveys and has undergone monitoring, including side-scan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will be made by EPA New England and the Corps–New England District who share the responsibilities of managing and monitoring the disposal sites. EPA and the Corps have prepared a draft RISDS SMMP (Appendix C of the DEIS). Once the proposed site is designated, monitoring shall be completed in accordance with the then-current SMMP. It is expected that revisions to the SMMP may be made periodically; revisions will be circulated for review, coordinated with the affected States and become final when approved by EPA New England Region in conjunction with the Corps' New England District. *See* 33 U.S.C. 1413(c)(3).

6. *Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6))*. The RISDS is located within the ocean waters of Rhode Island Sound, a water body that is exposed to wind and wave energy from the northwest Atlantic Ocean. The dominant tidal flow directions are northwest and southeast. The amplitude of the tidal velocity decreases with depth (12.7 cm/s at the surface and 7 cm/s near the bottom. The mean current velocity was 2.5 cm/s directed toward the west at mid-depth and 1.6 cm/s toward the west at the bottom. A modeling study performed as part of the Providence River and Harbor Maintenance Dredging Project EIS, examined the likelihood of erosion and transport of cohesive sediments proposed for placement at site 69B (the proposed RISDS), located at a depth of 128 ft. It is concluded that a disposal mound placed at 69B would not be dispersive under any conditions other than the most severe (50-year return period) hurricane; their results, however, were based on an assumption of extremely cohesive material and should therefore be viewed as potentially underpredicting erosion. Areas of the ZSF between 170 and 105 ft, including the north-central portion northeast of Block Island, were depositional areas with some infrequent sorting and reworking by waves and currents. The deepest areas here were the most depositional.

It is expected that peak wave induced bottom orbital velocities are not sufficient to cause significant erosion of dredged material at the RISDS. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics, and current velocities and directions at the RISDS are appropriate for designation as a dredged material disposal site.

7. *Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7))*. The RISDS is currently being used for disposal activity pursuant to the Corps' short-term site selection authority under section 103(b) of the MPRSA. 33 U.S.C. 1413(b) as Site 69B. This *generally* makes the RISDS preferable to more pristine sites that have either not been used or have been used in the more distant past. *See* 40 CFR 228.5(e). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use the RISDS on a long-term basis.

8. *Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))*. In evaluating whether disposal activity at the RISDS could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sites and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the RISDS. Areas that concern the criteria of this section were removed from consideration early in the screening process for the DEIS. The RISDS is not located in shipping lanes and is not an area of special scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly, depositing dredged material at the RISDS will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the proposed disposal site should not impact shipping or activities discussed above.

9. *The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))*. Water and sediment quality analyses conducted in the site and experience with past disposal in this region have not identified any adverse water quality or ecological impacts from ocean disposal of dredged material. Baseline data are further described in the DEIS.

10. *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10))*. Based on the available evidence, dredged material is not a potential

source for the development or recruitment of nuisance species at the RISDS. Monitoring results and available data indicate that placement of dredged material at Site 69B (which is in the same exact location as the RISDS) has not extended the range of undesirable living organisms, pathogens, degraded areas, or introduced viable non-indigenous species into the area. Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ocean dredged material disposal site in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the site.

11. *Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).* As part of the site selection for Site 69B, the Corps conducted an archaeological assessment, Entitled, "Archaeological Assessment, Remote Sensing, and Underwater Archaeological Survey for the Providence River and Harbor Maintenance Dredging Project, Rhode Island April 12, 2001." The archaeological assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The assessment determined that no significant sites were likely to be found within the areas of interest, but there was a potential for historic resources because of known shipwrecks in the vicinity. Additional remote sensing studies were conducted and no significant cultural resources were identified. Coordination between EPA and the Corps and the Commonwealth of Massachusetts and State of Rhode Island are detailed in the DEIS. The Narragansett Indians were included as cooperating agencies during the development of the DEIS. They have also not identified any natural or cultural features of historical significance at the RISDS.

F. Proposed Action

The DEIS concludes that the RISDS (currently known as Site 69B) may appropriately be designated for long-term use as a dredged material ocean disposal site. The proposed site is compatible with the general and specific factors used for site evaluation.

EPA is publishing this proposed rule to propose the designation of the RISDS as an EPA-approved dredged material ocean disposal site. The monitoring and management of requirements that will apply to this site are described in the draft SMMP (Appendix C of the DEIS). Management and monitoring will be carried out by EPA New England in conjunction with the Corps' New England District.

It should be emphasized that, if an ocean disposal site is designated, such a site designation does not constitute or imply Corps or EPA's approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove of the actual disposal, if it determines that environmental requirements under the MPRSA have not been met.

The information generated for this project and referenced in the DEIS is available for review on line at the address; *http://www.epa.gov/region1/eco/ridredge/index.html.*

1. *Electronically.* You may review and/or obtain electronic copies of this document and various support documents from the EPA Home page at the **Federal Register** *http://www.epa.gov/fedrgstr/*, or on the EPA New England Region's Home page at *www.epa.gov/region1/eco/ridredge/index.html.*

2. *In person.* The proposed rule, the Draft Environmental Impact Statement (DEIS) which includes the SMMPs (Appendix C), and the complete administrative record for this action are available for inspection at the following locations: (A) EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. For access to the documents, call Peg Nelson at (617) 918–1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. (B) EPA Atlantic Ecology Division, Library, 27 Tarzwell Drive, Narragansett, RI 02882. For access to the documents, call Mimi Johnson at (401) 782–3025 between 10 a.m and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. We are also putting copies of the DEIS in all of the Town libraries in the coastal towns in RI & southeast MA.

G. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) 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;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a "significant regulatory action" under E.O. 12866 and is therefore not subject to OMB review.

2. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant adverse economic impact on small entities because the proposed ocean disposal site designation does not regulate small entities. The site designation will only have the effect of providing a long term environmentally-acceptable disposal option for dredged material. This action will help to facilitate the maintenance of safe navigation on a continuing basis. After considering the economic impacts of today's proposed rule on small

entities, it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

3. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

5. 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule addresses the designation of an ocean disposal site in Rhode Island Sound for the potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any State, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule. In addition, and consistent with Executive Order 13132 and 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.

6. 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" are 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."

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This proposed rule designates an ocean dredged material disposal site and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal officials. Thus, Executive Order 13175 does not apply to this rule.

7. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 1001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

11. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, section 4321 *et seq*, (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be "functionally equivalent" to NEPA, EPA has a voluntarily policy to follow NEPA procedures when designating ocean dumping sites. *See*, 63 FR 58045 (October 29, 1998). In addition to the Notice of Intent published in the **Federal Register** on April 6, 2001 (66 FR 18244), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to participate in DEIS scoping meetings. Formal scoping meetings were conducted on May 17, 2001 and May 22, 2001. In addition EPA and the Corps have held public workshops and several working group meetings. As discussed above, EPA is issuing a DEIS for public review and comment in conjunction with publication of this proposed rule.

In addition, EPA and the Corps will submit Coastal Zone Consistency determinations to the State of Rhode Island. Coordination efforts with NMFS and USFWS for ESA and EFH consultation was completed on April 8 and April 1, respectively, during the DEIS process.

12. The Endangered Species Act

Under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), federal agencies are required to "insure that any action authorized, funded, or carried on by such agency * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species * * *." Under regulations implementing the Endangered Species Act, a Federal agency is required to consult with either the U. S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action "may affect" endangered or threatened species or their critical habitat. *See*, 50 CFR 402.14(a).

In 2001, EPA prepared a BA for the selection of Site 69B, which is in the exact same location as the RISDS. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004, and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect threatened and endangered species. The BA is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

13. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for Federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." In 2001, an EFH assessment was prepared for the selection of Site 69B (the proposed RISDS). EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated NMFS recommendations into the draft SMMP (Appendix C of the DEIS). The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

14. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this proposed rule in plain language to make this proposed rule easier to understand.

15. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's proposed rule implements section 103 of the MPRSA which requires that permits for dredged material are subject to EPA review and concurrence. The proposed rule would amend 40 CFR 228.15 by establishing the RISDS. As such, this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures. Therefore, EPA expects today's proposed rule would advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: April 16, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by removing and reserving paragraphs (b)(1), and (b)(2), and by adding and reserving paragraphs (b)(3) and (b)(4) (*currently proposed for LIS Sites*); and adding paragraph (b)(5) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(5) Rhode Island Sound Disposal Site (RISDS)

(i) *Location:* Corner Coordinates (NAD 1983): 41°14′21″ N, 71°23′29″ W; 41°14′21″ N, 71°22′09″ W; 41°13′21″ N, 71°23′29″ W; 41°13′21″ N, 71°22′09″ W.

(ii) *Size:* 1 square nautical mile.

(iii) *Depth:* range from 32 to 39 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material.

* * * * *

[FR Doc. 04–9720 Filed 4–29–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 600

[Docket No. 040423129–4129–01; I.D. 041404D]

RIN 0648–AQ22

International Fisheries Regulations; Pacific Tuna Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations necessary to implement the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty) as authorized by recently passed legislation. The proposed rule would establish vessel marking, recordkeeping, and reporting requirements for U.S. albacore tuna fishing vessel operators and vessel marking and reporting requirements for Canadian albacore tuna fishing vessel operators fishing under the Treaty. The intended effect of this proposed rule is to allow the United States to carry out its obligations under the Treaty by allowing fishing by both U.S. and Canadian vessels as provided for in the Treaty.

DATES: Comments must be submitted by May 17, 2004.

ADDRESSES: Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 or by e-mail to the Southwest Region at *0648–AQ22@noaa.gov*. Comments may also be submitted by e-mail through the Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AQ22. Comments also may be submitted by fax to (562) 980–4047. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Svein Fougner at the NMFS address. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region and to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov*, or by facsimile (fax) to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980–4030; fax: (562) 980–4047; and e-mail: *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Treaty, as amended in 2002, establishes a number of obligations of the Parties (the United States and Canada) to control reciprocal fishing in the waters of one Party by vessels of the other Party as well as reciprocal port privileges. The Treaty permits fishing vessels of one Party to fish for albacore tuna in waters under the fisheries jurisdiction of the other Party seaward of 12 nautical miles from the baseline from which the territorial sea is measured (hereafter generally referred to as "waters"). The Treaty originally allowed for unlimited fishing for albacore tuna by vessels of each Party in waters of the other Party. The Treaty was negotiated to allow reciprocal fishing and port calls in selected ports at a time when Canada asserted jurisdiction over highly migratory species such as tuna out to 200 nautical miles from its coastlines, while the U.S. did not recognize or assert a comparable claim to jurisdiction over highly migratory species off its coasts. (U.S. law was subsequently amended to accept jurisdiction by coastal states over highly migratory species in their 200-nautical mile Exclusive Economic Zones.)

Initially, vessels of both countries regularly fished in each other's waters, but fishing patterns subsequently changed, as albacore were found more frequently in U.S. waters than in Canadian waters. As a result, Canadian vessels continued to fish regularly in

U.S. waters most years, while it was comparatively rare for U.S. fishers to fish significantly in Canadian waters. Beginning in 1998, Canada sharply increased its fishing effort in U.S. waters from its historical average of about 75 vessels to 200 or more vessels a year. This was due at least partly to a shift into the albacore industry by displaced Canadian salmon vessels. U.S. fishing in Canadian waters, however, did not increase during this period.

In 2000, the U.S. albacore fishing industry complained to the Departments of State (DOS) and Commerce that U.S. fishing grounds were overcrowded by the enlarged Canadian fleet fishing in U.S. waters, and that Canadian fishers were receiving disproportionate benefits under the Treaty. Many fishers called for termination of the Treaty if the number of Canadian vessels fishing in U.S. waters was not cut back.

In response to the U.S. fishing industry request, and after consultation with NMFS and U.S. fishing and seafood processing industries, DOS initiated technical discussions with Canada to develop data on the fishery and share U.S. industry concerns. In early 2001, a negotiating team, led by DOS and including NMFS and industry representatives, entered into negotiations with Canada to amend the Treaty to provide a mechanism for setting a reciprocal limitation on the fishery conducted in each other's waters under the Treaty. The aim of the negotiations was not only to cut back the Canadian fishing effort to acceptable levels, but also to develop a system that could respond to future efforts by each Party to implement domestic and international conservation and management measures for the stock in its own waters. Implementation of such management measures could be difficult if unlimited fishing in each other's waters were permitted under the Treaty. The United States is now implementing a Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP), which includes albacore, and Canada has likewise developed and is implementing such a management plan.

Agreement to amend the Treaty was reached on April 24, 2002. The U.S. Senate has given its advice and consent to the Treaty amendments, and Congress enacted H.R. 2584 (Pub. L. 108–219) on March 29, 2004, to authorize the Secretary of Commerce to issue regulations to implement the amended Treaty. The President signed H.R. 2584 into law on April 13, 2004, thereby enacting Pub. L. No. 108–219. The amendment to Article 1(b) of the Treaty allows for the United States and Canada to establish a mutually agreed upon fisheries limitation regime applicable to each Party's vessels fishing for albacore in the other Party's waters. Pursuant to that provision, the United States and Canada agreed to an initial limitation regime which is set out in a new Annex C. It is a 3-year regime that reduces the fishing effort each year until a level is reached in year three that is slightly above the pre-1998 average. Annex C also provides for a further reduced level of fishing after the 3-year period if the Parties are not able to reach agreement on a subsequent regime. The structure of the regime and its placement in Annex C provide the mechanism for readjustment of the fishing limitation by agreement by an exchange of diplomatic notes rather than Treaty amendments to more easily accommodate changing conservation and fishery management needs. If necessary, any such changes will be implemented through future rulemaking actions. Article VII of the Treaty provides that any Annex may be amended by executive agreement. The specific actions that are called for under the Treaty and would be implemented through this proposed rule are:

Vessel Lists

As under the original Treaty, each Party will provide annually to the other Party a list of its fishing vessels which may fish for albacore tuna in the other Party's waters. The list includes:

(a) Vessel name;

(b) Home port;

(c) A vessel identification marking (number and letter combination) that identifies the flag state of the vessel;

(d) Fishing vessel registration number, and

(e) Captain or operator's name, if known.

Each Party may provide the other Party with additions or deletions to its list at any time. As soon as possible after receipt, the receiving Party shall satisfy itself that the list received from the other Party provides the required information and shall inform the other Party in order to enable the albacore fishery by those vessels to proceed pursuant to the Treaty. A U.S. vessel must be on the list for at least 7 days prior to engaging in fishing under the Treaty. This is intended to ensure that both the U.S. and Canada have equal information as to eligible vessels, and U.S. and Canadian enforcement offices can obtain lists of eligible vessels that are up to date to facilitate enforcement.

Vessel Marking

When in the fishing zone of the other Party, each vessel must have its name and vessel identification marking (typically the U.S. Coast Guard documentation number or state registration number), followed by a letter code (U for U.S. vessels and C for Canadian vessels) prominently displayed where they will be clearly visible both from the air and from a surface vessel.

Hail-in and Hail-out

To the extent required by either Party, the operator of any albacore fishing vessel must provide the vessel name, vessel identification number, captain or operator's name and the purpose for being in such Party's fishing zone prior to entering and leaving the waters in which fishing is permitted (*i.e.*, waters under the fisheries jurisdiction of the other Party seaward of 12 nautical miles from the baseline from which the territorial sea is measured for the purpose of fishing).

Recordkeeping

Operators of vessels of both Parties must keep accurate logbook records of catch and effort while fishing pursuant to the Treaty and must provide to its government statistics and other scientific information on its operations in the fishing zone of the other Party.

Information Exchange

Each Party will annually monitor the amount of fishing and the weight of albacore tuna caught by its vessels in waters under the fisheries jurisdiction of the other Party, and will annually provide this information to the other Party. The information will be exchanged by the Parties on an annual basis and at least 30 days prior to the annual consultations (*see* below). Other specific information to be provided, as well as the forms and procedures for providing such information, will be agreed upon by the two Parties.

Annual Treaty Consultations

The United States and Canada will consult annually to:

(a) Discuss data and information on albacore tuna fisheries exchanged under the Treaty, and

(b) Exchange information on their respective conservation and management measures for albacore tuna and on implementation of internationally agreed conservation and management measures applicable to the Parties related to fisheries covered under the Treaty.

Notification of Management Laws and Regulations

The Parties will also notify one another of the conservation and management laws and regulations

applicable to vessels fishing in each other's waters.

Limitation of Fishing Effort

Annex C of the Treaty limits the level of fishing that vessels of one Party can conduct in fishing for albacore tuna in the other Party's waters, beginning on June 1 of the first year of implementation of the limitation program. The limit can be exercised in terms of either the maximum number of vessels that can fish under the Treaty for up to 4 months each in a year; or the maximum number of fishing months that vessels can conduct in a year without a limit on the number of vessels that can participate in the year. Each Party would be free to choose the method of application. For purposes of monitoring fleet activity and counting fishing against the limitation, a "vessel fishing month" is defined as any calendar month or part thereof in which a U.S. vessel is in the waters subject to the fisheries jurisdiction of Canada for the purpose of fishing for albacore tuna under the Treaty.

NMFS has chosen to apply the limit in terms of vessel fishing months. This is administratively the simplest approach and provides maximum flexibility to U.S. vessels to engage in fishing in Canadian waters if the fish are there. Other methods would be more complex as they could require establishing the specific vessels that could participate or limiting vessel participation to a monthly total limit to spread out the fishing opportunity. This is unnecessary given recent years' levels of U.S. fishing in Canadian waters.

During the first year, the limit on fishing by U.S. vessels in Canadian waters will be 680 vessel fishing months; during the second year, the limit will be 560 vessel fishing months; and during the third year, the limit will be 500 vessel fishing months.

In the event that, in any year, U.S. fishing effort in Canadian waters is less than the annual maximum set out above, the unused portion of that year's maximum may be carried forward and added to the maximum for any subsequent year, provided that the resulting level of fishing effort in any one year does not exceed the maximum for the preceding year. That is, a "carry over" by year 3 could not be fully applied that year if this would allow more fishing than the year 2 limit.

It should be noted that the Treaty does not affect rights of U.S. vessels, including fishing vessels, to transit Canadian waters. However, Canadian hail-in requirements will continue to apply to transiting vessels, and with respect to albacore fishing vessels, fishing gear must be stowed in an unfishable condition to prevent the vessel from being considered to be "fishing" under the Treaty.

Extension or Adjustment of Fishing Limits

Prior to the expiration of this 3-year effort limitation program, the Parties will consult to consider a new limitation program or extension of this program for 1 or more years. If no agreement is reached by the Parties by the expiration of the program, then Parties may fish in future years at a level no more than 75 percent of the limitation applicable during the last year. Thus, the limits under this provision would be up to 375 vessel months without a limit on the number of vessels that are active, or 94 vessels with up to 4 months fishing by each vessel. However, if there were any carryover available from a previous year, fishing could be permitted up to the limit of year 3 above (125 vessels or 500 fishing months). These limits would apply until a new agreement is reached.

The intent of this program is to ensure that neither Party receives disproportionate benefits from the fishing opportunities provided by the Treaty and that neither Party's fishermen will be disadvantaged relative to the other Party's fishermen under the Treaty.

To carry out this agreement, NMFS proposes to establish the following requirements for U.S. albacore fishing vessel owners and operators:

1. *Vessel List.* As noted above, the U.S. and Canada exchange lists of vessels eligible to fish under the Treaty. The owner of any albacore fishing vessel who wants that vessel to be on the list of U.S. vessels eligible to fish for albacore tuna in Canadian waters under the Treaty must provide to NMFS the vessel name, the vessel registration number (U.S. Coast Guard documentation number or, if not documented, the state registration number), the home port, and the captain or operator's name. A vessel is not eligible to fish for albacore tuna in Canadian waters if it is not on the U.S. vessel list. This information must be provided not less than 7 days prior to engaging in fishing for albacore tuna in Canadian waters. This will provide time for information to be provided to U.S. and Canadian enforcement and management staff to facilitate vessel tracking and enforce compliance with the Treaty limits. Each list is only valid for a single calendar year.

2. *Vessel Marking.* A U.S. vessel eligible to fish for albacore tuna in Canadian waters must be marked with the name and vessel identification marking prominently displayed where they will be clearly visible both from the air and from a surface vessel. The letter "U" must be painted or otherwise securely affixed to the vessel and be positioned at the end of each appearance on the vessel of its U.S. Coast Guard Documentation number (or if not documented, the state registration number) in the same height and size as the numerals.

Regulations at 50 CFR 660.704 implementing the HMS FMP establish vessel marking size requirements relative to the size of the vessel involved; the U would be the same size as the numerals for each vessel under those regulations.

3. *Logbook Reports.* The owner of a U.S. albacore fishing vessel is responsible for ensuring that a logbook of catch and effort covering fishing under the Treaty is maintained and submitted to the Southwest Region, NMFS, within 15 days of the end of the trip if the vessel re-enters U.S. waters or enters the Canadian territorial sea or other Canadian waters in which fishing is not permitted; or within 7 days of landing of fish if the vessel entered the high seas after exiting the Canadian EEZ. NMFS will provide the logbook form upon being advised of the owner's request to be placed on the list of eligible vessels as described above. Regulations at 50 CFR 660.708 establish logbook requirements for fisheries under the HMS FMP; the reporting requirement under this proposed rule complements the HMS FMP rule.

4. *Hail-in/Hail-out Reports.* The operator of a U.S. vessel eligible to fish for albacore tuna in Canadian waters may not enter Canadian waters to fish unless he has first contacted appropriate authorities to advise them of this intent. NMFS is contracting for a call-in system to support U.S. reporting requirements. Reports will be acceptable through single sideband radio, landline and cell telephone, fax, and e-mail. NMFS will provide detailed information to U.S. vessel operators of the appropriate times for reporting and the contractor contact points (phone numbers, radio frequencies, and e-mail addresses) to all owners or operators identified on the list of eligible vessels.

NMFS and the U.S. Coast Guard will use all available means to inform fishers of closures of the fishery in Canadian waters in a timely manner. This will include use of Notice to Mariners, a hotline on current information relative to fishing limits, fax notices, and Internet and Web page notices. A closure notice also will be published in the **Federal Register**. Other means may

be developed with the industry in the future.

The proposed rule also would add a new § 600.530 to the foreign fishing regulations at 50 CFR part 600, subpart F. This will reinforce Canadian regulations to govern the activity of Canadian vessels and ensure adequate ability to enforce the regulations and prosecute violations.

The DOS has concurred with issuance of this proposed rule as required by Public Law 108–219.

Classification

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (*see* **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would not likely have significant effects on U.S. vessels that are active in the troll albacore fishery off the West Coast and on the high seas, all of which are considered small entities. About 800 vessels made landings of albacore into U.S. ports or transshipped albacore to foreign ports in 2003, with a total estimated catch of just under 15,000 metric tons (mt). Average annual albacore catches have been about 12,000 mt for the past 10 years. The amount of fishing in Canadian waters has been quite low; NMFS estimates that between 1 and 2 percent of total U.S. fishing effort (estimated at about 25,000 days per year) has been conducted in Canadian waters the past 10 years. The Treaty limitations are not expected to affect either the amount of fishing by U.S. vessels or their albacore catches in future years off the West Coast, in Canadian waters, or on the high seas. There are no catch limits under the Treaty or these implementing regulations. If Canadian fishing in U.S. waters declines through the effort limitation regime, there may be less competition on fishing grounds in U.S. waters, but it does not appear (though it is not certain) that there would be any effects on U.S. vessels' effort or catches or on subsequent revenues and profits in the fishery.

The principal impacts of the proposed rule are reporting burdens (*see* following discussion of Paperwork Reduction Act burdens). The monetary cost of these burdens is estimated to be less than $30 per year for any U.S. vessel that participates in fishing under the Treaty.

NMFS considered the following alternatives to the proposed approach: (a) To establish a U.S. limited entry program by which to carry out the U.S. effort limitation regime using "vessel years" as the operating limit; and (b) to establish monthly effort limits (*i.e.*, one-fifth of the annual limit each month in the months of June through October each year) to implement the effort limitation regime on a vessel month basis. The former would be administratively more complex than the proposed approach. It would require establishing either a lottery by which eligible vessels might be selected or criteria (*e.g.*, prior participation) by which the requisite number of vessels would be identified as being eligible to fish in the year; issuing specific licenses or permits for fishing under the Treaty to those vessels; and then evaluating the effects and effectiveness of the program and possibly refining it the next year.

The latter would also be more complex and less flexible than the proposed approach. It could support enforcement of the program by ensuring that there would not be an excessive flood of vessels into Canadian waters in any one month. However, it also would increase the potential that the U.S. would not be able to carry out as much fishing as legally permitted under the Treaty, since unused vessel months in one month would not carry over to the following month (which is the practical effect of the proposed approach).

Thus the proposed action was chosen for administrative ease, maximum flexibility to the fleet, and ability to enforce and administer at relatively low cost.

Neither of the alternatives (nor the proposed rule) would be likely to substantially affect the fishing effort and catch and revenue of the U.S. albacore fishery. As noted above, U.S. vessels have not fished extensively in Canadian waters for many years, and the U.S. fleet is not expected to fish at levels permitted under the Treaty. Thus the form of the limitation used should not result in changes in fishing effort, catches or revenue.

The proposed rule establishes reporting burdens subject to the Paperwork Reduction Act (PRA). The vessel marking requirement consists of adding the letter "U" after the vessel marking number required under regulations at 50 CFR 660.704 if the vessel enters Canadian waters. This is estimated to take 5 minutes per vessel. It is expected that all of the U.S. vessels that would fish under the Treaty are subject to the HMS FMP and/or the High Seas Fishing Compliance Act, both of which require vessel marking, and the added cost (adding the letter U) under this proposed rule is minimal. Given the limits of the amended Treaty, the maximum number of times the added burden would occur in the 3 year period is 1,740 vessel crossings, or 580 per year, with a burden of 48.33 hours annualized.

The proposed rule would require that vessel owners or operators take action each year to be sure that their vessels are on the list of vessels eligible to fish in Canadian waters under the Treaty. This can be done with a 5 minute phone call. Although it is highly unlikely, it is assumed for estimating the reporting burden that 700 vessels will get on the list (this is about 90 percent of the number of vessels that actually landed albacore into a West Coast port in 2003); under this assumption, the total fleet burden is 58.33 hours. It should be noted that there is no cost to get on the list; therefore, it is expected that many will choose to get on the list just in case an opportunity to fish in Canadian waters arises during the year. The proposed rule also will require U.S. vessels to report border crossings to and from Canadian waters. Assuming a round trip for the maximum of 580 vessels (assuming that every vessel fishes only 1 month toward the U.S. limit), and with each call taking an average of 5 minutes, this imposes a burden of 96.67 hours. Finally, the proposed rule would impose a logbook reporting requirement for U.S. vessels fishing under the Treaty in Canadian waters. Under the limits of the Treaty, U.S. vessels will be limited to an average of no more than 580 vessel months per year (over 3 years). Assuming full fishing each month (*i.e.*, up to 30 days per month) and 1 logbook page per day (at 5 minutes per page), the reporting burden will be 2.5 hours per vessel per month or a fleet total of 1450 hours per year. It is estimated that 50 percent of these vessels already participate in a voluntary albacore fishery logbook program, so the net new burden for which PRA approval has been requested is 725 hours.

Most years there will be much less fishing under the Treaty than the level on which this estimate is based. However, assuming full participation, the total new reporting burden for the fleet is 928.33 hours per year for the first 3 year period of fishing limits. There are no significant capital or equipment costs associated with this reporting burden. NMFS is working with the albacore fishery to evaluate the potential of electronic recordkeeping and reporting for this fishery. This could reduce the collection burden in the future. A PRA clearance request has been submitted to the Office of Management and Budget with this proposed rule.

Public comment is sought regarding whether these proposed collections of information are 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 information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to, Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or facsimile (fax) to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS conducted a formal Endangered Species Act section 7 consultation on the U.S. troll albacore fishery as it would operate as a component of the fisheries to be managed under the HMS FMP. The resulting Biological Opinion indicated that the fishery is not likely to jeopardize the continued existence of any listed species under NMFS jurisdiction. NMFS also conducted a formal section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) on the U.S. troll albacore fishery as it would operate as a component of the fisheries to be managed under the HMS FMP. The resulting Biological Opinion concluded that the fishery is not likely to jeopardize the continued existence of any listed species under USFWS jurisdiction. The fishery as it would operate under this proposed rule is not expected to differ from the fishery under the HMS FMP. Thus, there are no different impacts expected on ESA-listed species, and no further consultations are necessary.

List of Subjects

50 CFR Part 300

Fisheries, High seas fishing, International agreements, Reporting and recordkeeping requirements, Permits.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: April 27, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. A new subpart L is added to read as follows:

Subpart L—Pacific Albacore Tuna Fisheries

2. The authority citation for subpart L reads as follows:

Authority: Pub. L. 108–219.

§ 300.170 Purpose and scope.

The regulations in this subpart govern fishing by U.S. vessels in waters under the fisheries jurisdiction of Canada pursuant to the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Regulations governing fishing by Canadian vessels in waters under the fisheries jurisdiction of the United States pursuant to this Treaty as amended in 2002 are found at § 600.530 of chapter VI of this title.

§ 300.171 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10 of Chapter VI of this title, the terms used in this subpart have the following meanings:

Fishing under the Treaty as amended in 2002 means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of Canada seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reporting Office means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

Treaty means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

§ 300.172 Vessel list.

The "vessel list" is the list of U.S. vessels that are authorized to fish under the Treaty as amended in 2002. Only a vessel on the list for at least 7 days may engage in fishing in Canadian waters under the Treaty as amended in 2002. At least 7 (seven) days prior to the first day on which any fishing in Canadian waters may begin, the owner of any U.S. vessel that wishes to be eligible to fish for albacore tuna under the Treaty as amended in 2002 must provide the Regional Administrator or his designee with the vessel name, the owner's name and address, phone number where the owner can be reached, the U.S. Coast Guard documentation number (or State registration number if not documented), and vessel operator (if different from the owner) and his or her address and phone number. NMFS will then place the vessel on the vessel list.

§ 300.173 Vessel identification.

A U.S. vessel fishing under the Treaty as amended in 2002 must be marked with its name and vessel identification prominently displayed where they will be clearly visible both from the air and from a surface vessel. Vessel identification means the U.S. Coast Guard Documentation number (or if not documented, the State registration number) followed by the letter U in the same height and size as the numerals. Numerals and the letter U must meet the size requirements of § 660.704 of chapter VI of this title.

§ 300.174 Logbook reports.

The owner of any U.S. vessel that fishes for albacore tuna in Canadian waters under the Treaty as amended in 2002 must maintain and submit to the Regional Administrator a logbook of catch and effort of such fishing. The logbook form will be provided to the vessel owner as soon as practicable after the request to be placed on the list of vessels. The logbook must be submitted to the Regional Administrator within 15 days of the end of a trip, regardless of whether the trip ends by reentry to U.S. waters or entry to Canada's territorial sea, other Canadian waters in which fishing is not permitted, or a Canadian port. If the departure is due to exit to the high seas, the vessel operator must submit the logbook within 7 days of its next landing.

§ 300.175 Hail-in and hail-out reports.

(a) The operator of any U.S. vessel that wishes to engage in fishing in

waters under the fisheries jurisdiction of Canada must file a hail-in report to the Reporting Office prior to engaging in fishing in such waters.

(b) The operator of a U.S. vessel that has been fishing under the Treaty as amended in 2002 must file a hail-out report to the Reporting Office within 24 hours of departing waters under the fisheries jurisdiction of Canada.

§ 300.176 Prohibitions.

It is prohibited for the owner or operator of a U.S. fishing vessel to:

(a) Engage in fishing in waters under the fisheries jurisdiction of Canada if:

(1) The vessel has not been on the list of fisheries pursuant to § 300.172 for at least 7 days;

(2) The vessel is not clearly marked as required under § 300.173;

(3) The vessel operator has not filed a hail-in report with the Reporting Office as required under § 300.175(a); or

(4) The Regional Administrator has announced that the U.S. limit on fishing under the Treaty as amended in 2002 has been reached.

(b) Fail to maintain and submit logbook records of catch and effort statistics as required under § 300.174;

(c) Fail to report an exit from waters under the fisheries jurisdiction of Canada as required by § 300.175(b).

For the reasons set out in the preamble, 50 CFR part 600 subpart F is proposed to be amended as follows:

Subpart F—Foreign Fishing

3. The authority citation for subpart F continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* as amended by Pub. L. 108–219.

4. A new § 600.530 is added to read as follows:

§ 600.530 Pacific albacore fishery.

(a) *Purpose and scope.* This section regulates fishing by Canadian vessels under the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Regulations governing fishing by U.S. vessels in waters under the fisheries jurisdiction of the Canada pursuant to this Treaty are found at §§ 300.170–176 of chapter II of this title.

(b) *Definitions.*

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10, the terms used in this subpart have the following meanings:

Fishing under the Treaty as amended in 2002 means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of the United States seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reporting Office means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

Treaty means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

(c) *Vessel list.* A Canadian vessel is not eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 unless the vessel is on the list provided to NMFS by the Government of Canada of vessels authorized by Canada to fish under the Treaty as amended in 2002.

(d) *Vessel identification.* A Canadian vessel fishing under the Treaty as amended in 2002 must clearly display its Canadian vessel registration number followed by the letter C in the same height and size as the numerals, consistent with Canadian vessel marking requirements.

(e) *Hail-in reports.* The operator of a Canadian vessel eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 must file a hail-in report with the Reporting Office prior to beginning any such fishing.

(f) *Hail-out Reports.* The operator of a Canadian vessel that has been fishing in U.S. waters under the Treaty as amended in 2002 must file a hail-out report with the Reporting Office prior to or upon exit from U.S. waters.

(g) *Prohibitions.* It is prohibited for the operator of a Canadian vessel to engage in fishing in U.S. waters if the vessel:

(1) Is not on the vessel list in paragraph (c) of this section;

(2) Has not filed a hail-in report to advise of an intent to fish under the Treaty as amended in 2002 prior to engaging in such fishing; or

(3) Is not clearly marked in accordance with paragraph (d) of this section.

[FR Doc. 04–9849 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 69, No. 84
Friday, April 30, 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

Commodity Credit Corporation

Livestock Indemnity Program for Livestock Losses Due to Southern California Fires

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to inform interested parties of the availability of $500,000 to provide assistance to producers who suffered livestock losses due to wild fires in Southern California. Assistance will be provided in the same manner as the assistance provided under terms applicable to a previous Livestock Indemnity Program.

DATES: The Farm Service Agency (FSA) will begin accepting applications on April 15, 2004. The application deadline is June 14, 2004, or such other date as determined by FSA's Deputy Administrator for Farm Programs.

FOR FURTHER INFORMATION CONTACT: Eloise Taylor, Chief, Compliance Branch, Production, Emergencies and Compliance Division, FSA, 1400 Independence Ave., SW., Washington, DC 20250–0517, (202) 720–9882, or e-mail at: *Eloise_Taylor@wdc.usda.gov* or *http://www.regulations.gov*. Persons with disabilities who require alternative means for communication of regulatory information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information from the public to implement this program has been approved by the Office of Management and Budget under Control Number 0560–0179.

Background

This notice provides California Livestock Indemnity Program terms and conditions, and informs affected parties that they may be eligible for benefits. Section 102(g) of Division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199, January 23, 2004), provided $500,000 of funds of the CCC for a livestock indemnity program in Southern California "under the heading 'Commodity Credit Corporation'" in the 1999 emergency Supplemental Appropriations Act, Public Law 106–31. That provision is accompanied in Section 102 with other provisions addressing recent wildfire losses. In accord with the understood intent of the livestock provision, the CCC is making available by this notice $500,000 for those losses, namely in Southern California, to livestock owners in the counties of Ventura, San Bernardino, Santa Barbara, San Diego, Riverside, and Los Angeles who suffered eligible livestock losses from wildfires in the fall of 2003. No claims will be paid except upon the filing of a proper application during the application period as announced in this notice. All claims are subject to the availability of funds. Owners will be compensated by livestock category as established by CCC. The owner's loss must be the result of the wild fires and in excess of normal losses, as established by CCC, for the owner's livestock operation. The requirements as set forth below apply as do any additional terms as may be imposed in the application process by the agency.

Comments and questions concerning this notice may be directed to Eloise Taylor at the address above. However, because the nature of the relief, it has been determined that a delay in this action would be contrary to the public interest, and Congressional intent. Thus, the notice is effective immediately.

I. How To Apply

(A) Livestock owners must submit the application for benefits at the FSA service center for the area in which the livestock was lost. Except as otherwise provided in this notice, owners must meet all eligibility requirements as codified at 7 CFR part 1439, Subpart A. Further, expect as otherwise provided in this notice, the terms and conditions, requirements, and definitions of the regulations published in the **Federal Register** on November 1, 1999 (64 FR 58766), for the livestock indemnity program provided in Public Law 106–31 shall apply.

(B) The livestock owner shall provide any available supporting documents that will assist the FSA county committee, or is requested by the county committee, including, but not limited to:

(1) Evidence of the quantity of eligible livestock that perished in the natural disaster, such as purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses; and

(2) Evidence, including any documents available, confirming that the disaster was responsible for the livestock losses.

(3) Certifications by the owner and other such documentation the county committee determines to be necessary to verify the information provided by the owner. Third-party verifications may be accepted only if the owner certifies in writing that there is no other documentation available. Third-party verification must be signed by the verifying party. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application.

II. Payment Limitations

(A) Funding for the program is limited to $500,000. In the event that amount is insufficient to pay all approved claims, CCC will reduce the payments for all eligible and timely submitted claims on a pro rata basis or other method deemed appropriate by CCC.

(B) The total amount of benefits that a person may receive, as determined in accordance with 7 CFR Part 1400, shall not exceed $50,000.

III. Who Is Eligible

Eligible producers for California LIP payments are livestock owners in the Southern California counties of Ventura, San Bernardino, Santa Barbara, San Diego, Riverside, and Los Angeles who suffered livestock losses from wildfires in the fall of 2003, and to livestock producers in Kern or Tulare county who suffered livestock losses from the McNally fire in 2002.

IV. Eligibility Determinations

Eligibility determinations will be made by the county committee upon receipt of all necessary data. Ineligible causes of loss are those that are not a direct result of the wild fires.

A person, as defined in 7 CFR Part 1400, who has annual gross revenue in excess of $2.5 million shall not be eligible for benefits from this program.

V. Payment Calculations

(A) LIP payments will be based on the owner's share of the lost livestock.

(B) Payments will be calculated by multiplying the national payment rate for the livestock category, as determined by CCC, by the number of qualifying animals determined in paragraph I, above.

VI. General

(A) LIP will be under the supervision of the Deputy Administrator for Farm Programs, who will have the authority to modify terms and conditions of the program in order to achieve the purposes of the program.

(B) Livestock owners shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by CCC. Failure to provide information requested by the county committee or by agency officials is cause for denial of any application.

(C) The livestock owner must agree to the final terms and conditions.

(D) For additional information, affected livestock owners should contact Eloise Taylor at the address shown above.

(E) Payments are subject to administrative offset.

VII. Appeals

Once all claims have been submitted, individual applicants will have 30 days to challenge the payment amount with the county committee.

Signed at Washington, DC, April 20, 2004.

Michael W. Yost,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–9800 Filed 4–29–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–011N]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of adjusted dollar limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the new dollar limitations on the amount of sales of meat and meat food products and poultry products to hotels, restaurants, and similar institutions that do not disqualify a retail store for exemption from Federal inspection requirements. By reason of FSIS' regulations, for calendar year 2004 the dollar limitation for meat and meat food products has been increased from $47,000 to $53,600 and for poultry products from $41,600 to $43,600. FSIS is increasing the dollar limitations from calendar year 2003 based on price changes for these products evidenced by the Consumer Price Index.

EFFECTIVE DATE: This notice is effective April 30, 2004.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Directives and Economic Analysis Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 720–0345, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry, and the preparation or processing of meat and meat food and poultry products, do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities (21 U.S.C. 454(c)(2) and 661 (c)(2)). In title 9 of the Code of Federal Regulations, §§ 303.1(d) and 381.10(d), FSIS regulations address the conditions under which requirements for inspection do not apply to retail operations involving the preparation or processing of meat or poultry products.

Under these regulations, sales to hotels, restaurants, and similar institutions disqualify a store for exemption if they exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, indicates an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (See paragraphs (d)(2)(iii)(b) and (d)(2)(iii)(b) of §§ 303.1 and 381.10.)

The CPI for 2003 reveals an average annual price increase for meat and meat food products of 14 percent and an annual average price increase for poultry products of 4.7 percent. When rounded off to the nearest $100.00, the price increase for meat and meat food products is $6,600 and the price increase for poultry products is $2,000. Because the price of meat and meat food products and the price of poultry products have increased by more than $500, in accordance with §§ 303.1 (d)(2)(iii)(*b*) and 381.10 (d)(2)(iii)(*b*) of the regulations, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to $53,600 for meat and meat food products and at $43,600 for poultry products for calendar year 2004.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that the public, and in particular that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. The update is also available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to

the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on April 27, 2004.

Barbara Masters,

Acting Administrator.

[FR Doc. 04–9831 Filed 4–29–04; 8:45 am]

BILLING CODE 3410–DM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List, products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must be Received on or Before: May 30, 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.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product will be required to procure the products 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 to the Government.

2. If approved, the action will 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 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 are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

Product/NSN: Pre-moistened Disposable Cleaning Wipes, M.R. 572—Kitchen and Bath Wipes, M.R. 573—Glass Cleaning Wipes, M.R. 589—Wood Cleaning Wipes, M.R. 590—Microwave and Refrigerator Wipes, M.R. 591—Antibacterial Wipes.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

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 and services 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 services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products:

Product/NSN: Bag, Soiled Clothes, 8465–00–122–3869
NPA: None Currently Authorized.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Product/NSN: Belt, Aircraft Safety, 1680–00–163–1570
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Contract Activity: Defense Supply Center Richmond, Richmond, Virginia.

Product/NSN: Belt, Automobile, Safety, 2540–00–894–1273, 2540–00–894–1274, 2540–00–894–1275, 2540–00–894–1276.
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Product/NSN: Bookcase, Wood, Executive, 7110–00–973–5127.
NPA: None Currently Authorized
Contract Activity: GSA, National Furniture Center, Washington, DC.

Product/NSN: Books and Pamphlets (Program 1995–S), 7690–00–NSH–0088.
NPA: None Currently Authorized
Contract Activity: Government Printing Office, Washington, DC.

Product/NSN: Costumer, Wood, Executive, 7195–00–132–6642, 7195–01–368–4817, 7195–01–368–4818, 7195–01–368–4819, 7195–01–391–5136, 7195–01–459–9149, 7195–01–459–9150, 7195–01–459–9151, 7195–01–459–9152, 7195–01–459–9153, 7195–01–459–9154.
NPA: None Currently Authorized
Contract Activity: GSA, National Furniture Center, Washington, DC.

Product/NSN: Office Furniture—Tables, Wood, 7110–00–151–6485, 7110–00–177–4901, 7110–00–177–4902.
NPA: None Currently Authorized
Contract Activity: GSA, National Furniture Center, Washington, DC

Product/NSN: Office Furniture, 7110–00–194–1613—Bookcase, 7110–00–281–5689—Costumer, 7195–00–242–3503—Coat Rack.
NPA: None Currently Authorized
Contract Activity: GSA, National Furniture Center, Washington, DC.

Product/NSN: Short Run, Short Schedule Duplicating (Program 2979–S), 7690–00–NSH–0087.
NPA: None Currently Authorized
Contract Activity: Government Printing Office, Washington, DC.

Product/NSN: Stamp, Rubber 7520–00–NSH–0084, 7520–00–NSH–0085, 7520–00–NSH–0086.
NPA: None Currently Authorized
Contract Activity: Mountain Home Air Force Base, Idaho.

Product/NSN: Tarpaulin, Support Arm, 5815–01–108–9180.
NPA: None Currently Authorized
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Services:

Service Type/Location: Base Supply Center, U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contract Activity: U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.

Service Type/Location: Toner Cartridge Remanufacturing, Veterans Affairs Medical Center, Seattle, Washington.
NPA: Community Option Resource Enterprises, Inc., Billings, Montana

Contract Activity: Department of Veterans Affairs.

G. John Heyer,

General Counsel.

[FR Doc. 04–9839 Filed 4–29–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: May 30, 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:

Addition

On March 4, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 10401) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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. 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 service to the Government.

2. The action will result in authorizing small entities to furnish the 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 service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service:

Service Type/Location: Janitorial/Custodial, Social Security District Office, 3231 Martin Luther King (MLK) Blvd, Dallas, Texas.

NPA: The Arc of Caddo-Bossier, Shreveport, Louisiana.

Contract Activity: GSA, Public Buildings Service, Central Area, Dallas, Texas.

Deletions

On March 5, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 10401) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. 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 deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Service:

Service Type/Location: Janitorial/Custodial, Social Security District Office, 3231 Martin Luther King (MLK) Blvd, Dallas, Texas.

NPA: The Arc of Caddo-Bossier, Shreveport, Louisiana.

Contract Activity: GSA, Public Buildings Service, Central Area, Dallas, Texas.

Deletions

On March 5, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 10401) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. 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 deleted from the Procurement list.

End of Certification

Accordingly, the following products are deleted from the Procurement List.

Products:

Product/NSN: Cap, Food Handler's 8415–00–234–7677, 8415–00–234–7678, 8415–00–234–7679.

NPA: BESB Industries, West Hartford, Connecticut.

NPA: Virginia Industries for the Blind, Charlottesville, Virginia.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Slide Fastener Unit, Laced Boot, 8430–00–465–1888, 8430–00–465–1889, 8430–00–465–1890.

NPA: Lighthouse for the Blind of the Palm Beaches, Inc., West Palm Beach, Florida.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Product/NSN: Streamer, Warning, Aircraft, 8345–00–863–9170.

NPA: BESB Industries, West Hartford, Connecticut.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

G. John Heyer,

General Counsel.

[FR Doc. 04–9840 Filed 4–29–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Correction

In the document appearing on page 22000, FR Doc. 04–9312, in the issue of April 23, 2004, in the second column, the Committee published an effective date of November 23, 2003 for addition of the Food Service Attendant, Elmendorf Air Force Base, Alaska to the Procurement List. The correct effective date should be May 23, 2004.

G. John Heyer,

General Counsel.

[FR Doc. 04–9838 Filed 4–29–04; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia 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 West Virginia Advisory Committee will convene at 1 p.m. and adjourn at 3 p.m., Tuesday, May 11, 2004. The purpose of the conference call is to discuss potential projects.

This conference call is available to the public through the following call-in number: 1–888–532–2096, access code: 23385003. 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 access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116), by 4 p.m. on Monday, May 10, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 20, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–9775 Filed 4–29–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339–4131–10]

Economic Development Assistance Programs

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice of Federal Funding Opportunity (FFO).

SUMMARY: The Economic Development Administration (EDA) announces general policies and application procedures for grant-based investments that will increase prosperity by advancing comprehensive, entrepreneurial, and innovation-based economic development efforts to enhance the competitiveness of regional business environments, resulting in increased private investment and higher-skill, higher-wage jobs.

DATES: Proposals are accepted on a continuing basis and applications are invited and processed as received. Normally, two months are required for a final decision after the receipt of a completed application invited by EDA that meets all requirements.

ADDRESSES: For applicants in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina or Tennessee, please send proposals to: Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308–3510, Telephone: (404) 730–3002, Fax: (404) 730–3025.

For applicants in Arkansas, Louisiana, New Mexico, Oklahoma or Texas, please send proposals to: Economic Development Administration, Austin Regional Office, 327 Congress Avenue, Suite 200, Austin, Texas 78701–365, Telephone: (512) 381–8144, Fax: (512) 381–8177.

For applicants in Illinois, Indiana, Michigan, Minnesota, Ohio or Wisconsin, please send proposals to: Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, IL 60606, Telephone: (312) 353–7706, Fax: (312) 353–8575.

For applicants in Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah or Wyoming, please send proposals to: Economic Development Administration, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, Telephone: (303) 844–4715, Fax: (303) 844–3968.

For applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands or West Virginia, please send proposals to: Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, PA 19106, Telephone: (215) 597–4603, Fax: (215) 597–1063.

For applicants in Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands, Micronesia, Nevada, Northern Mariana Islands, Oregon or Washington, please send proposals to: Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Fax: (206) 220–7669.

The text of the full Federal Funding Opportunity announcement can be accessed at EDA's Web site, *http://www.eda.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or for a copy of the full funding opportunity announcement for this request for proposals, contact the appropriate EDA regional office listed above.

SUPPLEMENTARY INFORMATION:

Electronic Access: EDA is not currently able to accept electronic submission of proposal packages. However, the full funding opportunity announcement for the FY 2004 Economic Development Assistance Programs competition is available through EDA's Web site, *http://www.eda.gov*, and through Grants.gov at *http://www.grants.gov.*

Funding Availability: Funds in the amount of $285,083,000 have been appropriated for EDA programs in FY 2004 and shall remain available until expended.

Statutory Authority: Pub. L. 89–136, 42 U.S.C. 3121, as amended by Pub. L. 105–393; Pub. L. 93–618, 98–120, 98–369, 99–272, 99–514, 100–418, 103–66,

105–277, 107–210, 19 U.S.C. 2341–2391 *et seq.*

CFDA: 11.300 Grants for Public Works and Economic Development Facilities; 11.302 Economic Development—Support for Planning Organizations; 11.303 Economic Development—Technical Assistance; 11.307 Economic Adjustment Assistance; 11.312 Economic Development—Research and Evaluation; 11.313 Economic Development—Trade Adjustment Assistance.

Eligibility: Eligible applicants for and eligible recipients of EDA financial assistance are defined at 13 CFR 300.2. An "area" is an eligible recipient and is defined at 13 CFR 301.2. One category of the areas eligible for financial assistance are those areas meeting the "special needs" criteria as defined in 13 CFR 301.2(b)(3).

Cost Sharing Requirements: Ordinarily the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. Potential applicants should contact the appropriate EDA office to make this determination.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures: Each pre-application proposal is circulated by a project officer to the appropriate regional office staff for review, comments, and recommendations. When the necessary input and information are obtained, the pre-application proposal is considered by the regional office Investment Review Committee (IRC) made up of regional office staff. The IRC discusses the proposal and all pertinent documentation and evaluates it on two levels of analysis: (a) fulfillment of the Investment Policy Guidelines set forth below; and (b) the general evaluation criteria set forth at 13 CFR 304.1 and 304.2 as further defined by the Funding Priorities set forth in this notice below, and the program specific criteria provided under 13 CFR 305.2 for Public Works, 13 CFR 306.2 for Planning Assistance, 13 CFR 307.2 for Technical Assistance, 13 CFR 307.6 for University Centers, 13 CFR 307.10 for National Technical Assistance, Training, Research, and Evaluation, 13 CFR 308.2 and 308.4 for Economic Adjustment and 13 CFR 315.5 and 315.6 for Trade Adjustment Assistance for Firms. University Center funding proposals will be evaluated pursuant to a separate Federal Funding Opportunity notice published on April 15, 2004 (69 FR 19973).

After completing its evaluation, the IRC recommends whether or not an application should be invited, documenting its recommendation in the meeting minutes or in the Investment Proposal Summary and Evaluation Form. The IRC analysis of the project's fulfillment of the Investment Policy Guidelines is reviewed at EDA headquarters for quality assurance. After receiving quality control clearance, the Selecting Official (depending on the program, either the Regional Director or the Assistant Secretary) selects the applications to be invited after considering the evaluations provided by the IRC and the degree to which one or more of the Funding Priorities are included (or packaged together) in making his/her decision as to which preapplication proposals should be invited. The Selecting Official then formally invites the successful proponent to submit a formal application. If the Selecting Official declines to invite a full application, he/she provides written notice to the proponent. In the case of a continuation grant, no pre-application proposal is required. Proposals received after the date of this notice will be processed in accordance with the requirements set forth herein until the next annual FFO is published.

If a successful proponent submits a formal application, it is reviewed by EDA program officials to determine whether it contains any deficiencies under EDA regulations at 13 CFR chapter III and the requirements of this notice. If deficiencies are noted, the applicant is provided a written request to amend the application to resolve any deficiencies. If deficiencies are not resolved 30 days after receipt of the written notice, the application may be rejected. If the full application is accepted, the applicant and EDR are notified and it is forwarded for final reviews and processing in accordance with EDA and DOC procedures.

Evaluation Criteria: EDA investment proposals will be competitively evaluated primarily on their ability to meet or exceed the following Investment Policy Guidelines (each criterion will be given equal weight):

1. *Be market-based and results driven.* An investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: An increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. *Have strong organizational leadership.* An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. *Advance productivity, innovation, and entrepreneurship.* An investment will embrace the principles of entrepreneurship, enhance regional clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* An investment will be part of an overarching, long term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. *Demonstrate a high degree of commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage;
- Clear and unified leadership and support by local elected officials; and
- Strong cooperation between the business sector, relevant regional partners and local, State and Federal governments.

Highly rated preapplication proposals may or may not be invited to submit full applications based on the following Funding Priorities. Generally, all EDA proposals and applications should enhance regional competitiveness and support long-term development of the regional economy. Further priority will be given to proposals that:

1. Encourage innovation and regional competitiveness:

a. Reflect coordination of strong regional leadership committed to regional cluster development;

b. Encourage a formal organization structure and process for working on cluster development and maintaining consensus;

c. Encourage a common vision and collaboration among firms, universities, and training centers to implement a cluster strategy;

d. Establish research and industrial parks that encourage innovation-based competition;

e. Implement cluster-focused and innovation-focused business development efforts; and

f. Develop or implement coordinated economic and workforce development strategies.

2. Upgrade core business infrastructure such as:

a. Transportation infrastructure;

b. Communications infrastructure; and

c. Specialized training program infrastructure.

3. Help communities plan and implement economic adjustment strategies in response to sudden and severe economic dislocation. Specifically, EDA will give highest priority to support manufacturing-impacted communities by:

a. Helping communities that experience manufacturing job losses (*e.g.*, major layoffs, plant closures or trade impacts); and

b. Supporting innovation and competitiveness in American manufacturing.

4. Support technology-led economic development, for example, proposals that:

a. Reflect the important role of research and development capacity of universities in regional development; and

b. Create and support technology transfers.

5. Advance community and faith-based social entrepreneurship in redevelopment strategies for areas of chronic economic distress.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation, and are available on EDA's Web site, *www.eda.gov*.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900P has been approved by OMB under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a 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.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 22, 2004.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 04–9810 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339–4132–11]

National Technical Assistance, Training, Research, and Evaluation

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: The Economic Development Administration (EDA) announces general policies and application procedures for grant-based research and technical assistance investments that aim to increase prosperity by advancing comprehensive, entrepreneurial, and innovation-based economic development efforts. The research and technical assistance contemplated are intended to enhance the competitiveness of regional business environments resulting in increased private investment and higher-skill, higher-wage jobs.

DATES: Proposals for funding under this program will be accepted through May 28, 2004. Proposals received after 4 p.m. e.d.t., on May 28, 2004, will not be considered for funding. By June 16, 2004, EDA will notify proposers whether they will be given further funding consideration. The projects will be funded as soon as possible, but no later than September 30, 2004.

ADDRESSES: Research and Evaluation proposals may be e-mailed to *klim1@eda.doc.gov*; National Technical Assistance proposals may be e-mailed to *jmcnamee@eda.doc.gov*. Alternatively, Research and Evaluation proposals may be hand-delivered to: W. Kent Lim, U.S. Department of Commerce, Economic Development Administration, Room 1874, 1401 Constitution Avenue, NW., Washington, DC 20230. National Technical Assistance proposals may be hand-delivered to: Dr. John J. McNamee, U.S. Department of Commerce, Economic Development Administration, Room 1874, 1401 Constitution Avenue, NW., Washington, DC 20230; or Research and Evaluation proposals may be mailed to: W. Kent Lim, U.S. Department of Commerce, Economic Development Administration, Room 7015, 1401 Constitution Avenue, NW., Washington, DC 20230; National Technical Assistance proposals may be mailed to: Dr. John J. McNamee, U.S. Department of Commerce, Economic Development Administration, Room 7816, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For a copy of the full Federal Funding Opportunity (FFO) announcement for this request for proposals, contact the appropriate EDA officer listed above. The text of the full FFO announcement can also be accessed at EDA's Web site, *http://www.eda.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full FFO announcement for the FY 2004 Economic Development Assistance Programs competition is available through EDA's Web site, *http://www.eda.gov*, and through Grants.gov at *http://www.grants.gov*.

Funding Availability: Funds in the amount of $805,000 have been appropriated for the National Technical Assistance (NTA) program and shall remain available until expended. Funds in the amount of $495,000 have been appropriated for the Research and Evaluation program for FY 2004 and shall remain available until expended.

Statutory Authority: Pub. L. 89–136, and as further amended by Pub. L. 105–393, 42 U.S.C. 3121 *et seq.*

CFDA: 11.303 Economic Development—Technical Assistance; 11.312 Economic Development—Research and Evaluation.

Eligibility: Eligible recipients of EDA financial assistance are defined at 13 CFR 300.2.

Cost Sharing Requirements: Ordinarily the amount of the EDA grant may not exceed 50 percent of the cost of the project. While cash contributions are preferred, in-kind contributions, fairly evaluated by EDA, may include contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. Potential applicants should contact the appropriate EDA office to make this determination.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures and Criteria:

A. Application

To apply for an award under this request, an eligible recipient must submit a proposal to EDA during the specified timeframe, at the address specified above. Proposals that do not meet all items required or that exceed the page limitations of the FFO will be considered nonresponsive, and will not be considered. Proposals that meet all the requirements will be evaluated by a review panel comprised of at least three members, all of whom will be full-time Federal employees. The panel first evaluates the proposals using the general evaluation criteria set forth in 13 CFR 304.1 and 304.2 and the supplemental evaluation criteria (Investment Policy Guidelines) set forth below. Proposals that meet these threshold criteria listed below will then be evaluated by the panel using the following criteria of approximate equal weight:

1. The quality of a proposal's response to the Scope of Work;

2. The ability of the applicant to successfully carry out the proposed activities; and

3. Cost to the Federal Government.

B. Supplemental Evaluation Criteria: Investment Policy Guidelines

EDA's mission is to increase prosperity by advancing comprehensive, entrepreneurial, and innovation-based economic development efforts to enhance the competitiveness of regional business environments resulting in increased private investment and higher-skill, higher-wage jobs.

All potential EDA investments will be analyzed using the following five Investment Policy Guidelines, which constitute supplemental evaluation criteria of approximate equal weight and which further define the criteria provided at 13 CFR 304.2.

1. *Be market-based and results driven.* An investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: an increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. *Have strong organizational leadership.* An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. *Advance productivity, innovation, and entrepreneurship.* An investment will embrace the principles of entrepreneurship, enhance regional clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* An investment will be part of an overarching, long term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. *Demonstrate a high degree of commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage.
- Clear and unified leadership and support by local elected officials.
- Strong cooperation between the business sector, relevant regional partners and local, state and federal governments.

Selection Factors: The Assistant Secretary of Commerce for Economic Development is the Selecting Official, and will in the normal course follow the recommendation of the review panel. However, the Assistant Secretary may not make any selection, or he may substitute one of the lower rated proposals, if he determines that it better meets the overall objectives of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), and as further amended by Pub. L. 105–393.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900A has been approved by OMB under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a 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.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore,

a regulatory flexibility analysis has not been prepared.

Dated: April 26, 2004.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 04–9811 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042204E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the Southern Atlantic States; Amendment 6

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

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (SEIS), supplemental notice.

SUMMARY: The South Atlantic Fishery Management Council (Council) has added Federal permitting, bycatch reporting, and bycatch reduction actions to Amendment 6 of the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (Shrimp Amendment 6). Shrimp Amendment 6 also includes actions to evaluate and redefine, as needed, biological reference points and status determination criteria, and actions to modify the bycatch reduction protocol.

ADDRESSES: Comments and requests for copies of the scoping documents should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, fax: 843–769–4520. Comments may also be submitted by e-mail to shrimpcomments@safmc.net. Include in the subject line of the e-mail comment the following document identifier: Shrimp Amendment 6.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Office; phone: 866–SAFMC–10 or 843–571–4366; e-mail: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: This notice supplements the notice of intent to prepare a draft SEIS to support Shrimp Amendment 6 (February 19, 2002, 67 FR 7344) by adding the following actions: (1) require Federal permits in the penaeid (white, pink, and brown shrimp) shrimp fishery; (2) regularly monitor and assess bycatch in the penaeid and rock shrimp fisheries; and (3) reduce bycatch in the rock shrimp fishery. These actions will be evaluated in the draft SEIS.

The purpose of the permit action is to identify and quantify the number of vessels participating in the South Atlantic penaeid shrimp fishery. Alternatives evaluated under the action would not limit access to the fishery at this time. However, the Council might consider a limited access program in the future and could use the control date of December 10, 2003, as a qualifying criterion for participation in the fishery. The Council notified the public of this control date through an advanced notice of proposed rulemaking published in the **Federal Register** on March 4, 2004 (69 FR 10189).

The purpose of the bycatch reporting and reduction actions is to improve the accounting and management of bycatch in the penaeid and rock shrimp fisheries, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

Other actions in Shrimp Amendment 6 previously noticed in the **Federal Register** include evaluating and redefining, as needed, biological reference points and status determination criteria and modifying the bycatch reduction protocol.

The Environmental Protection Agency will publish a notice in the **Federal Register** when the draft SEIS is available for public comment. Comments received by the Council and NMFS during the 45–day comment period on the draft SEIS will be considered in developing the final SEIS.

Dated: April 27, 2004,

John H. Dunnigan,

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

[FR Doc. 04–9856 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011204A]

RIN 0648–AN16

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10

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

ACTION: Notice of partial approval of a fishery management plan amendment.

SUMMARY: NMFS announces that Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 10) has been partially approved by NMFS, acting on behalf of the Secretary of Commerce. Amendment 10 was developed by the New England Fishery Management Council to establish a long-term, comprehensive program to maximize scallop yield and implement a suite of management measures intended to make the management program more effective and flexible. The intent of this announcement is to inform the public of the partial approval of Amendment 10 and of the availability of the Record of Decision (ROD) for Amendment 10 in compliance with the National Environmental Policy Act (NEPA).

DATES: Amendment 10 was partially approved on April 14, 2004.

ADDRESSES: Copies of the ROD may be obtained from the Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 or from the Northeast Regional Office's website at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288, fax: 978–281–9135; email: *peter.christopher@noaa.gov*.

SUPPLEMENTARY INFORMATION: A Notice of Availability for Amendment 10 was published on January 16, 2004 (69 FR 2561) that announced NMFS review of Amendment 10 under the Magnuson-Stevens Fishery Conservation and Management Act. The public comment period on the NOA ended on March 15, 2004. Thirteen comments in response to the NOA were received. A proposed rule to implement Amendment 10 was published in the **Federal Register** on February 26, 2004 (69 FR 8915), with public comment ending on March 29, 2004. A total of 27 comments were received on the proposed rule. A summary of the comments received and NMFS's responses to those comments will be published in the final rule.

On April 14, 2004, NMFS approved all measures in Amendment 10 with the exception of the following proposed measures, which have been disapproved: (1) Possession restriction on Limited Access scallop vessels fishing outside of scallop days at sea; and a (2) cooperative industry resource survey program. A full explanation of the reasons for disapproval will be included in the final rule implementing Amendment 10. Regulatory provisions

implementing the approved measures will not become effective until the implementation of the final rule. NMFS anticipates that the final rule will be published in the near future.

In compliance with NEPA, the public is informed that the ROD for Amendment 10 is available on the NMFS website at *http://www.nero.noaa.gov* or may be obtained from the Regional Administrator (see **ADDRESSES**).

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

Dated: April 26, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–9779 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042604G]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Improved Retention/Improved Utilization Subcommittee will meet in Seattle, WA.

DATES: The meeting will be held on Monday, May 17, 2004, from 9 a.m. to 5 p.m. and Tuesday, May 18, 2004, from 9 a.m. to noon.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 1, Human Resource Conference Room, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Jon McCracken; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee is scheduled to discuss: (1) Further refine the underutilized species threshold component in Amendment 80a (Component 10); (2) The Committee may also address any other issues that they deem necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: April 26, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–9859 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042604F]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a work session, which is open to the public.

DATES: The CPSMT will meet Tuesday, May 18, 2004 from 9 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at NMFS, Southwest Region, 501 West Ocean Blvd., Conference Room 3400, Long Beach, CA 90802; telephone: (562) 980–4000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review the current Pacific mackerel stock assessment and develop harvest guideline and seasonal structure recommendations for the 2004-05 fishery. Planning for the CPS stock assessment review and election of CPSMT officers for 2004 will also occur. The 2004 CPS stock assessment and fishery evaluation (SAFE) document, and CPSMT considerations about the need for an amendment to the CPS fishery management plan to address management measures related to Pacific sardine allocation will also be discussed.

Although non-emergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 26, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–9860 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060603D]

Atlantic Highly Migratory Species (HMS); Issues and Options Paper for Amendment 2 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 2 to the Atlantic Billfish Fishery Management Plan (Billfish FMP)

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

ACTION: Notice of availability, notice of public scoping meetings, notice of public comment period.

SUMMARY: NMFS announces the availability of a paper describing issues and options for Amendment 2 to the

HMS FMP and for Amendment 2 to the Billfish FMP. The issues and options paper describes a wide range of potential management measures that could affect fishermen, dealers, or equipment suppliers for the Atlantic tuna, swordfish, shark, or billfish fisheries. NMFS also announces a series of public scoping meetings to discuss and collect comments on the issues described in the issues and options paper. Comments received on the issues and options paper and in the scoping meetings will assist NMFS in developing Amendment 2 to the HMS FMP and Amendment 2 to the Billfish FMP.

DATES: Written comments on the issues and options paper must be received no later than July 14, 2004.

The public scoping meetings will be held in May and June, 2004. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on this action should be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to (301) 713–1917. Comments on this NOA may also be submitted by e-mail: *060303D.issues@noaa.gov*. Copies of the issues and options paper or the HMS and Billfish FMPs can be obtained from the HMS website at: *http://www.nmfs.noaa.gov/sfa/hms*, by contacting Karyl Brewster-Geisz at (301) 713–2347, or by writing to the address above.

The public scoping meetings will be held in Gloucester, MA; Ocean City, MD; New Orleans, LA; Manteo, NC; San Juan, PR; Destin, FL; Montauk, NY; Port Aransas, TX; and Cocoa Beach, FL; for specific locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at (301) 713–2347, Mark Murray-Brown at (978) 281–9260, or Russell Dunn at (727) 570–5447.

SUPPLEMENTARY INFORMATION: Atlantic tuna, swordfish, shark and billfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulated pursuant to the Atlantic Tunas Convention Act (ATCA), which authorizes rulemaking to implement recommendations of the International Convention for the Conservation of Atlantic Tunas (ICCAT). Implementing regulations for both the HMS FMP and the Billfish FMP are at 50 CFR part 635.

Background

NMFS has received numerous recommendations and comments regarding fishery management issues and regulations from the HMS and Billfish Advisory Panels (APs) and other members of the public regarding the 1999 HMS and Billfish FMPs, and their respective amendments. An amendment to the HMS and Billfish FMPs is necessary to address many of these issues and to enact management alternatives. On July 9, 2003 (68 FR 40907), NMFS published a notice of intent (NOI) to prepare an environmental impact statement (EIS) under the National Environmental Policy Act that would assess potential effects on the human environment of actions proposed under Amendment 2 to the HMS FMP and under Amendment 2 to the Billfish FMP. The NOI identified potential actions that could be incorporated into Amendment 2 including, but not limited to: adjusting Atlantic Bluefin Tuna quota allocations, revising the limited access permit program, identifying essential fish habitat, addressing swordfish and shark quota allocation issues, and issuance of exempted fishing permits. In February 2004, NMFS met with the APs and discussed these and other potential issues and options. As a result of discussion with the APs and the comments received on the NOI, NMFS compiled an Issues and Options paper for Amendment 2 to the HMS FMP and for Amendment 2 to the Billfish FMP.

The purpose of this notice is to inform the public of the availability of the issues and options paper. This paper provides a framework for receiving public comments and for evaluating those comments as NMFS considers what actions should be incorporated into Amendment 2 or other rulemakings. NMFS will hold nine scoping meetings to gather public comments on the issues and options described in the paper. Written comments can be mailed, faxed, or e-mailed to NMFS (see **ADDRESSES**).

After scoping has been completed and public comments have been gathered and analyzed, NMFS will proceed, as appropriate, with the preparation of draft EISs for Amendment 2 to the HMS and Billfish FMPs and of a proposed rule. NMFS will then provide additional opportunities for public comment. Until the EISs, amendments, and proposed rule documents are finalized, all current regulations regarding HMS fisheries will remain in effect.

Request for Comments

NMFS requests public comments on a wide range of management options for Amendment 2 to the HMS and Billfish FMPs. These management measures could affect fishermen, dealers, equipment suppliers, or anyone involved with HMS fisheries. Some of the issues and potential options for which NMFS is requesting comment include, but are not limited to: modifying the General category allocation of Bluefin tuna; filleting Atlantic tuna at sea; modifying the swordfish bag limit for anglers; changing the large coastal shark trip limit for directed permit holders; streamlining the limited access permit program; simplifying the quota and permitting administrative processes for exempted fishing permits; modifying non-tournament reporting of billfish harvest; establishing outreach workshops; implementing the bycatch reduction plan; and updating essential fish habitat identifications and data for all HMS. Comments received on these and other relevant issues will assist NMFS in determining suitable alternatives to rulemaking actions and will improve the management of Atlantic HMS.

Schedule of Public Scoping Meetings

The dates, times, and locations of these meetings are scheduled as follows:

1. Wednesday, May 19, 2004. 7–9 p.m.

Gloucester Lyceum and Sawyer Free Library, 2 Dale Ave., Gloucester, MA 01930.

2. Wednesday, June 2, 2004. 7–9 p.m.

Ocean City Council Chambers, 301 Baltimore Ave., Ocean City, MD 21842.

3. Thursday, June 3, 2004. 7–9 p.m.

Elquier Regional Library, 3014 Holiday Drive, New Orleans, LA 70131.

4. Tuesday, June 8, 2004. 7–9 p.m.

North Carolina Aquarium, Roanoke Island, P.O. Box 967, Airport Road, Manteo, NC 27954.

5. Thursday, June 10, 2004. 2–4 p.m.

Ponce de Leon Ave ı7, San Juan, PR 00901.

6. Thursday, June 17, 2004. 7–9 p.m.

101 Stahlman Ave., Destin, FL 32541.

7. Tuesday, June 22, 2004. 7–9 p.m.

12 Flamingo Avenue, Montauk, NY 11954.

8. Thursday, June 24, 2004. 7–9 p.m.

Marine Science Institute, Visitors Center (located on Cotter St. near

beach), 750 Channel View Dr., Port Aransas, TX 78373.

9. Wednesday, June 30, 2004. 7–9 p.m.

550 North Brevard Avenue, Cocoa Beach, FL 32931.

Special Accommodations

These meetings will be accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt, (301) 713–2347.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 27, 2004.

John H. Dunnigan,

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

[FR Doc. 04–9854 Filed 4–29–04; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0023, Notice Registration as a Futures Commission Merchant or Introducing Broker for Certain Securities Brokers and Dealers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("the Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before June 29, 2004.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, (202) 418–5439; FAX (202) 418–5547; e-mail *lpatent@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, *44 U.S.C. 3506(c)(2)(A)*, requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Notice Registration as a Futures Commission Merchant or Introducing Broker for Certain Securities Brokers and Dealers, OMB Control No. 3038–0023–Extension

This collection covers the paperwork requirements associated with the process of registration by futures industry intermediaries, including futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, associated persons of each of the foregoing, and floor brokers, as well as floor traders. The Commission has authorized the National Futures Association, an industry self-regulatory organization and the only registered futures association, to perform the registration processing functions.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
78,215	Periodically	81,465	.09	7,405

Dated: April 23, 2004.

Jean A. Webb

Secretary of the Commission.

[FR Doc. 04–9833 Filed 4–29–04; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m., Thursday, May 27, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–9995 Filed 4–28–04; 1:36 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Record of Decision for the Final Mercury Management Environmental Impact Statement; Notice

AGENCY: Defense Logistics Agency, Defense National Stockpile Center, DoD.

ACTION: Notice of availability of a Record of Decision for the Final Mercury Management Environmental Impact Statement.

SUMMARY: The Defense Logistics Agency (DLA) announces the availability of the Record of Decision for the Final Mercury Management Environmental Impact Statement (Final EIS). This announcement is made pursuant to the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) and the DLA regulation (DLAR 1000.22, Environmental Considerations in DLA Actions in the United States) that implement the National Environmental Policy Act (NEPA). The Notices of Availability for the Final EIS were published in the **Federal Register** on March 26, 2004 (69 FR 15820 and 15830).

The Defense National Stockpile Center (DNSC) has decided to consolidate its commodity-grade, elemental mercury stockpile at one site. This decision is based on a combination of environmental and economic factors, policy considerations, and stakeholder comments. The Consolidated Storage Alternative and the rationale for selecting it are presented in detail in the Supplementary Information section. DNSC will select a site for consolidated storage after completion of a procurement process. If a site other than one of those evaluated in the Final EIS is selected, additional environmental documentation may be required.

The Final EIS analyzes in detail three alternatives for managing the National Defense Stockpile inventory of excess mercury: (1) No action, *i.e.*, leave the mercury at the existing storage locations; (2) consolidated storage of the mercury stockpile at one site; and (3) sale of the stockpile. Agencies are required by regulation to identify a preferred alternative in the final EIS. The preferred alternative is the one that best meets an agency's objectives. The Consolidated Storage Alternative is DNSC's Preferred Alternative in the Draft and Final EIS. DNSC has selected Consolidated Storage at one site in this Record of Decision as the alternative it will implement.

NEPA requires identification of an environmentally preferable alternative in the record of decision. An environmentally preferable alternative is the alternative that poses the fewest overall impacts and the least risk. It may differ from both the preferred alternative and the alternative selected for implementation in the record of decision. DNSC has identified the No Action Alternative as the Environmentally Preferable Alternative. Details are provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Paper copies of the Final EIS (about 1,000 pages) and the Executive Summary (about 20 pages) are available by writing to: Attention: Project Manager, Mercury Management EIS; DNSC–E; Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3229, Fort Belvoir, Virginia 22060–6223, or by calling toll free at 1–888–306–6682. Electronic versions of the Final EIS, the Executive Summary, and this Record of Decision are available on the Internet at *www.mercuryeis.com*. Requests for information can be made by: leaving a voice message at 1–888–306–6682 or faxing a message to 1–888–306–8818 (through May 31, 2004); emailing a request to *information@mercuryeis.com;* or accessing the Mercury Management EIS Web site at *www.mercuryeis.com*.

SUPPLEMENTARY INFORMATION:

Background

DNSC is responsible for the disposition of stockpiled materials declared in excess of national defense needs. The U.S. Congress has determined that the U.S. Department of Defense no longer needs to maintain a stockpile of commodity-grade mercury because of the increased use of mercury substitutes and because of increases in the Nation's secondary mercury production through recovery and recycling. Therefore, as custodian of the mercury, DNSC must decide on a strategy for long-term management of this material.

The DNSC inventory of mercury (approximately 4,890 tons [4,436 metric tons]) is safely stored in enclosed warehouses at four sites in the United States: Hillsborough, New Jersey (2,885 tons [2,617 metric tons]); New Haven, Indiana (614 tons [557 metric tons]); Oak Ridge, Tennessee (770 tons [699 metric tons]); and Warren, Ohio (621 tons [563 metric tons]). DNSC excess mercury was offered for sale in open competitions until 1994, when concerns over mercury accumulation in the environment prompted DNSC to suspend sales. Mercury is a pollutant of environmental concern because it is toxic and persistent; it accumulates in the environment; and it poses human health and ecological risks.

The potential impacts of transporting and storing mercury under the various alternatives are summarized in this document. Terms used in this Record of Decision and their definitions are provided in Tables 1 and 2.

TABLE 1.—IMPACT CATEGORIES AND DEFINITIONS

Impact category	Definition
Beneficial impacts:	
Major	An action that would greatly improve current conditions.
Moderate	An action that would moderately improve current conditions.
Minor	An action that would slightly improve current conditions.
Negligible or no impact	An action that would neither degrade nor improve current conditions.
Adverse impacts:	
Minor	An action that would slightly degrade current conditions.
Moderate	An action that would moderately degrade current conditions.
Major	An action that would greatly degrade current conditions.

Note: Impacts may also be categorized as short term (less than 5 years) or long term.

TABLE 2.—RISK CATEGORIES AND DEFINITIONS

Risk category	Definition
Reduced risk:	
Major	An action that would greatly reduce risk.
Moderate	An action that would moderately reduce risk.
Minor	An action that would slightly reduce risk.
Negligible or no risk increase	An action that would neither reduce nor increase risk.
Increased risk:	
Minor	An action that would slightly increase risk.
Moderate	An action that would moderately increase risk.
Major	An action that would greatly increase risk.

Note: Impacts may also be categorized as acute (less than or equal to 24 hours) or chronic.

Alternatives Considered

In compliance with NEPA and DLAR 1000.22, DNSC prepared an EIS to evaluate the environmental impacts of a range of reasonable alternatives for long-term management (*i.e.*, 40 years) of the excess mercury. The alternatives evaluated in detail in the EIS are: (1) No Action; (2) Consolidated Storage; and (3) Sales.

Under the No Action Alternative, DNSC would continue to store its excess mercury at the four current storage sites for up to 40 years. Monitoring and maintenance would continue. There would be no major modifications to existing storage buildings or the mercury storage containers. This alternative would not allow DNSC to downsize or close storage depots and is not compatible with the U.S. Department of Energy's (DOE's) mission at the Y–12 National Security Complex (Y–12) in Oak Ridge, Tennessee.

Under the Consolidated Storage Alternative, which DNSC has selected for implementation, the entire DNSC mercury stockpile would be stored for up to 40 years at one of the three DNSC depots where mercury is currently stored (*i.e.*, in Hillsborough, New Jersey; near New Haven, Indiana; or near Warren, Ohio) or at a non-DNSC site. DNSC mercury is also stored at a fourth site, Y–12. Y–12 is not considered for consolidated storage because it does not have enough space, and long-term storage of DNSC mercury is not part of its national security mission.

The non-DNSC sites analyzed in the Final EIS are the Hawthorne Army Depot in Hawthorne, Nevada; the PEZ Lake Development near Romulus, New York; and the Utah Industrial Depot in Tooele, Utah. These sites, together with the DNSC storage locations, represent a wide range of environmental and socioeconomic settings. The PEZ Lake Development is no longer under consideration as a consolidated storage site because the facility managers withdrew it from consideration based on business and site development plans.

The Sales Alternative consists of two options: (1) Selling the mercury at the proposed maximum allowable market rate over a period of approximately 26 years and (2) selling the entire inventory in one year to reduce mercury mining.

Under the first sales option, the mercury would be sold at the estimated maximum allowable market rate of 5,000 flasks per year. The mercury could be sold directly to producers and users or to traders or brokers, who would then sell it to producers and users. Producers include mercury mining, refining, and recovery companies. Users include chemical processors and manufacturers of such products as lights, electrical switches, thermometers, dental materials, medicine, and medical equipment.

The second sales option calls for sale of the entire inventory to a mercury mining company. To avoid undue disruption of the mercury market, as required by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98, *et seq.*), an agreement would be negotiated requiring the mining company to sell DNSC mercury at a rate no greater than the rate of sale for newly mined mercury.

DNSC considered evaluating alternatives for treatment of mercury that would enable disposal in a qualified landfill. However, there are currently no viable commercially-available technologies capable of rendering large quantities of elemental mercury stable enough for placement in landfills. For this reason, and because the U.S. Environmental Protection Agency (EPA) has not approved a path forward for treatment and disposal of elemental mercury, this alternative is not evaluated in detail in the EIS.

Preferred Alternative

Agencies are required by regulation (40 CFR 1502.14(e)) to identify a preferred alternative in the final EIS and are encouraged to identify one as early as possible in the NEPA process. Consolidated Storage at one site is identified as DNSC's Preferred Alternative in both the Draft and Final EIS.

Environmentally Preferable Alternative

Agencies are required by regulation (40 CFR 1505.2(b)) to identify an environmentally preferable alternative in the record of decision. An environmentally preferable alternative is the one that poses the fewest overall impacts and the least risk. It may differ from both the preferred alternative and the alternative selected for implementation in the record of decision.

Identification of the environmentally preferable alternative is based on weighing higher-intensity, short-term impacts and risks (*e.g.*, transportation risks) against lower-intensity, long-term impacts and risks that could occur during storage of mercury.

DNSC has identified the No Action Alternative as the Environmentally Preferable Alternative. The analysis in the Final EIS indicates that it would have negligible long-term environmental impacts and negligible-to-low human health and ecological risk. Because the mercury would not be relocated under this alternative, there would be no additional transportation risks.

As described in the Final EIS, few discriminating factors among the impacts associated with the alternatives were identified. The differences in environmental impacts are largely due to the number of sites affected and the duration of the impacts. The differences in human health and ecological risks are primarily a function of the distance shipped.

Although the No Action Alternative is considered marginally environmentally preferable, this alternative would not allow DNSC to downsize or close storage depots and is not compatible with DOE's national security mission at Y–12.

Public Participation

DNSC began the mercury management EIS process by publishing a notice of

intent in the **Federal Register** on February 5, 2001. The Notice of Intent described the proposed action, provided background information on anticipated issues and potential impacts, and identified a preliminary list of alternatives to implement the proposed action.

As part of this early and open process, DNSC sought input from the public to help identify the alternatives, issues, and potential environmental impacts to be analyzed in the Draft EIS. Five public scoping meetings were held in communities near current mercury storage sites and in Washington, DC, during the scoping period that ended on June 30, 2001. Issues that were raised at the meetings and those submitted in comments by letter, e-mail, fax, and phone are documented in the report, Scope of the Mercury Management EIS (December 2001). Scoping comments were considered in developing the Draft EIS and are summarized in that document.

The Draft EIS or its Executive Summary was mailed to more than 830 individuals and organizations. The public comment period for the Draft EIS began with the publication of the EPA Notice of Availability in the **Federal Register** on April 11, 2003, and continued until July 18, 2003. In response to public requests to extend the comment period, the deadline for submittal of comments was extended informally until September 2, 2003.

During the comment period, DNSC held seven meetings to receive comments on the Draft EIS. The meetings were held in the communities that could be affected by the proposed actions, as well as in Washington, DC. Approximately 230 people attended the public meetings.

DNSC received 295 comment documents (*i.e.*, letters, e-mails, faxes, voice messages, comment forms, and meeting transcripts) containing 633 comments. Volume II of the Final EIS presents the comment documents, identifies the specific comment(s) within each, and provides DNSC's responses. The majority of the comments received on the Draft EIS are related to the Consolidated Storage Alternative, impacts on human health and safety, and environmental and economic impacts. Input from the public meetings along with comments received by other means, was considered in preparing the Final EIS. DNSC considered these comments as well when preparing this Record of Decision.

The Notices of Availability for the Final EIS were published in the **Federal Register** on March 26, 2004 (69 FR 15820 and 15830). The Final EIS or the Executive Summary was mailed to more than 1,200 individuals and organizations.

Summary of Environmental Impacts

As described in the Final EIS, the potential environmental and socioeconomic impacts of alternatives for mercury management are generally negligible to minor. The Final EIS analyzes weather, air quality and noise, waste management, socioeconomics, geology and soils, water resources, ecological resources, cultural resources, land use and visual resources, infrastructure, and environmental justice. These would be largely unaffected, because the alternatives involve low-intensity activities associated with maintaining the stored mercury and do not involve building construction and land disturbance. Human health, ecological, and transportation risks are discussed in the Summary of Risks section.

The absence of transportation and the low level of activity associated with the No Action Alternative would result in negligible impacts. However, because DNSC depots would not be able to downsize or close, this alternative is not compatible with DNSC's long-term closure strategy. This alternative is also not compatible with DOE's national security mission at Y–12.

The Consolidated Storage Alternative would result in negligible-to-minor impacts. The impacts of the Consolidated Storage Alternative would be slightly greater than the No Action Alternative because of the higher level of activity associated with shipping the mercury. There would be minor beneficial impacts at the existing storage locations after removal of the mercury.

The Sales Alternatives would result in negligible-to-minor impacts from continuing to store the mercury until it is shipped and from preparing the mercury for shipment. Impacts of the Sales Alternatives would be slightly greater than those of the No Action Alternative because of the activities associated with shipping the mercury. Under the Sales at the Maximum Allowable Market Rate Alternative, the impacts of mercury storage would continue for up to 26 years until all the mercury is sold. Under the Sales to Reduce Mercury Mining Alternative, the impacts of mercury storage would end after one year. Minor beneficial impacts would occur at the existing storage locations after the mercury is removed.

Mercury would be sold directly or indirectly to users where the mercury would be employed in commercial processes. Because changes to the supply and cost of mercury on the world mercury market are expected to be negligible under either sales option, it is anticipated that users would continue their commercial processes as before and would not be expected to use more or less mercury because of DNSC mercury sales. Therefore, it is likely that there would be no additional impact at the users' locations resulting from implementation of either DNSC mercury sales option. In addition, sales to reduce mercury mining would result in moderate beneficial impacts of reduced mercury mining and refining.

Summary of Risks

Mercury is toxic and may pose human health and ecological risks. The human health and ecological risks of mercury storage, handling, and transportation activities during routine operations and accident conditions were evaluated. This analysis considered potential impacts on sensitive individuals such as children and the elderly.

"Routine operations" refers to the conduct of activities without incident. Activities entail use of equipment such as mercury vapor detectors and personal protective gear, and procedures designed to protect workers and minimize any emissions of mercury to the environment. Facility accident scenarios evaluated include slow leaks, dropped and punctured flasks, pallet collapse, forklift fires, building fires, wildfires, earthquakes, high winds and tornadoes, lightning, snow loads, aircraft and vehicle crashes, and explosions and fires at nearby facilities. In addition, truck and rail car spills and associated fires were analyzed.

Human health and ecological risks for the No Action Alternative would be negligible during normal operations and facility accidents. Because the mercury would not be transported under this alternative, there would be no transportation risks.

When compared with the No Action Alternative, the Consolidated Storage Alternative requires the transport of mercury, which could result in low, short-term risk to the public and negligible-to-low, short-term ecological risk. Higher levels of activity associated with preparing the mercury for transport could result in low risk to the public from facility accidents and negligible-to-low ecological risk. Negligible-to-moderate ecological risks could result if an accident resulting in a spill of mercury and a fire occurs while it is raining. The Consolidated Storage Alternative would result in reduced human health and ecological risk at the existing storage locations after the mercury is removed.

When compared with the No Action Alternative, the Sales Alternatives require the transport of mercury, which could result in moderate, short-term risk to the public and negligible-to-moderate, short-term ecological risk. Like the Consolidated Storage Alternative, higher levels of activity associated with preparing the mercury for transport could result in low risk to the public from facility accidents and negligible-to-low ecological risk.

If, during a rainstorm, a facility accident occurs that results in both a spill of mercury and a fire, negligible-to-moderate ecological risks would be expected. If, during a rainstorm, a transportation accident occurs that results in both a spill of mercury and a fire, negligible-to-high ecological risks would be expected. However, Chapter 4 of the Final EIS states that an accident during a rainstorm and resulting in a fire is a low probability event that is predicted to occur once in 10,000 to 1 million years.

In addition, the Sales Alternatives would result in reduced human health and ecological risk at existing storage locations after the mercury is removed. The Sales to Reduce Mercury Mining Alternative is estimated to result in reduced human health and ecological risk from reduced mercury mining and refining.

Mitigation

All practicable measures to avoid and minimize environmental impacts and risks that could result from consolidated storage are in place. These measures are found in DNSC's standard operating practices. No additional mitigation measures are necessary.

Cumulative Impacts

As described in the Final EIS, the impacts from implementing any of the mercury management alternatives would represent a negligible-to-minor contribution to cumulative impacts in the areas near the sites and to regional and global environments.

Summary of Costs

As described in the Final EIS, the estimated cost for 40 years of storage under the No Action Alternative is approximately $26 million. The estimated cost for 40 years of storage under the Consolidated Storage Alternative is $29 million. The Sales at the Maximum Allowable Market Rate Alternative costs range from $6.1 million to revenues of $12 million. For purposes of evaluation in the EIS, the market price of mercury is assumed to range from $58 to $195 per flask. This alternative includes the cost of storage for up to 26 years while the mercury is being sold. The estimated revenue from the Sales to Reduce Mercury Mining Alternative ranges between $7.5 and $25 million. This alternative does not include storage costs, because it is assumed that all the mercury would be sold in less than 1 year.

Basis for the Decision

DNSC has selected Consolidated Storage at one site for implementation. Consolidated Storage at one site is identified as the Preferred Alternative in the Draft and Final EIS. Selection of this alternative gives consideration to environmental and economic factors; policy considerations, and stakeholder comments, as summarized below:

Consolidating the DNSC mercury inventory at one site results in negligible-to-minor environmental impacts at that site and improves environmental conditions at sites from which the mercury would be removed;

Human health risks to the public are negligible for normal operations and negligible to low for facility and transportation accidents;

Ecological risks are negligible for normal operations and negligible to low for facility and transportation accidents with dry deposition. Ecological risks are negligible to moderate for facility and transportation accidents if it is raining during an accident which results in a release of mercury and a fire;

Consolidating the mercury inventory simplifies storage operations and results in economies of scale (*i.e.*, fewer resources required to manage the mercury inventory);

Consolidating the excess mercury inventory facilitates DNSC's long-term closure strategy at the sites from which the mercury is removed;

Removing DNSC's excess mercury inventory is consistent with the national security mission of Y–12; and,

The stored DNSC commodity-grade elemental mercury will be available for future uses.

DNSC will select a site for consolidated storage after completion of a procurement process. If a site other than one of those evaluated in the Final EIS is selected, additional environmental documentation may be required. DNSC will announce the selection of its consolidated, long-term mercury storage site after completion of the procurement process.

Recent legislation, (section 113 of Pub. L. 108–199, Consolidated Appropriations Act for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies), requires the Secretary of Defense to submit a report on the consolidation of the mercury stockpile to Congress on June 1, 2004. Additionally, for 180 days after the report is submitted to Congress, DNSC is prohibited from making a decision to consolidate at a site that is not currently storing DNSC mercury.

Mercury flasks at the New Haven, Somerville, and Warren depots are currently stored in 30-gallon (114-liter) drums (overpacks); flasks from Y–12 are not overpacked. As described in the Final EIS, to provide an additional layer of protection, DNSC has made a commitment to overpack the flasks currently stored at Y–12 before they are placed in the consolidated storage facility.

Because of the lack of space and rigid security constraints, it is not feasible to overpack the flasks at Y–12. The Warren Depot, located 536 miles (863 kilometers) from Y–12, has warehouse space available for this overpacking. Therefore, these mercury flasks will be transported by truck to the Warren Depot, near Warren, Ohio, for overpacking and storage pending selection of the consolidated storage location.

The impacts and risks of overpacking and storing the mercury at the Warren Depot are comparable to those identified in the Mercury Reflasking Environmental Assessment (EA), for which a Finding of No Significant Impact (FONSI) was signed on October 19, 2000; and in the Mercury Overpacking at Somerville, New Jersey EA, for which a FONSI was signed on May 24, 2001. The impacts and risks of overpacking the Y–12 mercury flasks at the Warren Depot would be similar to or less than those evaluated in these documents.

The risks of transporting to and storing the mercury at the Warren Depot are less than those associated with the Consolidated Storage Alternative analyzed in the Final EIS. Under the Consolidated Storage Alternative, the shipment of 4,890 tons (4,436 metric tons) of mercury to the Warren Depot is analyzed. The Final EIS estimates that transportation of the entire stockpile of mercury would result in low risk to human health and moderate risk to plants and animals. Because only 16 percent (770 tons [699 metric tons]) of the total amount of mercury analyzed in the Final EIS (4,890 tons [4,436 metric tons]) would be transported to the Warren Depot for overpacking, the impacts would be considerably less than the EIS analysis indicates, and no significant human health or ecological risks would be expected. Similarly, storing a total of 30 percent of the mercury stockpile at Warren would pose

no significant human health or ecological risks.

In accordance with DLAR 1000.22, a Record of Determination, based on the EAs and FONSIs discussed above and the Final EIS, has established that no significant impacts can be expected to result from moving the mercury from Y–12 to the Warren Depot and overpacking and storing it at the Warren Depot. A copy of this Record of Determination has been placed in the Administrative Record.

Issued in Fort Belvoir, Virginia, on this 22nd day of April, 2004.

Cornel A. Holder,

Administrator, Defense National Stockpile Center.

[FR Doc. 04–9726 Filed 4–29–04; 8:45 am]

BILLING CODE 3620–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.345A]

Office of Postsecondary Education; Overview Information; Underground Railroad Educational and Cultural Program (URR) Notice Inviting Applications For New Awards For Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.345A.

DATES: Applications Available: April 30, 2004.

Deadline for Transmittal of Applications: June 1, 2004.

Deadline for Intergovernmental Review: July 29, 2004.

Eligible Applicants: Nonprofit educational organizations that research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Estimated Available Funds: $2,221,813.

Estimated Range of Awards: $250,000–$1,000,000 total for up to three years.

Estimated Amount of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide grants to establish a facility to house, display, and interpret artifacts related to the history of the Underground Railroad, and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree.

Special Requirements: Each nonprofit educational organization awarded a grant under this program must enter into an agreement with the Department. Each agreement must require the organization—

(1) To demonstrate substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds in an amount equal to four times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government;

(2) To create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility;

(3) To establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad throughout the United States. These satellite centers must raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources;

(4) To establish the capability to link the facility electronically with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad; and

(5) To submit, for each fiscal year for which an organization receives funding under this program, a report to the Department that contains;

(a) A description of the programs and activities supported by the funding;

(b) The audited financial statement of the organization for the preceding fiscal year;

(c) A plan for the programs and activities to be supported by the funding, as the Secretary may require; and

(d) An evaluation of the programs and activities supported by the funding, as the Secretary may require.

Program Authority: 20 U.S.C. 1153.

Applicable Regulations: The Education Department of General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary Grants.

Estimated Available Funds: $2,221,813.

Estimated Range of Awards: $250,000—$1,000,000 total for up to three years.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Nonprofit educational organizations that research, interpret, and collect artifacts relating to the history of the Underground Railroad.

2. *Cost Sharing or Matching:* Not more than 20% of the total funds for this project may be provided by the Federal Government.

IV. Application and Submission Information

1. *Address to Request Application Package:* Jay Donahue, U.S. Department of Education, room 6162, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–7507 or by e-mail: *jay.donahue@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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail), or submitting the name of the competition and your name and postal address to: *FIPSE@ed.gov.* Applications also are available on the FIPSE Web Site: *http://www.ed.gov/FIPSE.*

3. *Submission Dates and Times:* Applications Available: April 30, 2004. Deadline for Transmittal of Applications: June 1, 2004. The dates and time for transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 29, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding

restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

V. Application Review Information

Selection Criteria: The section criteria for this program are in 20 U.S.C. 1153.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Application Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is assessing the performance of this program by examining the extent to which projects are being institutionalized and continued after grant funding. These results constitute OPE's indicators of the success of this program.

Consequently, applicants for URR grants are advised to give careful consideration to these outcomes in conceptualizing the design, implementation, and evaluation of the proposed project. If funded, you will be asked to collect and report data in your project's annual performance report on steps taken toward this goal.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Beverly Baker, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., suite 6140, Washington, DC 20006–8544. Telephone: (202) 502–7503 or by e-mail: *beverly.baker@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

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.

For additional program information call the FIPSE office (202) 502–7500 between the hours of 8 a.m. and 5 p.m., eastern time, Monday through Friday.

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.htm1*.

Dated: April 28, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 04–9941 Filed 4–29–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1091–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Filings

April 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company

[Docket No. ER03–1091–001]

Take notice that on April 15, 2004 Pacific Gas and Electric Company (PG&E), tendered for filing pursuant to 18 CFR 385.602 (2003) on behalf of itself and Duke Energy Morro bay LLC, Lompac Wind Project LLC and Global Renewable Energy Partners, Inc. (collectively, the Sponsoring Parties), submit this Officer of Settlement in Docket No. ER03–1091–001.

Comment Date: May 6, 2004.

2. Kansas Gas and Electric Company

[Docket No. ES04–26–000]

Take notice that on April 16, 2004, Kansas Gas and Electric Company (KGE) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize the pledge of mortgage bonds in an aggregate amount not to exceed $500 million; and (2) authorize the issuance of one or more guaranties to secure in each case up to an aggregate of $500 million of short-term debt securities of KGE's sole shareholder, Westar Energy, Inc.

KGE also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 12, 2004.

3. Kansas Gas and Electric Company

[Docket No. ES04–27–000]

Take notice that on April 16, 2004, Kansas Gas and Electric Company (KGE) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize the issuance of short-term debt securities in an amount not to exceed $500 million; and (2) authorize the pledge of mortgage bonds in an aggregate amount not to exceed $500 million to secure such short-term debt.

KGE also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 12, 2004.

4. Westar Energy, Inc.

[Docket No. ES04–28–000]

Take notice that on April 16, 2004, Westar Energy, Inc. (Westar) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize the issuance of short-term debt securities in an amount not to exceed $500 million; and (2) authorize the pledge of mortgage bonds in an aggregate amount not to exceed $500 million to secure such short-term debt.

KGE also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 12, 2004.

5. ISO New England Inc.

[Docket No. ES04–29–000]

Take notice that on April 19, 2004, ISO New England Inc (ISO NE) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of unsecured promissory notes for: (1) A $15 million revolving line of credit for working capital needs; and (2) a $4 million line of credit supporting the Payment Default Shortfall Fund.

Comment Date: May 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–968 Filed 4–29–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0065, FRL–7655–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies, EPA ICR Number 1643.05, OMB Control Number 2060–0264

AGENCY: Environmental Protection Agency.

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 a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on June 30, 2004. 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 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0065, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Noell, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–04, Research Triangle Park, NC 27711; telephone number: (919) 541–5607; fax number: (919) 541–3470; e-mail address: *noell.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0065, which is available for public viewing at the 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 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 *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are State, territorial, local, or tribal agencies (S/L/Ts) that are seeking to obtain delegation of Federal section 112 standards developed by EPA under the Clean Air Act (CAA).

Title: Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, territorial, local, and tribal Agencies.

Abstract: This information collection is a voluntary application from S/L/Ts for delegation of regulations developed under section 112 of the Clean Air Act (CAA). In the time frame for this submittal, we, the EPA, estimate that the majority of the delegated regulations will be those developed under section 112(d) of the CAA. The procedures and requirements that the S/L/Ts will use to request the delegations are codified as 40 CFR 63, subpart E, in accordance with section 112(l) of the CAA.

The subpart E regulations contain the following five options for delegation:

- Straight delegation;
- Rule adjustment;
- Rule substitution;
- Equivalency by permit;
- State program approval.

Straight delegation is the option where the respondents, S/L/Ts, choose to accept delegation of a section 112 provision and to implement and enforce the provision as written. The S/L/Ts may use the rule adjustment option when they want to substitute a rule and/or requirement that is unequivocally no less stringent than the otherwise applicable section 112 standard, such as a part 63 national emission standards for hazardous air pollutants (NESHAP). They may use rule substitution when they wish to substitute individual rules and/or requirements in place of the otherwise applicable section 112 standard. They may use the equivalency by permit option when they wish to substitute operating permit terms and conditions for a section 112 standard; this option is only applicable to a limited number of sources using title V permit terms and conditions. Finally, S/L/Ts may use the State program approval option if they want to substitute their overall air toxics program for the Federal air toxics program; *i.e.*, the section 112(d) standards.

The delegation options vary in the types of changes allowed, the level of demonstration required, and the amount of time and process needed to implement them. Respondents must submit any packages requesting delegation to their EPA Regional office. We must then review and approve, partially approve, or disapprove the request based on the subpart E approval criteria. The request may only take effect after our approval (or partial approval of a subset of the request), public notice, and, in some cases, public comment.

The information is needed and used to determine if the entity submitting an application has met the criteria established in the subpart E rule. This information is necessary for the Administrator to determine the acceptability of approving the S/L/T's rules, requirements, or programs in lieu of the Federal section 112 rules or programs. The collection of information is authorized under 42 U.S.C. 7401–7671q.

All information submitted to us for which a claim of confidentiality is made will be safeguarded according to the policies set forth in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information. *See* 40 CFR; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where we have determined that data received in response to an ICR is eligible for confidential treatment under 40 CFR part 2, subpart B, we may nonetheless disclose the information if it is "relevant in any proceeding" under the statute [42 U.S.C. 7414(c); 40 CFR 2.301(g)]. The information collection complies with the Privacy Act of 1974 and Office of Management and Budget Circular 108.

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.

We 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: The projected cost to S/L/Ts for implementing the subpart E program for the 3 years from July 1, 2004, until June 30, 2007, is approximately $2.7 million in annualized labor and document copying and mailing expenses. The overall burden is based on an assumption that 20 NESHAP developed under section 112(d) will be available for delegation in the 3-year period covered by this clearance request. We also assume that 124 S/L/Ts will request to receive this delegation using one of the five subpart E delegation options. In addition, up to 75 NESHAP are expected to be delegated by EPA Region 6 to two agencies within this time period as well. This results in an average of 1,008 responses per year and a total average annual burden of 41,577 hours. The average burden per application (*e.g.*, request for delegation) is 41 hours, for a cost of $2,648. We expect average annual Federal costs will be 32,731 hours and $1.5 million (32 hours and $1,476 per delegation request). We anticipate that these burden estimates will change as the number of standards available for delegation are promulgated and as S/L/T programs develop to the extent they wish to request permission to substitute them for the Federal program. These changes to the burden estimate will be reflected in the ICR document.

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: April 26, 2004.

Penny Lassiter,

Acting Director, Emissions Standards Division.

[FR Doc. 04–9866 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0009, FRL–7655–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Disinfectants/Disinfection By-Products, Chemical and Radionuclides Rules (Renewal), EPA ICR Number 1896.05, OMB Control Number 2040–0204

AGENCY: Environmental Protection Agency.

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 a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2004. 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 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0009, to EPA online using EDOCKET (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0009.

FOR FURTHER INFORMATION CONTACT: Richard P. Naylor, Office of Ground Water and Drinking Water, (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202.564.3847; fax number: 202.564.3755; e-mail address: *naylor.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2004–0009, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. 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 new and existing public water systems (PWS), primacy agencies; and EPA.

Title: Disinfectants/Disinfection By-Products, Chemical and Radionuclides Rules (Renewal).

Abstract: The Disinfectants/Disinfection By-Products, Chemical and Radionuclides Rules ICR examines PWS, primacy agency and EPA burden and costs for recordkeeping and reporting requirements in support of the chemical regulations. These activities which have recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR parts 141 and 142 include the following chemical regulations: Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR), Chemical Phase Rules (Phases II/IIB/V), Unregulated Contaminant Monitoring Rule (UCMR), Lists 1 and 2, 1976 Radionuclides Rule and 2000 Radionuclides Rule, Total Trihalomethanes (TTHM) Rule, Disinfectant Residual Monitoring and Associated Activities under the Surface Water Treatment Rule, Arsenic Rule, Lead and Copper Rule (LCR). Future chemical-related rulemakings, such as Radon and the Stage 2 DBPR, will be added to this ICR after the regulations are finalized and the initial, rule-specific, ICRs have expired. 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: The estimated annual burden hours for the Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules ICR are 6,428,593 hours. The estimated average burden hours per response is 0.4 hours. The proposed frequency of response varies by requirement (e.g., monthly, quarterly, annually). The estimated average number of responses per respondent is 109. The estimated number of likely respondents annually is 161,274. The total annualized capital/startup costs are $6.9 million. The estimated annual cost for operation and maintenance is $187.4 million.

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: April 23, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–9867 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0008, FRL–7655–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Microbial Rules (Renewal), EPA ICR Number 1895.03, OMB Control Number 2040–0205

AGENCY: Environmental Protection Agency.

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 a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. 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 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0008, to EPA online using EDOCKET (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0008.

FOR FURTHER INFORMATION CONTACT: Richard P. Naylor, Office of Ground Water and Drinking Water, (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3847; fax number: (202) 564–3755; email address: *naylor.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2004–0008, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. 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 new and existing public water systems (PWS), primacy agencies, and EPA.

Title: Microbial Rules (Renewal).

Abstract: The Microbial Rules ICR examines PWS, primacy agency and EPA burden and costs for recordkeeping and reporting requirements in support of microbial contaminant-associated rulemakings. These activities which have recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR parts 141 and 142 include the following rules addressing microbial contaminants: Surface Water Treatment Rule, Total Coliform Rule, Interim Enhanced Surface Water Treatment Rule, Filter Backwash Recycling Rule and Long Term 1 Enhanced Surface Water Treatment Rule. As new regulations addressing microbial contaminants are published, EPA will amend the Microbial Rules ICR to include the burden for these new rules upon expiration of the original stand-alone ICRs. Proposed new regulations include Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), and the Ground Water Rule (GWR). 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: The estimated annual burden hours for the Microbial Rules ICR are 8,560,996 hours. The estimated average burden hours per response is .77 hours. The proposed frequency of response varies by requirement (e.g., monthly, quarterly, annually). The estimated average number of responses per respondent is 69.1. The estimated number of likely respondents annually is 161,274. The total annualized capital/startup costs are $22.7 million. The estimated annual cost for operation and maintenance is $71.2 million. 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: April 23, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–9868 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0007, FRL7655–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Public Water System Supervision Program (Renewal), EPA ICR Number 0270.42, OMB Control Number 2040–0090

AGENCY: Environmental Protection Agency.

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 a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2004. 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 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0007, to EPA online using EDOCKET (our preferred method), by email to *OW-Docket@epa.gov*, or by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0007.

FOR FURTHER INFORMATION CONTACT: Richard P. Naylor, Office of Ground Water and Drinking Water, (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202.564.3847; fax number: 202.564.3755; email address: *naylor.richard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2004–0007, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. 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 new and existing public water systems (PWS), primacy agencies, EPA, and tribal operator certification providers.

Title: Public Water System Supervision Program (Renewal).

Abstract: The Public Water System Supervision (PWSS) Program ICR examines PWS, primacy agency, EPA and tribal operator certification provider burden and costs for "cross-cutting" recordkeeping and reporting requirements (i.e., the burden and costs for complying with drinking water information requirements that are not associated with contaminant-specific rulemakings). These activities which have recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR parts 141 and 142 include the following: Consumer Confidence Reports (CCRs), Primacy Regulation Activities, Variance and Exemption Rule (V/E Rule), General State Primacy Activities, and Public Notification (PN). The information collection activities for both the Operator Certification/Expense Reimbursement Program and the Capacity Development Program are driven by the grant withholding and reporting provisions under § 1419 and § 1420, respectively, of the Safe Drinking Water Act. Although the Tribal Operator Certification Program is voluntary, the information collection is driven by grant eligibility requirements outlined in the Drinking Water Infrastructure Grant Tribal Set-Aside Program Final Guidelines and the Tribal Drinking Water Operator Certification Program Guidelines. 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: The estimated annual burden hours for the Public Water System Supervision Program ICR are 3,172,183 hours. The estimated average burden hours per response is 7.2 hours. The proposed frequency of response varies by requirement (e.g., monthly, quarterly, annually). The estimated average number of responses per respondent is 2.71. The estimated number of likely respondents annually is 161,682. The total annualized capital/startup costs are $0.0 million. The estimated annual cost for operation and maintenance is $19.65 million. 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: April 23, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–9869 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0023; FRL–7655–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental Council of the States (ECOS) Survey of State Performance Measures, EPA ICR Number 2143.01

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 a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. 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 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0023, to EPA online using EDOCKET (our preferred method), by email to *intranet.epa.gov/edocket*, or by mail to: EPA Docket Center, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lynn Vendinello, Office of Compliance, Mail Code 2222a, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7066; fax number: (202) 564–0031; email address: *vendinello.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2004–0023, which is available for public viewing at the OECA 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 OECA Docket is (202) 566–1514. 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 the state environmental commissioners.

Title: ECOS Survey of State Performance Measures.

Abstract: The survey in question asks state environmental commissioners to report on their contribution to enforcement and compliance assistance for 2000–2003. They are asked to refer to their own records and account for the number of inspections, reviews, complaints etc. that have taken shape during this time. They are also asked to give the number and type of mechanisms and fines applied and collected. It also questions if and how the states feel they have been effective using these methods. There is a section of the survey asking the states to rate how important and useful they feel the statistics and reports required by the EPA are in conveying the current conditions within their borders. Importantly, the survey also aims to capture information about state activity in outcome measurement. In particular, it asks states about their experiences with compliance rate measurement and with calculating the environmental benefits of enforcement actions and compliance assistance. The survey is designed to capture compliance rates and activities directly from state records. This will provide a means in which the states' efforts to promote the EPA's philosophy on enforcement and compliance can be more readily monitored. The responses to this collection of information are voluntary. The information obtained by this survey is completely confidential unless a state wants their information to be publicized. 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. This survey will provide information that will assist in the creation of a report. This will show if there is a discrepancy in the data found in the states databases and EPA's database. In addition to providing the EPA with the information it needs to more successfully function in the way it was designed to, this survey is also keeping the states burden at a minimum. This is being done by the use of electronic responses.

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: The survey will be distributed to one representative from each state. An estimated 49 voluntary responses will be retrieved. EPA estimates that participating entities may need to spend between one to two hours completing this survey. A total of 98 hours may be spent to provide EPA and ECOS with this data. This burden hour estimate translates to a cost of $75/39per entity that voluntarily completes the survey resulting in the total of $3,694.21 (based on labor rates obtained from the United States of Commerce, Bureau of Labor Statistics, December 2003, State and local government, by occupational and industry group). There should be no additional capital or other non-labor costs.

Affected Entities: 50.

Estimated Number of Respondents: 49.

Frequency of Response: one time.

Estimated Total Hour Burden: 98 hours.

Estimated Total Capital and Other Non-labor Costs: $0.

Estimated Total Labor Costs: $3,694.21.

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 31, 2004.

Michael M. Stahl,

Office Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–9871 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0002, FRL–7655–5]

National Oil and Hazardous Substance Pollution Contingency Plan (NCP) Information Collection Request Renewal, EPA ICR Number 1463.05, OMB Control Number 2050–0096

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 a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection: ICR 1463.05. This ICR is scheduled to expire on October 31, 2004. 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. ICR 1463.05 addresses the portion of the NCP that details the requirements for remedial activities at sites on the National Priority List (Superfund Sites). The NCP is the rule that stipulates requirements for fulfilling the legislative mandates of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA or Superfund). The information collected via these activities is critical to characterizing contamination at sites, determining appropriate remedies and goals for cleanup, and involving the community in the process. All of these steps help ensure that some of the nation's worst hazardous waste sites are cleaned up in a manner that is protective of human health and the environment, and, where practical, returned to productive use.

DATES: Comments must be received on or before June 29, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. SFUND–2004–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *superfund.docket@epa.gov*.
- Mail: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Superfund Docket, EPA West B107, 1301 Constitution Ave., NW., Washington, DC 20460 (phone #: 202–566–0276). Such deliveries are only accepted during the Docket's normal hours of operation (M–F, 8:30 a.m.–4:30 p.m.), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. SFUND–2004–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, *www.regulations.gov*, or e-mail. The EPA EDOCKET and the federal *www.regulations.gov* websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically in EDOCKET or in hard copy at the Superfund Docket, EPA West B107, 1301 Constitution Ave. NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m.–4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: Marisa Guarinello, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204G), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–603–9028; fax number: 703–603–9100; e-mail address: *guarinello.marisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action are State/Tribal governments and individual community members who voluntarily participate in the remedial phase of the Superfund program and in associated community involvement activities throughout the Superfund process.

B. What Should I Consider as I Prepare My Comments for EPA?

Tips for Preparing Your Comments. When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iii. Describe any assumptions and provide any technical information and/or data that you used.

iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

v. Provide specific examples to illustrate your concerns, and suggest alternatives.

vi. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

vii. Make sure to submit your comments by the comment period deadline identified.

II. Abstract

This Information Collection Request is a renewal ICR that covers the remedial portion of the Superfund Program, as specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA) and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). All remedial actions covered by this ICR (*e.g.*, Remedial Investigations/Feasibility Studies) are stipulated in the statute (CERCLA) and are instrumental in the process of cleaning up National Priority List (NPL) sites to be protective of human health and the environment. Some community involvement activities covered by this ICR are not required at every site (*e.g.*, Technical Assistance Grants) and depend very much on the community and the nature of the site and cleanup. All community activities seek to involve the public in the cleanup of the sites, gain the input of community members, and include the community's perspective on the potential future reuse of Superfund NPL sites. Community involvement activities can enhance the remedial process and increase community acceptance and the potential for productive and useful reuse of the sites.

The respondents on whom a burden is placed include State (and Tribal) governments and communities. Potential Responsible Parties (PRPs) are not addressed in this ICR because the Paperwork Reduction Act [5 CFR Part 1320 (Controlling Paperwork Burdens on the Public, FRN 8/29/1995) Sect. 1320.4 (a)] does not require the inclusion of those entities that are the subject of administrative or civil action by the Agency. The ICR reports the estimated reporting and record-keeping burden hours and costs expected to be incurred by these entities and by the Federal government in its oversight capacities of State action and administration of community activities at Fund-lead NPL sites. Remedial activities undertaken by States at NPL sites are those required and recommended by CERCLA and the NCP and the cost of many of these activities may be reimbursed by the Federal government. All community involvement in the remedial process of Superfund is voluntary. Therefore, all cost estimates for community members is speculative and does not represent expenditure of actual dollars.

The number of active Superfund sites is assumed to be approximately 500 over the three year period covered by this ICR. For the purposes of the ICR, active sites are defined as those in the pre-Construction Complete stages of the remedial process. These sites may fall into any of the following categories "studies pending, study or design underway, construction underway." Activities completed in each respective stage include the Remedial Investigation/Feasibility Study (RI/FS), the Remedial Design (RD), and the Remedial Action (RA). Programmatic data reveals that over the history of the Superfund Program approximately 20% of activities conducted in the pre-Construction Complete stages were done at State-lead sites. Therefore, the ICR assumes that there are 100 active Superfund sites in which the State is the lead agency and 400 sites in which the Federal government (EPA) is the lead agency.

States have responsibilities at new and on-going State-lead sites and at all State-lead, Federal-lead, and Federal Facility sites entering the remedial phase of Superfund. Based on information in the Superfund database, it has been estimated that in each year covered by the 3 year period of this ICR there will be 2 new State-lead, 10 new Federal-lead, and 33 new Federal Facility sites entering the remedial phase. The State is responsible for identifying all Applicable or Relevant and Appropriate Requirements (ARARs) at all 45 new sites each year (NCP: 40 CFR § 300.400 (g)). All other remedial activities taken by the State are done so at sites at which the State voluntarily assumes the lead agency role. Over each year of this ICR the State will be completing remedial activities at sites that entered the remedial phase of Superfund at different times. Past data and planned completion dates from the Superfund database were used to estimate the number of sites for which the State is responsible for each activity. It is anticipated that each year of the ICR period the State will complete an RI/FS at 2 sites, a Proposed Plan at 4 sites, a Record of Decision (ROD) at 4 sites, maintain the Administrative Record at 100 sites, complete an Initial Community Involvement Plan (CIP) at 2 sites, revise the CIP at 20 sites, issue an average of 4 Fact Sheets for each of 100 sites, conduct 4 focus group sessions at 1 site, and organize a community workshop at 2 sites.

Community members' participation in remedial activities at Superfund sites is purely voluntary and the level of involvement varies greatly depending on the complexity of the site, its location (urban vs. rural, industrial vs. residential, etc.), and the level of interest. Much of the information used for estimates in this section were provided by a group of EPA Community Involvement employees, including Regional Community Involvement Managers, Headquarters staff, and Technical Assistance Grant (TAG) Coordinators. It is estimated that: 40 people will be interviewed for the development of the CIP at 12 Federal and State-lead Superfund sites entering the remedial phase each year; 25 people

will be interviewed for the revision of the CIP at 100 on-going Federal and State-lead sites; 15 people will participate in 4 focus groups at each of 5 sites; 50 people will participate in a workshop at each of 10 sites; 15 community groups will be awarded a TAG; 120 community groups will manage an existing TAG; and 800 people will complete a short satisfaction survey at 5 sites.

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

Burden hours and costs have been estimated for all recordkeeping and reporting activities taken by the respondents as described in the Abstract. Information was gathered from a Superfund database that contains information about completed activities and those that are planned, Superfund contract records, the Office of Personnel Management, the Bureau of Labor Statistics, EPA staff, and the 2001 edition of the ICR. Further details as to the methods used and assumptions made in estimating burden hours and costs will be provided in the ICR Supporting Statement that accompanies Form OMB 83–1, which is submitted to the Office of Management and Budget. Detailed cost and burden breakdown tables will also be provided in the Supporting Statement.

The total estimated annual burden hours placed on State governments for all remedial activities is 40,185 (120,555 for the total 3 yr. ICR period). The total estimated annual costs, much of which may be reimbursable by the Federal government, placed on State governments is $2,813,455 ($8,440,365 for the total 3 yr. ICR period). This estimate includes the costs of labor, printing and distribution of materials, contractor services, supplies, and equipment. The total estimated annual burden hours placed on communities is 28,730 (86,190 for the total 3 yr. ICR period). The total estimated annual costs, all of which reflects speculative labor costs as community members engage in all activities on a voluntary basis, placed on communities is $459,680 ($1,379,040 for the 3 yr. ICR period).

The ICR covers an array of activities that may occur at various discrete points in time or periodically throughout the entire Superfund remedial process. Therefore, the number of likely respondents per Superfund site in both the State and community categories will vary by site depending on its position in the remedial process, the lead agency, and the level of community involvement warranted. Additionally, the frequency of response to all activities covered by the ICR can only be described as occurring when required to meet CERCLA requirements and the needs of the Superfund site and the community.

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: April 22, 2004.

Chuck H. Suftin,

Acting Office Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 04–9872 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0087; FRL–7353–7]

PCBs, Consolidated Reporting and Recordkeeping Requirements; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): PCBs, Consolidated Reporting and Recordkeeping Requirements (EPA ICR No. 1446.08, OMB Control No. 2070–0112). This ICR involves a collection activity that is currently approved and scheduled to expire on August 31, 2004. The information collected under this ICR helps EPA prevent the improper handling and disposal of polychlorinated biphenyls (PCBs) and to minimize the exposure of humans or the environment to PCBs. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2004–0087, must be received on or before June 29, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Peter Gimlin, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; fax number: (202) 566–0469; e-mail address: *gimlin.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you currently possess PCB items, PCB-contaminated equipment, or other PCB waste. Potentially affected entities may include, but are not limited to:

- Manufacturing (NAICS 31–33), e.g., chemical manufacturing, agricultural chemical manufacturing, basic inorganic chemical manufacturing, plastics and rubber products manufacturing, etc.
- Electrical equipment, appliance, and component manufacturing (NAICS 335), e.g., power, distribution, and specialty transformer manufacturing, switchgear and switchboard apparatus manufacturing, relay and industrial control manufacturing, other electrical equipment and component manufacturing, etc.
- Oil and gas extraction (NAICS 2111), e.g., crude petroleum production, natural gas production, oil and gas production, etc.
- Electric power generation, transmission and distribution (NAICS 2211), e.g., municipal and county electric systems, other publicly owned systems such as irrigation districts, etc.
- Rail transportation (NAICS 48211) , e.g., line-haul railroads, freight railways, passenger railways, short-line railroads, other railroad transportation, etc.
- Broadcasting and telecommunications (NAICS 513), e.g., radio and television broadcasting, cable networks, wired telecommunications carriers, wireless telecommunications carriers, satellite telecommunications, etc.
- Waste management and remediation services (NAICS 562), e.g., solid waste collection, hazardous waste collection, waste treatment and disposal, remediation services, materials recovery facilities, etc.
- Trucking transportation (NAICS 484), e.g., general freight trucking, specialized freight trucking, etc.
- Warehousing and storage (NAICS 493), e.g., general warehousing and storage, refrigerated warehousing and storage, etc.
- Steam and air-conditioning supply (NAICS 22133), e.g., steam production and distribution, steam heat distribution, air-conditioning supply, cooled air distribution, etc.
- Hospitals (NAICS 622), e.g., general medical and surgical hospitals, psychiatric and substance abuse hospitals, specialty hospitals, etc.
- Colleges, universities, and professional schools (NAICS 6113), e.g., public and private colleges, junior colleges, community colleges, universities, professional schools, theological seminaries, etc.
- Administrators of environmental quality programs (NAICS 924), e.g., administration of air and water resource and solid waste management programs, environmental protection program administration, pollution control program administration, waste management program administration, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0087. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical

objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2004–0087. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0087. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0087. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: PCBs, Consolidated Reporting and Recordkeeping Requirements.

ICR numbers: EPA ICR No. 1446.08, OMB Control No. 2070–0112.

ICR status: This ICR is currently scheduled to expire on August 31, 2004. 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 title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, "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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 1.01 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 814,120.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 824,778 hours.

Estimated total annual burden costs: $23,005,750.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects an increase of 83,517 hours (from 741,261 hours to 824,778 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase is due to revisions to the total number of respondents. In some cases, the total number of respondents was based on number of facilities, in other cases, the total number of respondents was calculated by estimating the total number of pieces of equipment that respondents must monitor for a particular requirement. These burden changes were the result of new data gathered for this ICR renewal as well as a recent PCB regulatory analysis, estimate adjustments made for consistency with a recent Agency report, and updated Agency data regarding total numbers of regulated entities. The change in burden represents an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 19, 2004.

Margaret N. Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–9873 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6650–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental 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. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–J65401–00 Rating EC2, Northern Rockies Lynx Amendment, To Conserve and Promote Recovery of the Canada Lynx, NFS and BLM to Amend Land Resource

Management Plans for 18 National Forests (NF), MT, WY, UT and ID.

Summary: EPA expressed concerns that the preferred alternative would allow activities potentially damaging to lynx and its habitat and may not promote adequate conservation to allow lynx recovery. EPA recommended that the involved federal agencies develop standards to better balance lynx conservation and multiple-use needs.

ERP No. D–AFS–J65405–ND Rating EC1, Equity Oil Company Federal 32–4 and 23–21 Oil and Gas Wells Surface Use Plan of Operation (SUP0), Implementation, Located in the Bell Lake Inventoried Roadless Area (IRA), Dakota Prairie Grasslands, Medora Ranger District, Goldon Valley County, ND.

Summary: EPA expressed environmental concerns due to impacts from roads into Inventoried Roadless Area. EPA recommended avoiding and/or minimizing disturbances in the Inventoried Roadless Area and fully implementing proposed monitoring and mitigation measures. ERP No. D–AFS–J65408–MT Rating EC2, Fortine Project, To Implement Vegetation Management, Timber Harvest and Fuel Reduction Activities, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT.

Summary: EPA expressed concerns due to impacts from sediment production and transport from proposed timber harvest activities in the watershed of 303(d) listed Fortine Creek. EPA recommended additional information and analysis to clarify the ability of watershed restoration to adequately offset sediment produced during timber harvest and road construction, as well as including detailed monitoring and mitigation plans.

ERP No. D–AFS–K65307–AZ Rating EC2, Coconino, Kaibab, and Prescott National Forest, Integrated Treatment of Noxious and Invasive Weeds, Implementation, Coconino, Mojave and Yavapai Counties, AZ.

Summary: EPA expressed concerns due to potential impacts to drinking water sources from herbicide applications. EPA requested information on this issue and mitigation to avoid or reduce possible drinking water impacts. ERP No. D-AFS-L65450–00 Rating LO, Chips Ahoy Project, Proposes Vegetation, Wildlife Habitat, Recreation and Aquatic Improvement Treatments, Idaho Panhandle National Forests, Priest Lake Ranger District, Bonner County, ID and Pend Orielle County, WA.

Summary: While EPA has no objection to the proposed action, additional information was requested on recreation activities be included in the Final EIS and that vegetation management in Canada Lynx and Fisher habitat be staggered over time.

ERP No. D–FHW–E40794–00 Rating EC2, Interstate 69 National Corridor, Connecting Henderson, Kentucky to Evansville, Indiana, NPDES, and U.S. Army COE Section 10 and 404 Permits, Transportation Equity Act for the 21st, KY and IN.

Summary: EPA expressed concerns regarding impacts relating to the non-attainment of the 8-hour ozone standard, as well as noise and wetlands impacts. Potential impacts to federally-listed species is an additional area of concern.

ERP No. D–NPS–K65267–CA Rating LO, Point Reyes National Seashore (PRNS) and the North District of Golden Gate National Recreation Area (GGNRA) Fire Management Plan, Implementation, Marin County, Ca.

Summary: EPA expressed a lack of objections to this project but requested clarification of water quality mitigation measures and the biological opinion.

Final EISs

ERP No. F–AFS–E65038–FL, USDA Forest Service and State of Florida Land Exchange Project, Assembled Exchange of both Fee, Ownership Parcels and Partial Interest Parcels, Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Osceola, Santa Rosa and Sumter Counties, FL.

Summary: EPA supports the proposed action to consolidate lands and therefore has no objections to the project.

ERP No. F–AFS–E65067–AL, Forest Health and Red-Cockaded Woodpecker (RCW) Initiative, Implementation, Talladega National Forest, Talladega and Shoal Creek Ranger Districts, Calhoun, Cherokee, Clay, Clebourne and Talladega Counties, AL.

Summary: EPA has no objections to the proposed action.

ERP No. F–AFS–F65044–MI, Baltimore Vegetative Management Project, Implementation, Ottawa National Forest, Ontonagon Ranger District, Ontonagon County, MI.

Summary: EPA continues to express concern relating to glossy buckhorn control and deer monitoring.

ERP No. F–AFS–L65439–OR, Monument Fire Recovery Project, Whitman Unit —Wallowa—Whitman National Forest (WWNF) Timber Harvest of Fire Killed/Dying Trees, Reforestation, Recovery of Herbaceous, Native Vegetation and Maintenance or Improvement of Water Quality, Implementation, Baker County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–J01079–WY, South Powder River Basin Coal Project, Application for Leasing of Five Federal Coal Tracts: NARO Tracts: NARO North and NARO South (North Antelope/Rochelle Mine Complex), Little Thunder (Black Thunder Mine) West Roundup (North Rochelle Mine) and West Antelope (Antelope Mine), Campbell and Converse Counties, WY.

Summary: EPA expressed environmental concerns due to impacts from fugitive dust and the need for an air cumulative impact analysis.

ERP No. F–BLM–J65376–CO, Gunnison Gorge National Conservation Area Resource Management Plan, Implementation, Montrose and Delta Counties, CO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–E40782–NC, Western Wake Freeway, Transportation Improvements from NC–55 at NC–1172 (Old Smithfield Road) to NC–55 near NC–1630 (Alston Avenue), Funding and COE 404 Permit, Wake County, NC.

Summary: EPA continues to express concerns due to non-mitigable impacts to terrestrial forests and other upland natural systems. EPA also continues to be concerned about potential noise receptor impacts in Feltonsville and the preparation, review and approval of a wetland and stream mitigation plan.

Dated: April 27, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–9877 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6650–7]

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 April 19, 2004, through April 23, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040186, DRAFT EIS, BLM, ND, West Mine Area, Freedom Mine Project, Application to Acquire Federal Coal Lease, Mercer County, ND, Comment Period Ends: June 29, 2004, Contact: Lee Jefferis (701) 227–7713.

EIS No. 040187, REVISED DRAFT EIS, AFS, MT, Bridger Bowel Ski Area, Special Use Permit and Master Development Plan, Improve the Current Recreation Experience, Gallatin National Forest, Bozeman Ranger District, Gallatin County, MT, Comment Period Ends: June 14, 2004, Contact: Nancy Halstrom (406) 522–2520.

EIS No. 040188, DRAFT EIS, NPS, ID, Craters of the Moon National Monument and Preserve, Update and Consolidate Management Plans into One Comprehensive Plan, Snake River Plain, Blaine, Butte, Lincoln and Minidoka Counties, ID, Comment Period Ends: July 29, 2004, Contact: Adrienne Anderson (303) 987–6730. This document is available on the Internet at: *http://www.id.blm.gov/planning/craters/index.htm.*

EIS No. 040189, FINAL EIS, BLM, TX, NM, El Camino Real De Tierra Adentro National Historic Trail, Comprehensive Management Plan, Implementation, TX and NM, Wait Period Ends: June 4, 2004, Contact: Sarah Schlanger (505) 438–7454. This document is available on the Internet at: *http://www.elcaminorcal.org.*

EIS No. 040190, FINAL EIS, IBR, CA, Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project, Connection of PVWMA Pipeline to the Santa Clara Conduit of the Central Valley Project (CVP), Santa Cruz, Monterey and San Benito Counties, CA, Wait Period Ends: June 4, 2004, Contact: Lynne Silva (559) 487–5807. This document is available on the Internet at: *http//www.pvwma.dst.ca.us/.*

EIS No. 040191, DRAFT SUPPLEMENT, SFW, CA, Trinity River Mainstem Fishery Restoration Program, Updated Information, To Restore and Maintain the Natural Production of Anadromus Fish, Downstream of Lewiston Dam, Hoopa Valley Tribe, Weaverville, Trinity County, CA, Comment Period Ends: June 29, 2004, Contact: Russel Smith (530) 276–2045.

EIS No. 040192, DRAFT EIS, COE, FL, Programmatic EIS—Florida Keys Water Quality Improvements Program, To Implement Wastewater and Stormwater Improvements, South Florida Water Management District, Monroe County, FL, Comment Period Ends: June 14, 2004, Contact: Barbara Cintron (904) 232–1692. This document is available on the Internet at: *http://www.evergladesplan.org.*

EIS No. 040193, FINAL EIS, BOP, CA, Fresno Federal Correctional Facility Development, Funding, Orange Cove, Fresno County, CA, Wait Period Ends: June 4, 2004, Contact: Pamela J. Chandler (202) 514–6470.

EIS No. 040194, FINAL EIS, AFS, OR, North Fork Burnt River Mining Project, Proposal for Mineral Plans of Operation, Implementation, Wallowa-Whitman National Forest, Unity Ranger District, Whitman Unit, Blue Mountains, Town of Unity, Baker County, OR, Wait Period Ends: June 4, 2004, Contact: Wayne Frye (541) 523–1945.

EIS No. 040195, DRAFT SUPPLEMENT, NOA, Monkfish Fishery Management Plan (FMP) Amendment 2, Implementation, New England and Mid-Atlantic Coast, Comment Period Ends: July 28, 2004, Contact: Paul Howard (976) 465–0492. This document is available on the Internet at: *http://www.nefmc.org.*

EIS No. 040196, FINAL EIS, IBR, CA, Lower Santa Ynez River Fish Management Plan and Cachuma Project, Biological Opinion for Southern Steelhead Trout and Endangered Southern Steelhead Habitat Conditions Improvements, Santa Barbara County, CA, Wait Period Ends: June 4, 2004, Contact: David Young (559) 487–5127.

EIS No. 040197, DRAFT EIS, COE, NJ, NJ 92 Project, New Jersey Turnpike Authority, Transportation Improvement from East-West Highway Link Connecting U.S. Route 1 in South Brunswick Township with the New Jersey Turnpike at Interchange 8A in Monroe Township, Middlesex County, NJ, Comment Period Ends: June 14, 2004, Contact: Koko Cronin (212) 264–3813. This document is available on the Internet at: *http://www.nan.usace.army.mil.*

EIS No. 040198, DRAFT EIS, FTA, UT, Weber County to Salt Lake City Commuter Rail Project, Proposes a Commuter Rail Transit Service with Nine Stations between Salt Lake City and Peasant View, Weber Davis and Salt Lake Counties, UT, Comment Period Ends: June 14, 2004, Contact: Don Cover (303) 844–2174.

EIS No. 040199, FINAL EIS, NRS, ID, Little Wood River Irrigation District, Gravity Pressurized Delivery System Construction, Funding and U.S. Army COE Section 404 Permit, Townships of 1 North, 1 South and 2 South of Range 21 East of the Boise Merridan, City of Carey, Blaine County, ID, Wait Period Ends: June 4, 2004, Contact: Richard Sims (208) 378–5700.

EIS No. 040200, DRAFT EIS, EPA, RI, MA, Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project, Designation of One or Comment Period Ends: June 14, 2004, Contact: Olga Guza (617) 918–1542.

EIS No. 040201, FINAL EIS, NIH, MT, Rocky Mountain Laboratories (RML) Integrated Research Facility, Construction and Operation to Improve the Nation's Ability to Study and Combat Emerging Infectious Disease and to Protect Public Health, Hamilton, Ravalli County, MT, Wait Period Ends: June 4,2004, Contact: Valerie Nottingham (301) 496–7775.

EIS No. 040202, FINAL EIS, AFS, OR, Baked Apple Fire Salvage Project, Salvaging Fire Killed Trees in the Matrix Portion of the 2002 Apple Fire, Umpqua National Forest, Umpqua Ranger District, Douglas County, OR, Wait Period Ends: June 4, 2004, Contact: Debbie Anderson (541) 957–3466. This document is available on the Internet at: *http://www.fs.fed.us/r6/umpqua/.*

Amended Notices

EIS No. 040167, DRAFT SUPPLEMENT, BLM, CA, U.S. Army National Training Center, Proposed Addition of Maneuver Training Land at Fort Irwin, Implementation, San Bernardino County, CA, Comment Period Ends: June 1, 2004, Contact: Ray Marler (760) 380–3035. Revision of **Federal Register** Notice Published on 4/16/2004: Correction to Comment Period from 07/16/2004 to 06/01/2004.

EIS No. 040179, DRAFT EIS, FAA, IN, Gary/Chicago International Airport Master Plan Development Including Runway Safety Area Enhancement/Extension of Runway 12–30, Funding, Lake County, IN, Comment Period Ends: June 11, 2004, Contact: Prescott C. Snyder (847) 294–9538. Revision of **Federal Register** Notice Published on 4/23/2004: Correction to Comment Period from 06/07/2004 to 06/11/2004.

Dated: April 27, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–9876 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7655–4; Docket ID No. OAR–2003–0188]

Peer-Review Workshop on EPA's 2003 Interim Final position paper titled "An Evaluation of the Human Carcinogenic Potential of Ethylene Glycol Butyl Ether"

AGENCY: Environmental Protection Agency.

ACTION: Notice of a peer-review workshop and public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Oak Ridge Institute for Science and Education (ORISE)—an EPA contractor for external scientific peer review—will organize, convene, and conduct an expert peer-review workshop to review the Agency's August 2003 Interim Final position paper titled, "An Evaluation of the Human Carcinogenic Potential of Ethylene Glycol Butyl Ether."

DATES: The peer-review workshop will be held on Wednesday, May 19, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The peer-review workshop will be held in Classroom C–114 of the U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Logistics and registration for the workshop are being arranged by ORISE, P.O. Box 117, Oak Ridge, TN 37831–0117.

FOR FURTHER INFORMATION CONTACT: The EPA contractor lead, Leslie Shaphard of ORISE, should be contacted at telephone: (865) 241–5784 or by e-mail: *ShapardL@orau.gov* for details pertaining to the workshop, registration, and logistics. For technical information contact: Jeff Gift, U.S. EPA, NCEA–RTP, B243–01, Research Triangle Park, NC 27711; telephone: 919–541–4828; facsimile: 919–541–0245; or e-mail: *gift.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: The August 2003 Interim Final position paper on EGBE was prepared by EPA's National Center for Environmental Assessment (NCEA) in support of EPA's proposed rule to remove EGBE from the Agency's list of Hazardous Air Pollutants (68 FR 65648, November 21, 2003). Public comments on this proposed ruling were due January 20, 2004, and can be viewed at *http://www.epa.gov/edocket* (Docket ID OAR–2003–0188).[1]

[1] To view the docket, select "Advanced Search" and enter OAR–2003–0188 in the "Docket ID" field. Set the "Broad or Narrow Search:" setting to "Match ANY search criteria" and select "Search."

The purpose of this workshop is to provide for an external panel review by experts capable of evaluating EPA's position paper in light of the recent research and literature that has been submitted to the Agency in response to the proposed ruling. Members of the public are invited to attend the workshop as observers and will be allowed to present brief verbal and/or written comments at the end of the workshop. To attend the workshop, register by May 15, 2004, on the Web site at *http://www.orau.gov/egbe*. Space is limited, and reservations will be accepted on a first-come, first-served basis. The Interim Final position paper is also available for downloading from this site. EPA will consider comments received at the workshop in preparing the final version of this paper.

The Interim Final position paper on EGBE makes use of draft cancer guidelines and several studies that have been published since the completion in 1999 of the EPA IRIS (Integrated Risk Information System) assessment for ethylene glycol butyl ether, which can be obtained from the IRIS Web site at *http://www.epa.gov/IRIS*. Upon completion of the peer review of the interim position paper, the Agency plans to revise the existing IRIS assessment to reflect the information and conclusions contained in the finalized position paper.

Dated: April 26, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–9870 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

April 19, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before June 29, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0355.

Title: Rate of Return Reports.

Form Nos.: FCC Forms 492 and 492A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 113.

Estimated Time per Response: 8 hours.

Frequency of Response: Recordkeeping requirement, on occasion and annual reporting requirements.

Total Annual Burden: 904 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: FCC Form 492 is filed by each local exchange carrier (LEC) or group of carriers who file individual access tariffs or who are not subject to §§ 61.41 through 61.49 of the Commission's rules. Each LEC or group of affiliated carriers subject to the previously stated section files FCC Form 492A. Both forms are filed annually. The reports contain rate of return information and are needed to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 04–9878 Filed 4–29–04; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 21, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0897.
Title: MDS and ITFS Two-Way Transmissions.
Form No: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.
Number of Respondents: 130,888.
Estimated Time Per Response: .083–40 hours.
Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.
Total Annual Burden: 223,618 hours.
Total Annual Cost: $5,431,032.
Privacy Act Impact Assessment: Not applicable.
Needs and Uses: The rules for two-way transmissions for Multipoint Distribution Service (MDS) and International Television Fixed Service (ITFS) will allow two-way licensing and provide greater flexibility in the use of the allotted spectrum to licensees. The Commission will use this information to ensure that MDS and ITFS applicants and conditional licensees have considered the potential for harmful interference from their facilities properly under the Commission's rules.

OMB Control No.: 3060–0600.
Title: Application to Participate in an FCC Auction.
Form No: FCC Form 175.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.
Number of Respondents: 11,000.
Estimated Time Per Response: .25 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 2,750 hours.
Total Annual Cost: Not applicable.
Privacy Act Impact Assessment: Not applicable.
Needs and Uses: This information collection allows the Commission to ascertain whether or not applicants for spectrum have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to a Federal agency. The information will allow the Commission to determine the amount of the upfront payment to be paid by each applicant and will help ensure that auctions are conducted fairly and efficiently, thereby speeding the flow of payments to the U.S. Treasury and accelerating the provision of wireless service to the public.

OMB Control No.: 3060–0192.
Title: Section 87.103, Posting Station License.
Form No: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local and tribal government.
Number of Respondents: 47,800.
Estimated Time Per Response: .25 hours.
Frequency of Response: Recordkeeping requirement.
Total Annual Burden: 11,950 hours.
Total Annual Cost: N/A.
Privacy Act Impact Assessment: Yes.
Needs and Uses: The recordkeeping requirement contained in § 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, No. 2020 of the International Radio Regulations, and Article 30 of the Convention on International Civil Aviation. The information is used by FCC personnel during inspections and investigations to insure the particular station is licensed and operated in compliance with applicable rules, statutes, and treaties. In the case of aircraft stations, the information may be utilized for similar purposes by appropriate representatives of foreign governments when the aircraft is operated in foreign nations.

OMB Control No.: 3060–0621.
Title: Rules and Requirements for C & F Block Broadband PCS Licenses.
Form No: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local and tribal government.
Number of Respondents: 3,000.
Estimated Time Per Response: .50–20 hours.
Frequency of Response: On occasion reporting requirement and recordkeeping requirement.
Total Annual Burden: 14,044 hours.
Total Annual Cost: N/A.
Privacy Act Impact Assessment: Yes.
Needs and Uses: The Commission's rules require applicants to file information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and to determine whether applicants claiming different eligibility statuses are entitled to certain benefits. The Commission is submitting this information collection to the OMB as an extension (no change in requirements) in order to obtain the full three year clearance.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 04–9879 Filed 4–29–04; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 19, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 29, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0654.

Title: Application for a Multipoint Distribution Service Authorization.

Form No.: FCC Form 304.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: $604,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 304 is used by existing Multipoint Distribution (MDS) operators to modify their stations or to add a signal booster station. It is also used by some winning bidders in the competitive bidding process to propose facilities to provide wireless cable service over any usable MDS channels within their Basic Trading Area (BTA). This collection of information also includes the burden for the technical rules involving the interference or engineering analysis and service requirements under Sections 21.902, 21.913, and 21.938. These analyses will not be submitted with the application but will be retained by the operator and must be made available to the Commission upon request. The data is used by FCC staff to ensure that the applicant is legally, technically and otherwise qualified to become a Commission licensee. MDS/ITFS applicants/licensees will need this information to perform the necessary analyses of the potential for harmful interference to their facility.

The Commission is now revising this form to request additional information to complete the Universal Licensing Service (ULS) data elements since MDS/ITFS has been implemented into ULS. Additional information such as the licensee's email address, fax number, type of applicant, contact's email address and fax number will be added to this form. The Commission is also clarifying data elements, instructions and correction of mailing addresses and Web sites. The increase in the annual cost burden is due to hourly wage and fees within the past three years.

OMB Control No.: 3060–0664.

Title: Certification of Completion of Construction for Multipoint Distribution Service (MDS) Station.

Form No.: FCC Form 304A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: FCC Form 304A is used to certify that the facilities authorized in the FCC Form 304 have been completed and that the station is now operational and ready to provide service to the public. Each licensee must specify as a condition that upon the completion of construction, the licensee file with the Commission a FCC Form 304A, certifying that the facilities as authorized have been completed, the station is operational, and ready to provide service to the public. The conditional license shall be automatically forfeited upon the expiration of the construction period specified in the license within five days after the date an FCC Form 304A has been filed with the Commission.

The Commission is now revising FCC Form 304A to request additional information to complete the Universal Licensing System (ULS) data elements since MDS/ITFS has been implemented into ULS. Additional information such as the licensee's email address, fax number, type of applicant, contact's email address and fax number will be added to this collection. The Commission is also clarifying data elements, instructions, and corrections of mailing addresses and Web sites. The decrease in burden hours and costs are due to the decrease in the number of applications estimated to be filed with the Commission.

OMB Control No.: 3060–0774.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Sections 36.611 and 36.612, and Part 54.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not for-profit institutions, and state, local or tribal government.

Number of Respondents: 5,554,651.

Estimated Time Per Response: 20 minutes average response time.

Frequency of Response: On occasion, annual, quarterly, and every five year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 1,852,590 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. Part 54 promulgates the rules and requirements to preserve and advance universal service. The Commission will be submitting this information collection to the OMB as an extension (no change in requirements) in order to obtain the full three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–9880 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CCB/CPD File No. 98–30; DA 04–943]

Parties Asked To Update Record Regarding Petition for Declaratory Ruling on Interexchange Carrier "Rounding-Up" Practices

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Commission invites interested parties to update the record pertaining to the petition for declaratory ruling filed by Connie L. Smith (Petitioner) on March 30, 1998. Because the district court has dismissed the underlying litigation, it appears that there no longer is any need for the Commission to respond to the primary jurisdiction referral. The Commission's Wireline Competition Bureau requests, therefore, that interested parties now file a supplemental notice indicating if there are issues that they still wish to be considered. To the extent parties do not indicate an intent to pursue the issues delineated in the petition for declaratory ruling, the Commission will deem the petition withdrawn and will dismiss it.

DATES: Comments are due on or before June 1, 2004, and reply comments are due on or before June 14, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: David Hu, Attorney-Advisor, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or via the Internet at *david.hu@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CCB/CPD File No. 98–30, released on April 2, 2004. This is a non-docketed proceeding. Therefore, interested parties must file pleadings by paper because electronic filing on the Commission's Electronic Comment Filing System (ECFS) is not available in non-docketed proceedings. When filing comments and reply comments, parties should reference CCB/CPD File No. 98–30, and conform to the filing procedures contained in the Notice. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. Two (2) copies of the comments and reply comments should also be sent to Steve Morris, Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–A121, Washington, DC 20554. Parties shall also serve one copy with Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, or via e-mail to *qualexint@aol.com.* The original petition for declaratory ruling filed in CCB/CPD File No. 98–30 is available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from Qualex International, telephone (202) 863–2893, facsimile (202) 863–2898.

Synopsis

1. The Petitioner asked for a declaratory ruling that Sprint Communications Company, L.P. (Sprint) violated the Communications Act by failing to expressly disclose its alleged "rounding-up" practices in its tariff filed with this Commission and/or that Sprint has otherwise failed to adequately disclose its billing practices. The petition stems from a federal district court class action brought by Petitioner against Sprint on June 5, 1996 in the United States District Court for the Northern District of California. Petitioner's complaint in the court proceeding accused Sprint of rounding-up the length of telephone calls to the next full minute, thus billing its customers for an entire minute even when only a fraction of a minute is actually used, without disclosing this practice in its marketing materials, advertisements, phone bills or general business correspondence. The Petitioner asserted that the alleged practice constitutes a cause of action under common law and California law.

2. In its September 13, 1996 decision, the district court dismissed all of the claims presented by the Petitioner except for the claims for injunctive relief under the Consumers Legal Remedies Act and California Civil Code with respect to interstate long-distance service. Specifically, the Petitioner claimed that Sprint engaged in false advertising and unlawful business practices under state law by filing a tariff with the Commission for its interstate residential long-distance service without expressly disclosing that it rounds up to the next full minute. The court found that the Communications Act requires disclosure of carrier billing practices in filed tariffs but was unable to determine whether Sprint's tariff adequately disclosed its billing practices. The court concluded that whether Sprint should have expressly stated in its tariff that it rounds up is a question the Commission would need to address in light of its regulations under the Communications Act. Therefore, relying on the doctrine of primary jurisdiction, the court stayed a decision on Petitioner's claims with respect to interstate residential long-distance service pending referral of the disclosure issue to the Commission. Petitioner subsequently filed the petition for declaratory ruling with the

Commission on March 30, 1998 and on May 18, 1998, the Bureau issued a public notice seeking comment on the petition.

3. In a decision issued on December 27, 1999, the district court dismissed Petitioner's case in its entirety for lack of subject matter jurisdiction. The court found that Petitioner's claims arose under state law, not federal law, and that the case should have been brought in state court. Based on this finding, the court stated that there was no longer any point in staying the case.

4. Because the court has dismissed the underlying litigation, it appears that there no longer is any need for the Commission to respond to the primary jurisdiction referral. Similarly, the question raised by the petition for declaratory ruling, *i.e.*, what constitutes proper disclosure under section 203 of the Communications Act, may have become moot or irrelevant. Because the Petitioner does not appear to have pursued the matter further before the Commission since the court dismissed the litigation, it is not clear if there are any outstanding issues for the Commission to address.

5. For these reasons, the Bureau requests that interested parties now file a supplemental notice indicating those issues that they still wish to be considered. In addition, parties may refresh the record with any new information or arguments that they believe to be relevant to deciding such issues. To the extent parties do not indicate an intent to pursue the issues delineated in the petition for declaratory ruling, the Commission will deem the petition withdrawn and will dismiss it.

Federal Communications Commission.

Steve Morris,

Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 04–9883 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 04–36; DA 04–1051]

FCC Announces Agenda for May 7, 2004 "Solutions Summit" on Disability Access Issues Associated With Internet-Protocol Based Communications Services

AGENCY: Federal Communications Commission.

ACTION: Announcement of meeting.

SUMMARY: This document invites interested persons to a Solutions Summit on Friday, May 7, 2004. The Solutions Summit is the second in a series where government, industry leaders and stakeholders can discuss creative ways to address policy issues that arise as communications services move to Internet-Protocol based platforms. This meeting will focus on the ways persons with disabilities access services increasingly based upon IP technologies.

DATES: The Solutions Summit will be held on Friday, May 7, 2004 from 9 a.m. to 1 p.m. in the Commission Meeting Room, Room TW–C305.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For more information about the Solutions Summit, please contact Kelly Jones at (202) 418–7078 (voice), (202) 418–1169 (TTY), or *Kelly.Jones@fcc.gov* (E-mail).

SUPPLEMENTARY INFORMATION: This second meeting will focus on accessibility of persons with disabilities, and on the particular challenges and opportunities created for persons with disabilities. The agenda for this second Solutions Summit is as follows:

9 a.m.–9:30 a.m.—Opening Remarks
9:30 a.m.–10:30 a.m.—Panel I: Opportunities of IP-Enabled Services
10:30 a.m.–10:45 a.m.—Break
10:45 a.m.–11:45 a.m.—Panel II: Challenges of IP-Enabled Services for Persons with Disabilities
11:45 a.m.–Noon—Break
Noon–1 p.m.—Panel III: Regulatory Impact on IP-Enabled Services and Accessibility for Persons with Disabilities

Participants will include members of the disability community, industry representatives, and FCC staff.

Facilities

The FCC is located at 445 12th Street, SW., Washington, DC 20554. Directions and a map of the streets near the FCC are available at *http://www.fcc.gov/portalsmap.html*. The Commission Meeting Room is equipped with a Wi-Fi Internet network, an assistive listening device system, and is accessible to persons with disabilities.

Security

Please note that the FCC is a federal building with security. All attendees will be required to pass through security and present a government-issued form of identification. The FCC's Commission Meeting Room will be opened early to facilitate access to the building; attendees are encouraged to allocate additional time to enter the building.

Webcast and Video

The Solutions Summit will be webcast live and also archived for later viewing. Access to and additional information concerning the webcast is available at *http://www.fcc.gov/realaudio/*. Open captioning will be provided for the webcast.

Reasonable Accommodations

Open captioning and sign language interpreters will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible. Last minute requests will be accepted, but may not be possible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau: For reasonable accommodations: (202) 418–0530 (voice), (202) 418–0432 (TTY). For accessible format materials (Braille, large print, electronic files, and audio format): (202) 418–0531 (voice), 202–418–7365 (TTY).

Pre-Registration

The hearing is open to the public, and seating will be available on a first-come, first served basis. The FCC is recommending that attendees submit a pre-registration form. Pre-registration is encouraged, but not required. The pre-registration form is located at: *http://www.fcc.gov/voip/*. To pre-register by April 30, 2004, complete the form and send to Kelly Jones at *Kelly.Jones@fcc.gov*, or fax to (202) 418–2345.

More Information

For additional information on Internet-Protocol enabled services, please visit the Web site at: *http://www.fcc.gov/voip*. For questions about WC Docket No. 04–36, contact Robert Pepper, Chief of Policy Development, at (202) 418–2030 (voice), or *Robert.Pepper@fcc.gov* (E-mail), or Jeff Carlisle, Senior Deputy Chief, Wireline Competition Bureau, at (202) 418–1500 (voice) or *Jeffrey.Carlisle@fcc.gov* (E-mail).

Federal Communications Commission.

P. June Taylor,

Chief of Staff, Consumer and Governmental Affairs Bureau.

[FR Doc. 04–9885 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of a meeting of the Media Security and Reliability Council (Council). The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, June 2, 2004 at 9:30 a.m. to 10:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman at 202–418–1600 or TTY 202–418–7172.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would enhance the security and reliability of media facilities and services.

The Council will review its new charter and discuss the establishment of working groups. The Council may also discuss such other matters as come before it at the meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by e-mail (*bkreisma@fcc.gov*) or U.S. mail (2–A666, 445 12th St., SW., Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov/*.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute request will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau: for sign language interpreters, CART and other reasonable accommodations: 202–418–0530 (voice), 202–418–0432 (TTY); for accessible format materials (Braille, large print, electronic files and audio format): 202–418–0531 (voice), 202–418–7365 (TTY).

Federal Communications Commission.

Barbara Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–9881 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 04–1073]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On April 27, 2004, the Commission released a public notice announcing the May 3, 2004 conference call meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's conference call meeting and agenda. This notice of the May 3, 2004, NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to the NANC's need to discuss a time sensitive issue before the next scheduled meeting. This statement complies with the General Services Administration Management regulations implementing the Federal Advisory Committee Act. *See* 41 CFR Section 101–6.1015(b)(2).

DATES: Monday, May 3, 2004, 2:30 p.m., e.s.t.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *deborah.blue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

Released: April 27, 2004.

The North American Numbering Council (NANC) has scheduled a meeting to be held by conference call on Monday, May 3, 2004, from 2:30 p.m., e.s.t. until 3:30 p.m., e.s.t. The conference bridge number for domestic participants is (888) 532–2096 (toll free). The call in number for international participants is (904) 779–4760 (caller pays). The Chairperson to ask for is Robert Atkinson. This meeting is open to members of the general public. Due to limited port space, NANC members and Commission staff will have first priority on the call. The FCC will attempt to accommodate as many participants as possible. Members of the public may join the call as remaining port space permits or may attend in person at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room 3–B516, Washington, DC 20554. The public may submit written statements to the NANC, which must be received one business day before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received one business day before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Monday, May 3, 2004, 2:30 p.m., e.s.t.

To discuss the NANC Report and Recommendation to the Federal Communications Commission regarding the Intermodal Porting Interval.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 04–9884 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–129; DA 04–962]

Declaratory Ruling by WorldCom, Inc.; Petition for Comments

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a Petition filed on March 12, 2004, by WorldCom, Inc. (WorldCom). WorldCom filed a Petition with the Commission requesting that the

Commission preempt a West Virginia carrier change verification requirement. Specifically, WorldCom states that West Virginia Rule 15 CSR 6, 2.8(b) provides that only a "customer of record" may verify intrastate carrier changes. WorldCom contends that this rule conflicts with Commission rule 47 CFR 64.1120(a)(1)(c) regarding verifications of carrier changes.

DATES: Comments are due on or before June 14, 2004, and reply comments are due on or before June 29, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Calvin Osborne, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 04–962, released April 7, 2004. When filing comments, please reference CC Docket No. 94–129. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before June 14, 2004, and reply comments on or before June 29, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet [to *http://www.fcc.gov/efile/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capital Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file comments by paper should submit their comments on diskette. These diskettes should be submitted to Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Rm 4–C734, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 94–129), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "disk copy—not an original." Each diskette should contain only one party's pleadings, preferably in a single electronics file.

In addition, commenters must send diskette copies to the Commission's copy contractor Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

P. June Taylor,

Chief of Staff, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–9504 Filed 4–29–04; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Applied Research on Antimicrobial Resistance (AR): Estimates of Economic Cost for Antimicrobial Resistant Human Pathogens of Public Health Importance

Announcement Type: New.

Funding Opportunity Number: 04094.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: May 17, 2004.

Application Deadline: June 14, 2004.

I. Funding Opportunity Description

Authority: Sections 319E(d) of the Public Health Service Act, [42 U.S.C. 247d–5(d)], as amended.

Purpose: The purpose of the program is to provide assistance for applied research aimed at prevention and control of the emergence and spread of antimicrobial resistance in the United States. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for Infectious Diseases: Protect Americans from infectious diseases and reduce the spread of antimicrobial resistance.

The program's design must implement *A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)* (Action Plan). For Research Objective I, measurable outcomes need to be consistent with item (16) in Focus Area I, Surveillance of the Action Plan: to provide health care system administrators and other decision makers with data on the impact of drug-resistant organisms (*e.g.*, outcome, treatment costs) and on effective prevention and control measures. For Research Objective II, measurable outcomes need to be consistent with one or more of the following action items: Focus Area II. Prevention and Control, Item 23, 30 or 50. The Action Plan is available at Internet site: *www.cdc.gov/drugresistance/actionplan/index.htm.* Applications should address Research Objective I or Research Objective II.

Research Objectives I: The priority objective of this program is to create estimates of the economic costs of antimicrobial resistance in human pathogens of public health importance by providing information needed to

prevent and control AR. This should include:

• Analysis of data on incidence, prevalence, and antimicrobial susceptibility of specific infectious diseases.

• Development of methods to determine costs which are simple and reproducible for different antimicrobial resistant organisms.

• Calculation of economic costs (direct and indirect) of infections that are resistant to one or more antimicrobial agents compared with infections that are susceptible to those agents.

Activities: Awardee activities for this program must include ALL of the following:

• Assemble retrospective clinical data from a sample of people infected with a specific organism (*e.g., Streptococcus pneumoniae, Staphylococcus aureus, Neisseria gonorrhoeae*), some susceptible and others resistant (as defined and outlined in NCCLS document M100–S13) to specific antimicrobial agents or classes of antimicrobial agents (*e.g.*, penicillin, semi-synthetic penicillins, erthromycin, macrolides, ciprofloxacin, fluroquinolones). Clinical data include, but are not limited to demographic information, morbidity, mortality, treatment, hospitalization, laboratory testing results, and infection control measures and must be linked to individual patients (that is, for a single patient, treatment and laboratory data must be available; summary data for treatments and antimicrobial susceptibility are not acceptable). Provide estimate, original or from existing data sources, for burden of disease(s).

• Provide a method for defining and calculating costs of treatment and hospitalization and other relevant aspects of care regarding infections with chosen organisms and which can be readily reproduced for organisms in other situations (*e.g.*, in a spreadsheet format). This could include, but is not limited to treating given resistant infection(s) with a drug to which a pathogen is susceptible, likelihood of culturing, hospitalization or other treatment, and transmission within households or healthcare facilities or among contacts, and indirect costs as applicable.

• Analysis of data to answer the questions:

—What is the cost of antimicrobial resistance in the chosen situation?

—How accurate is this method of data collection and analysis?

—Under what circumstances is this method of data collection and analysis reliably reproducible?

• Partnerships among an economist, statistician, clinician and epidemiologist or others may be necessary to ensure appropriate information is included in dataset and appropriate analysis are conducted.

Research Objective II: Awardee activities for this program must include research that addresses at least one of the following Action Items found in A Public Health Action Plan to Prevent Antimicrobial Resistance: Focus Area II. Prevention and Control, items 23 (Evaluate the relationship between prescribing behavior and specific antimicrobial drug marketing and promotional practices. Assess the public health effects of these practices in collaboration with partners.), 33 (Evaluate the potential impact of improved diagnostic tests, including rapid point-of-care tests on antimicrobial drug use and patient care, and assess their financial implications. Take into account tests that distinguish between bacterial and viral infections, tests that identify resistant pathogens, and tests that distinguish common clinical entities such as bacterial sinusitis and acute bacterial otitis media from illnesses with similar manifestations for which antimicrobials are not beneficial.), and 50 (Conduct additional research to further define the effects of using various veterinary drugs on the emergence of resistant bacteria that infect or colonize food animals of different species, using various animal husbandry practices. Identify risk factors and preventive measures. Assess the associated risk of: Transmission of AR infections to humans; Clinical disease in humans; and Transfer of resistance factors from animal flora to human flora.) In proposals that concern action items 23, 30, or 50, research proposals must address a current and compelling problem of antimicrobial resistance that is of high public health importance and for which research is needed. Such proposals must provide arguments why results of the proposed research could provide substantial impact and improvement to the current methods of prevention and control of the stated antimicrobial resistance problem. (Examples include but are not limited to problems in community-associated, healthcare-associated and foodborne-associated resistant infections).

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: Five.

Approximate Average Award: $200,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: August 30, 2004.

Budget Period Length: 12 Months.

Project Period Length: Two Years for the economic research proposal, Research Objective I; two years for Research Objective II, unless a compelling argument is presented that describes why research cannot be completed in less than three years. Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as

documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range. If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: five
- Font size: 12–point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon Your LOI must contain the following information:
- Descriptive title of the proposed research
- Name, address, E-mail address, and telephone number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact Grants Info, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See: *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: May 17, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 14, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age. Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Barbara Stewart, Public Health Analyst, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, Telephone: 404–639–0044, Fax: 404–639–2469, e-mail: *bsg2@cdc.gov.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04094, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria for review are the same for applications for either Research Objective except where noted and are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the proposed research consider all the activities listed in either "Research Objective I" or "Research Objective II"?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Applications for Research Objective I: Are there plans for analysis of relevant epidemiological data, for development of methods that can be readily reproduced for organisms in other situations, and for analysis of data to answer questions on cost, accuracy and reproducibility?

Are the measurable outcomes of the program consistent with Action Item 16 (Provide health care system administrators and other decision makers with data on the impact of drug-resistant organisms (*e.g.*, outcome, treatment costs) and on effective prevention and control measures.) in Focus Area I, Surveillance of *A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues)?*

Applications for Research Objective II: Does the proposed research help implement at least one of the following Action Items found in *A Public Health Action Plan to Prevent Antimicrobial Resistance (Part I: Domestic Issues):* Focus Area II, Prevention and Control, Action Items 23 (Evaluate the relationship between prescribing behavior and specific antimicrobial drug marketing and promotional practices. Assess the public health effects of these practices in collaboration with partners.), 33 (Evaluate the potential impact of improved diagnostic tests, including rapid point-of-care tests on antimicrobial drug use and patient care, and assess their financial implications. Take into account tests that distinguish between bacterial and viral infections, tests that identify resistant pathogens, and tests that distinguish common clinical entities such as bacterial sinusitis and acute bacterial otitis media from illnesses with similar manifestations for which antimicrobials are not beneficial.), and 50 (Conduct additional research to further define the effects of using various veterinary drugs on the emergence of resistant bacteria that infect or colonize food animals of different species, using various animal husbandry practices. Identify risk factors and preventive measures. Assess the associated risk of: Transmission of AR infections to humans; Clinical disease in humans; and Transfer of resistance factors from animal flora to human flora.) Does the research address a current and compelling problem of antimicrobial resistance that is of high public health importance and for which research is needed?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and

outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the National Center for Infectious Diseases. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the National Center for Infectious Diseases in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic Priorities

V.3. Anticipated Award Date

August 30, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1—Human Subjects Requirements
- AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7—Executive Order 12372
- AR–10—Smoke-Free Workplace Requirements
- AR–11—Healthy People 2010
- AR–12—Lobbying Restrictions
- AR–15—Proof of Non-Profit Status
- AR–22—Research Integrity
- AR–23—States and Faith-Based Organizations
- AR–25—Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Mary Lerchen, DrPH, MS, Extramural Program Official, National Center for Infectious Diseases, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404–639–0043, E-mail: *mll0@cdc.gov.*

For questions about peer review, contact:

Barbara Stewart, Public Health Analyst, National Center for Infectious Diseases, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404–639–0044, E-mail: *bsg2@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Sharon Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2748, *E-mail:sqr2@cdc.gov.*

VIII. Other Information

None.

Dated: April 26, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9808 Filed 4–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prevention Epicenter Program

Announcement Type: Competitive Supplemental.

Funding Opportunity Number: 04100.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Application Deadline: June 14, 2004.

Executive Summary: This announcement encompasses two distinct projects.

(1) Microbiology laboratory errors. Errors in the laboratory can occur during the pre-analytical, analytical, and post analytical phases of specimen management. Most studies on laboratory errors focus on the analytical (testing) phase; however, preliminary data from a pilot study conducted by CDC suggests that there are a significant numbers of errors that occur with antimicrobial susceptibility testing results in the post analytical reporting phase. This program focuses on assessing the impact of both testing and reporting errors on patient management and outcomes.

(2) *C. difficile* associated disease. *C. difficile* associated disease (CDAD) is an important, yet under recognized, public health problem that results in significant patient morbidity and

increased healthcare costs. Recent estimates of the scope and magnitude of CDAD suggest its incidence among acute care hospital patients, results in over 500 million dollars in excess healthcare costs annually. Moreover, various data sources suggest its incidence is increasing. It is hypothesized that changing antimicrobial use patterns and resistance may be contributing to this increasing incidence. In addition, programs that include new methods of infection control (such as novel methods of environmental disinfection, novel strain typing methods and hand washing using alcohol-base products) as well as improved laboratory detection and reporting methods may be impacting the incidence of CDAD.

I. Funding Opportunity Description

Authority: Section 317(k)(2) of the Public Health Service Act [42 U.S.C. 247b(k)(2)], as amended.

Purpose: The purpose of these supplemental awards is twofold: (1) To determine the number and types of laboratory errors associated with identification and antimicrobial susceptibility testing of bacteria isolated from cultures of blood and sterile body sites of hospitalized patients; and (2) to determine if recently introduced antimicrobial agents and infection control practices are impacting rates of *C. difficile*-associated disease and whether antimicrobial resistance could be emerging. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with one or more of the following performance goal(s) for the National Center for Infectious Diseases: Protect Americans from infectious diseases, Reduce the spread of antimicrobial resistance, and Protect Americans from death and serious harm caused by medical errors and preventable complications of healthcare.

Research Objectives: (1) Microbiology laboratory errors. Errors in the laboratory can occur during the pre-analytical, analytical, and post analytical phases of specimen management. Most studies on laboratory errors focus on the analytical (testing) phase; however, preliminary data from a pilot study conducted by CDC on laboratory reports concerning bacterial pathogens causing bloodstream infections suggest that there are a significant numbers of errors that occur with antimicrobial susceptibility testing results in the post analytical reporting phase. This program focuses on assessing the impact of both testing and reporting errors on patient management and outcomes.

The knowledge gained through this research will help define what interventions need to be made in laboratories to improve the accuracy and utility of antimicrobial susceptibility tests reports (such as cascading of results) to reduce errors and improve patient outcomes. The objectives of this program are to:

- Determine the number and types of microbiology laboratory errors associated with processing cultures from blood and sterile body sites (such as cerebrospinal fluid (CSF)) of hospitalized patients;
- Determine the accuracy of bacterial identifications by participating laboratories;
- Determine the accuracy of the antimicrobial susceptibility patterns of the bacteria recovered from the blood and sterile body sites; and
- Determine the accuracy and appropriateness of the reports issued to the patients' charts, along with the outcomes of the patients for which errors are noted.

One possible study design would be to identify a series of positive blood and body fluid cultures, to include both Gram-positive and Gram-negative pathogens, and to track the flow of information from the laboratory to the patients' chart, while concomitantly sending the isolates and a copy of the microbiology results to a reference laboratory for confirmation. The appropriateness of the antimicrobial agents tested and reported, given the identification of the organism to genus and species level, is critical. Thus, attention should be paid to reporting of results for inappropriate antimicrobial agents (*e.g.*, nitrofurantoin for blood cultures), or reporting results for fourth generation cephalosporins or carbapenems, for organism that are susceptible to first generation cephalosporins.

(2) *C. difficile* associated disease. (CDAD) According to national data from hospital discharges, CDAD rates are increasing and CDAD is now responsible for substantial patient morbidity and excess healthcare costs. Because antimicrobial agents are a major risk factor for CDAD, it is unknown whether the introduction and widespread use of certain newer antimicrobials, especially those with anti-anaerobic activity, may lead to increased rates of CDAD. In addition, certain infection control practices, such as the use of alcohol gels for hand hygiene, also may contribute to increasing rates of CDAD, whereas hospitals that use bleach as a disinfectant for environmental surfaces may have better controlled rates of CDAD. A rationale for introducing new antimicrobial use guidelines and/or infection control policies will require knowing the excess costs associated with CDAD and cost effectiveness of prevention strategies. Finally, it is unknown whether the pathogen *C. difficile* itself may be developing resistance to the antimicrobial agents commonly used to treat CDAD (*i.e.* metronidazole and vancomycin).

The scientific knowledge to be achieved through this project includes addressing each of the above questions and information gaps regarding the contemporary epidemiology of CDAD in U.S. hospitals. To this end, objectives for this project include the following:

- Identify current antimicrobial agents that may be risk factors for CDAD in several U.S. healthcare facilities.
- Determine the antimicrobial susceptibility of at least 100 recent isolates of *Clostridium difficile.*
- Determine whether infection control practices, including hand hygiene with alcohol gel (vs. soap and water) and environmental cleaning with bleach, are risk or protective factors for CDAD.
- Determine the excess healthcare costs of CDAD.

The types of research and experimental approaches to be considered in answering these questions and achieving the objectives include: Case-control and/or cohort studies to determine risk factors for CDAD and the attributable costs of CDAD; isolation of *C. difficile* from the stool of CDAD patients followed by identification and susceptibility testing of isolates; and environmental and hand sampling for *C. difficile* and/or intervention studies to determine the impact of different infection control strategies on either surface contamination or incidence of CDAD.

Depending on current capabilities and needs, recipients may request support under this supplement for one or both of the following projects:

- Microbiology Errors Associated with Processing Blood and Sterile Body Site Cultures.
- The Impact of New Forms of Antimicrobial Use, Resistance, Laboratory Methods, and Infection Control Practices on the Incidence of Clostridium difficile and Associated Patient Morbidity and Healthcare Costs.

Activities: Awardee activities for this program are as follows:

Microbiology Errors Associated With Processing Blood and Sterile Body Site Cultures

- Determine the number and types of microbiology laboratory errors associated with processing cultures from the blood and sterile body sites (such as CSF) of hospitalized patients.
- Identify the bacteria isolated.
- Identify the accuracy of the antimicrobial susceptibility patterns of the bacteria.
- Determine the accuracy of the reports issued to the patients' charts. Patients' charts should be reviewed and assessed, along with the outcomes of the patients for which errors are noted.
- Identify at least 10 microbiology laboratories in different healthcare institutions that can serve as study sites. Identify a central reference laboratory for confirmation of the identification and antimicrobial susceptibility pattern of the isolates (this could include the Division of Healthcare Quality Promotion (DHQP) reference laboratories at CDC).
- Prospectively collect at least 10 bacterial isolates from each study site (at least 5 gram-positive and 5 gram-negative organisms) for which routine antimicrobial susceptibility tests are typically performed (excludes organisms such as *Neisseria meningitidis*, Group B streptococci, or *Haemophilus influenzae*). Send organisms, along with a copy of the organism's identification and antimicrobial susceptibility test report when completed by the study site laboratory, to the central laboratory for testing.
- Assess whether the appropriate cultures were collected for the suspected infection (*i.e.*, the appropriate number and timing of blood cultures, appropriate CSF tubes delivered to microbiology laboratory within the designated time period established by the laboratory).
- Assess whether the report of culture results and antimicrobial susceptibility test results on the patients' charts were accurate and appropriate (*e.g.*, no reports of antimicrobial agents that are used for urinary tract infections for bacteria from cerebrospinal fluid).
- Assess clinician's response to laboratory data (*i.e.*, changes in antimicrobial chemotherapy based on susceptibility test results).
- Assess adverse patient outcomes based on inaccurate or inappropriate reporting of culture and susceptibility results.
- Develop an educational program for reducing the laboratory errors associated with testing and reporting results for bacteria isolates from blood and sterile body fluids.

The Impact of New Forms of Antimicrobial Use, Resistance, Laboratory Methods, and Infection Control Practices on the Incidence of *Clostridium difficile* and Associated Patient Morbidity and Healthcare Costs

- Determine if recently introduced antimicrobial agents (such as fluoroquinolones) or new modes of antimicrobial use (such as clindamycin for community-associated *Staphylococcus aureus* infections) constitute risk factors for *C. difficile* associated disease (CDAD).
- Determine whether there is emerging resistance to the drugs of choice (*i.e.*, vancomycin and metronidazole) in *C. difficile* that could impede effective treatment.
- Determine if new infection control measures (such as hand washing with alcohol-based products or new disinfectants) may impact the incidence of CDAD (*e.g.*, risk factors for infection).
- Determine the impact of new laboratory methods (such as the use of assays that detect both toxin A and toxin B), efforts to reduce turnaround time of assay or culture results, or improved reporting methods, impact the incidence of CDAD.
- Determine the patient morbidity and healthcare costs associated with the excess or reduced number of cases of CDAD resulting from any or all of these factors.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for the two projects are as follows:

- Collaborate with the recipient in all stages of the program, and provide programmatic and technical assistance.
- Collaborate with the recipient in all aspects of the science.
- Participate in the dissemination of findings and information stemming from the project.
- Participate in improving program performance through consultation with recipient.
- Facilitate communication of data and results among stakeholders.
- Assist in the development of research protocols for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $634,000.

Approximate Number of Awards: Four (two per project).

Approximate Average Award: $158,500 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: $157,000.

Ceiling of Award Range: $160,000.

Anticipated Award Date: August 16, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Eligibility is limited to the seven current Prevention Epicenter Program grantees. They are: Harvard Pilgrim Health Care, Washington University, Northwestern University, University of Iowa, McGuire Research Institute, Memorial Sloan-Kettering Institute for Cancer Research, and Johns Hopkins University. No other applications are solicited.

Eligibility is limited to the Prevention Epicenters in order to maximize the use of available funds by building on existing infrastructure for evaluating healthcare-associated infections and adverse events and utilizing highly demonstrated expertise in infection control procedures and practices. The proposed supplemental projects will complement activities associated with the established Prevention Epicenter Program, which includes projects designed to develop, implement, and evaluate the effectiveness of epidemiologically-based strategies to improve healthcare quality and assure patient safety.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be

entered into the review process. You will be notified that your application did not meet submission requirements.

This program is designed and intended to support research, therefore only research will be supported under this cooperative agreement. Any applications proposing anything other than research will be considered non-responsive.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period (through 1/31/2006).

Submit one application that includes one or both of the proposed projects. Each project should be clearly identified in the application. Provide a line-item budget and narrative justification for all requested costs, and separate line-item budgets for each proposal submitted.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See: *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: June 14, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management—PA#4100, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various

identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria that will be used to evaluate each project are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score: None

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by the National Center for Infectious Diseases. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by National Center for Infectious Diseases in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review by CDC senior staff.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Award Date

Award Date: August 16, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1—Human Subjects Requirements
- AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7—Executive Order 12372
- AR–10—Smoke-Free Workplace Requirements
- AR–11—Healthy People 2010
- AR–12—Lobbying Restrictions
- AR–22—Research Integrity
- AR–25—Release and Sharing of Data

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Dr. Mary Lerchen, Acting Director, Office of Extramural Research, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, Telephone: 404–639–0043, E-mail: *mll0@cdc.gov*.

For questions about peer review, contact: Barbara Stewart, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, Telephone: 404–639–0044, E-mail: *bsg2@cdc.gov*.

For financial, grants management, or budget assistance, contact: Yolanda Sledge, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2787, E-mail: *YSledge@cdc.gov*.

Dated: April 26, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9809 Filed 4–29–04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements: Community Services Block Grant Community Economic Development Discretionary Grant Program—Administration and Management Expertise Priority Area

AGENCY: Administration for Children and Families, Office of Community Services.

Funding Opportunity Title: The Community Services Block Grant Community Economic Development Discretionary Grant Program—Administration and Management Expertise Priority Area.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–EC–0017.

CFDA Number: 93.570.

Due Date for Applications: The due date for receipt of applications is June 29, 2004.

I. Funding Opportunity Description

The Community Services Block Grant (CSBG) Act of 1981, as amended, (section 680 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary of the U. S. Department of Health and Human Services to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Pursuant to this Announcement, OCS will make an award under Priority Area 6 Administration and Management Expertise, to a Community Development Corporation to establish a pool of experienced CDC administrators and managers to provide assistance to OCS grantees. An applicant in this Priority Area must document its experience and capability in several of the following areas: (1) Business development; (2) Micro-entrepreneurship development; (3) Organizational and staff development; (4) Board training; (5) Business management, including strategic planning and fiscal management; (6) Finance, including business packaging, accounting and financial services; (7) Commercial development, including real estate development, land assembling, deal-making; (8) Regulatory compliance, including zoning and obtaining permits; (9) Incubator development; (10) Tax credits and bond financing; (11) Marketing and (12) Community Development.

Definitions of Terms

The following definitions apply:

Budget Period—The time interval into which a grant period is divided for budgetary and funding purposes.

Business Start-up Period—Time interval within which the grantee completes preliminary project tasks. These tasks include but are not limited to assembling key staff, executing contracts, administering lease out or build-out of space for occupancy, purchasing plant and equipment and other similar activities. The Business Start-Up Period typically takes three to six months from the time OCS awards the grant or cooperative agreement. Cash contributions—The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

Community Development Corporation (CDC)—A private non-profit corporation governed by a board of directors consisting of residents of the community and business and civic leaders, which has as a principal purpose planning, developing, or managing low-income housing or community development activities.

Community Economic Development (CED)—A process by which a community uses resources to attract capital and increase physical, commercial, and business development, as well as job opportunities for its residents.

Construction projects—Projects that involve land improvements and development or major renovation of (new or existing) facilities and buildings, fixtures, and permanent attachments.

Cooperative Agreement—An award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project.

Developmental/Research Phase—The time interval during the Project Period that precedes the Operational Phase. Grantees accomplish preliminary activities during this phase including establishing third party agreements, mobilizing monetary funds and other resources, assembling, rezoning, and leasing of properties, conducting architectural and engineering studies, constructing facilities, etc.

Displaced worker—An individual in the labor market who has been unemployed for six months or longer.

Distressed community—A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

Employment education and training program—A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations.

Empowerment Zone and Enterprise Community Project Areas (EZ/EC)—Urban neighborhoods and rural areas designated as such by the Secretaries of Housing and Urban Development and Agriculture.

Equity investment—The provision of capital to a business entity for some specified purpose in return for a portion of ownership using a third party agreement as the contractual instrument.

Faith-Based Community Development Corporation—A community development corporation that has a religious character.

Hypothesis—An assumption made in order to test a theory. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and its result must be measured in order to confirm the hypothesis. The following is a hypothesis: "Eighty hours of classroom training will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

Intervention—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan is an intervention.

Job creation—New jobs, *i.e.*, jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

Job placement—Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

Letter of commitment—A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities contingent only on OCS accepting the applicant's project proposal.

Loan—Money lent to a borrower under a binding pledge for a given purpose to be repaid, usually at a stated rate of interest and within a specified period.

Non-profit Organization—An organization, including faith-based and community-based, that provides proof of non-profit status described in the "Additional Information on Eligibility" section of this announcement.

Operational Phase—The time interval during the Project Period when businesses, commercial development or other activities are in operation, and employment, business development assistance, and so forth are provided.

Outcome evaluation—An assessment of project results as measured by collected data that define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for being replicated. It should answer the question: Did this program work?

Poverty Income Guidelines—Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http://www.hhs.aspe.gov/poverty/*.

Process evaluation—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer the questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred, how the problems were resolved and what recommendations are needed for future implementation.

Pre-Development Phase—The time interval during the Project Period when an applicant or grantee plans a project, conducts feasibility studies, prepares a business or work plan and mobilizes non-OCS funding.

Program income—Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

Project Period—The total time for which a project is approved for OCS support, including any approved extensions.

Revolving loan fund—A capital fund established to make loans whereby repayments are re-lent to other borrowers.

Self-employment—The employment status of an individual who engages in self-directed economic activities.

Self-sufficiency—The economic status of a person who does not require public assistance to provide for his/her needs and that of his/her immediate family.

Sub-award—An award of financial assistance in the form of money, or property, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in 45 CFR part 74. (**Note**: Equity investments and loan transactions are not sub-awards.)

Technical assistance—A problem-solving event generally using the services of a specialist. Such services may be provided on-site, by telephone or by other communications. These services address specific problems and are intended to assist with immediate resolution of a given problem or set of problems.

Temporary Assistance for Needy Families (TANF)—The Federal block grant program authorized in Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). The TANF program transformed "welfare" into a system that requires work in exchange for time-limited assistance.

Third party—Any individual, organization or business entity that is not the direct recipient of grant funds.

Third party agreement—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

Third party in-kind contributions—Non-cash contributions provided by non-Federal third parties. These contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and especially identifiable to the project or program.

Priority Areas

Community Economic Development Program

Priority Area—Administration and Management Expertise

The applicant must include resumes of key expected to serve as project staff and of staff and contractors to be used in providing services to CDCs or undertaking nationwide projects. OCS will approve requests for assistance. Contacts may occur on-site, by telephone, or through other methods of communication. All costs incurred in connection with participation in such activities will be paid for with the grant funds awarded under this priority area.

Project Goals

Providing administration and management expertise to Community Economic Development (CED) projects furthers HHS goals of strengthening American families and promoting their self-sufficiency, and OCS goals of promoting healthy families in healthy communities.

Project Scope

The project scope for this priority area is to bring administration and management expertise to CED grantees in need of technical assistance on their specific projects.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Description of Federal Substantial Involvement with Cooperative Agreement: OCS will enter into a cooperative agreement with a Community Development Corporation to establish and field a pool of experienced CDC administrators and managers to provide assistance to grantees in need of such expertise. This expertise is not available to them through their awards. An applicant in this Priority Area must document its experience and capability in several of the following areas: (1) Business development; (2) Micro-entrepreneurship development; (3) Organizational and staff development; (4) Board training; (5) Business management, including strategic planning and fiscal management; (6) Finance, including business packaging, accounting and financial services; (7) Commercial development, including real estate development, land assembling, deal-making; (8) Regulatory compliance, including zoning and obtaining permits; (9) Incubator development; (10) Tax credits and bond financing; and (11) Marketing and (12) Community Development. In addition to providing assistance to individual CDCs, this grantee may also undertake projects of nationwide significance to the community economic development field.

A cooperative agreement is Federal assistance in which substantial Federal involvement is anticipated. Responsibility of Federal staff and the successful applicant are negotiated prior to an award. The duties and responsibilities of the applicant and the ACF/OCS in fulfilling the cooperative agreement will include the following:

Responsibilities of the Grantee

- To implement activities described in the approved project description.
- To develop and implement a work plan that will ensure that the delivery of administration and management expertise included in the approved application address the goals and objectives of the approved project in an efficient, effective and timely manner.
- To submit regular semi-annual Financial Status Reports (Standard Form 269) and progress reports that describes activities undertaken under the training and technical assistance project.
- To work cooperatively and collaboratively with ACF officials, other Federal agency officials conducting related activities, and other entities or organizations contracted by ACF to assist in carrying out the purposes of the Community Economic Development Program. Such cooperation and collaboration shall include, but not be limited to, providing requested financial and programmatic information, creating opportunities for interviews with agency officials and staff and allowing on-site observation of activities supported under the cooperative agreement.
- To notify the Office of Community Services Project Officer if revisions are needed to the cooperative agreement.
- To consult with the Office of Community Services Project Officer in implementing the activities on an ongoing and frequent basis.
- To comply with Community Economic Development Program regulations and all other applicable Federal statues and regulations in effect during the time the applicant is receiving funding.
- To notify the Federal Project Officer of any key personnel changes in writing.
- To ensure that the executive director and/or project director attend a two-day national OCS grantee training workshop in Washington, DC. The workshop will be scheduled shortly after the effective date of the grant award.
- To submit applications for continuation funding by July 1, 2002 if the applicant expects to receive a continuation cooperative agreement in FY 2005.

Responsibilities of ACF/OCS

- To provide consultation to the grantee with regard to the development of the work plan approaches to address problems that arise and identification of areas needing technical assistance.
- To consult with and to provide the grantee the data collection requirements of OCS and to keep the grantee informed of policy development as they affect the implementation of the project.
- To provide timely review, comment and decisions on significant project documents.
- To work with the grantee to address issues or problems with regard to the grantee's ability to carry out the full range of activities included in the approved application in the most efficient and effective manner.
- To promptly review written requests for approval of deviations from the project description or approved budget. Any changes which affect the terms and conditions of the grant award or revisions/amendments to the cooperative agreement or to the approved scope of activities will require prior approval by the ACF Grants Management Officer.

Anticipated Total Program Funding: $23.4 Million is expected to be available for the entire Community Economic Development Program. The estimated level of funding available for this Priority Area—Administration and Management Expertise (AM) is $350,000.

Anticipated Number of Awards: 1.

Anticipated Total Priority Area Funding: $350,000 per budget period.

Ceiling on Amount of Individual Awards: $350,000 per budget period.

An application that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor on Individual Award Amounts: None.

Project Periods for Award: This announcement is inviting applications for project periods up to 3 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory

progress of the grantee and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. Eligible Applicants

Nonprofits having a 501 (c) (3) status with the IRS, other than institutions of higher education. Nonprofits that do not have a 501 (c) (3) status with the IRS, other than institutions of higher education. Faith-based and Community-based Organizations.

An applicant must be a private, non-profit Community Development Corporation (CDC). For purposes of this grant program, the CDC must be governed by a Board of Directors consisting of residents of the community and business and civic leaders. The CDC must have as a principal purpose planning, developing, or managing low-income housing or community development activities.

Additional Information on Eligibility

Applications that do not include proof of nonprofit status in the application will be disqualified.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code;

(b) A copy of a currently valid IRS tax exemption certificate;

(c) A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status;

(e) Or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *www.acf.hhs.gov/programs/ofs/forms.htm.*

Applications that do not include proof of CDC status in the application will be disqualified.

An applicant must be a private, non-profit Community Development Corporation. For purposes of this grant program, the CDC must be governed by a Board of Directors consisting of residents of the community and business and civic leaders. The CDC must have as a principal purpose, planning, developing, or managing low-income housing or community development projects.

Applicants must document their eligibility as a CDC for the purposes of this grant program. The application must include a list of governing board members along with their designation as a community resident, or business or civic leader. In addition, the application must include documentation that the organization has as a primary purpose planning, developing or managing low income housing or community development activities. This documentation may include incorporation documents or other official documents that identify the organization.

2. Cost Sharing or Matching: None

3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services, Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, e-mail: *ocs@lcgnet.com*, Telephone: 1–(800) 281–9519.

2. Content and Form of Application Submission

1. Application Content

Each application must include the following components:

1. Table of Contents

2. Abstract of the Proposed Project—one or two paragraphs, not to exceed 350 words, that describe the community in which the project will be implemented, beneficiaries to be served, type(s) of business(es) to be developed, type(s) of jobs to be created, projected cost-per-job, any land or building to be purchased or building constructed, resources leveraged and intended impact on the community.

3. Completed Standard Form 424—that has been signed by an official of the organization applying for the grant who has legal authority to obligate the organization. Under Box 11. indicate the Priority Area for which the application is written.

4. Standard Form 424A—Budget Information—Non-Construction Programs.

5. Standard Form 424B—Assurances—Non-Construction Programs.

6. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A.

Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

7. Project Narrative—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

2. Application Format

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Each application should include one signed original and two additional copies.

3. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget

Narratives, business and work plans must not exceed 60 pages. The page limitation does not include Standard Forms and Assurances, Certifications, Disclosures, appendices and any supplemental documents as required in this announcement.

An application that exceeds the page limitation specified will be considered "non-responsive" and will be returned to the applicant without further review.

4. Required Standard Forms

Applicants must submit completed and signed SF 424 Application for Federal Assistance. SF 424A Budget Information—Non-Construction Programs, and Standard Form 424B, Assurances: Non-Construction Programs.

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. Applicants provide certification by signing the SF 424 and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. Applicants provide certification by signing the SF 424 and need not mail back the certification with the application.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a coy 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.

Please note the following if you plan to submit your application electronically via Grants. Gov

- Electronic submission is voluntary
- 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, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*
- You must search for the downloadable application package by the CFDA number.

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 29, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late and will not be reviewed.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209 Attention: Operations Center. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209 Attention: Operations Center between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: "Attention: Operations Center". Applicants are responsible for express/overnight mail services delivery.

Late applications: Applications which do not meet the criteria above are considered late applications and will not be considered. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project	Identifies project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.

What to submit	Required content	Required form or format	When to submit
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Completed Standard Form 424A ...	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Complegted Standard Form 424B	As described above and per required form..	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Narative Budget Justification	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

Prohibited Activities

Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

OCS will not consider applications that propose to establish Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS will not fund projects that would result in the relocation of a business from one geographic area to another resulting in job displacement.

Pre-award costs will not be covered by an award.

5. Other Submission Requirements

Private Nonprofit Community Development Corporation

Applicants must provide proof of nonprofit status and proof of status as a community development corporation as required by statute and as described under "Additional Information on Eligibility."

Sufficiency of Financial Management System

Because CED funds are Federal, all grantees must be capable of meeting the requirements of 45 CFR part 74 concerning their financial management system. To assure that the applicant has such capability, applications must include a signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the CDCs financial management system in accordance with 45 CFR part 74 and financial statements for the CDC for the prior three years. If such statements are not available because the CDC is a newly formed entity, the application must include a statement to this effect. The CDC grantee is responsible for ensuring that grant funds expended by it and the third party are expended in

compliance with Federal regulations of 45 CFR, Part 74 and OMB Circular A–122.

Work Plan

An applicant must include a detailed work plan covering the activities to be undertaken and benchmarks that demonstrate progress toward stated goals and measurable objectives.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The project description is approved under Office of Management and Budget (OMB) Control Number 0970–0139.

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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example such terms as the "number of people served." When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-

profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria

Criteria for Review and Evaluation of Applications Submitted Under Priority Area—Administration and Management

Evaluation Criterion I: Organizational Profiles (Maximum: 30 Points)

a. Organizational experience in program area (sub-rating: 0–20 points)

The application demonstrates that it has the management and administrative capacity, organizational structure and successful record of accomplishment relevant to serving other CDCs. (0–10 points)

b. The application describes in brief result form the experience and skills of the project director who is not only well qualified, but whose professional capabilities are relevant to the successful implementation of the project. (0–5 points)

c. The application describes in brief resume form the experience and skills of consultants who are not only well qualified, but whose professional capabilities are relevant to the successful implement of the project. (0–5 points)

Consultants to be available under this cooperative agreement demonstrate that they have expertise and capabilities in the following areas: (1) Business development. (2) Micro-entrepreneurship development. (3) Organizational and staff development. (4) Board training and development. (5) Business management, including strategic planning and fiscal management. (6) Finance, including business packaging, accounting and financial services. (7) Commercial development, including real estate development, land assembling, and deal-making. (8) Regulatory compliance, including zoning and obtaining permits. (9) Incubator development. (10) Tax credits and bond financing. (11) Marketing and (12) Community development. (0–10 points)

Evaluation Criterion II: Results or Benefits Expected (Maximum: 25 Points)

Project funds under this sub-priority area are to be used for the purpose of transferring expertise directly, or by a contract with a third party, to other OCS funded CDC grantees. Application describes how the success or failure of collaboration with these grantees will be documented. (0–10 points)

Application demonstrates an ability to disseminate results on the kinds of programmatic and administrative expertise transfer efforts in which it participated and successful strategies that it may have developed to share expertise with grantees during the grant period. (0—5 points)

Application states whether the results of the project will be included in a handbook, a progress paper, an evaluation report, a general manual, or seminars/workshops, and why the particular methodology chosen would be most effective. (0–5 points)

Application states it will undertake projects of national significance, if sufficient funding is available, that will assist CDCs in improving their administration and management capacity as a whole. (0–5 points)

Evaluation Criterion III: Approach (Maximum: 20 Points)

a. The application describes the project as it relates to provision of administration and management technical expertise to individual CDCs funded through CED. (0–5 points)

b. The application describes the CDCs to be served and documents an understanding of their needs and effective responses to those needs. (0–5 points)

c. The work plan is results-oriented and addresses the following: specific activities to be undertaken; outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained. (0–10 points)

Evaluation Criterion IV: Objectives and Need for Assistance (Maximum: 15 Points)

a. The application effectively describes the administration and management expertise needed by CDCs funded by CED to be provided under this cooperative agreement. (0–10 points)

b. The application proposes national initiatives that will benefit the community development field. (0–5 points)

Evaluation Criterion V: Evaluation (Maximum: 10 Points)

a. The application includes a self-evaluation component. The evaluation data collection and analysis procedures are specifically oriented to assess the degree to which the stated goals and objectives are achieved. (0–5 points)

b. The proposed methodology includes qualitative and quantitative measures that reflect the scheduling and task delineation. (0–5 points)

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

(a) The application must contain a signed Standard Form 424 Application for Federal Assistance, a Standard Form 424–A Budget Information and signed Standard Form 424B Assurance—Non-Construction Programs completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets

requirements set for in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt and CDC statuses as indicated in the "Additional Information on Eligibility" section of this announcement.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and the program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget and project periods for which support is granted and the non-Federal share to be provided. The Financial Assistance Award will be signed and issued by an authorized Grants Officer and transmitted via postal mail.

2. Administrative and National Policy Requirements

45 CFR Part 74.

3. Reporting Requirements

Programmatic Reports: Semi-annually with a final report due 90 days after project end date.

Financial Reports: Semi-annually with a final report due 90 days after project end date.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact

Debbie Brown, Office of Community Services, 370 L'Enfant Promenade, SW., Aerospace Building—5th Floor West, Washington. DC 20447, E-mail: *dbrown@acf.hhs.gov,* Telephone: (202) 401–3446.

Grants Management Office Contact

Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building—4th Floor West, Washington, DC 20447–0002, E-mail: *bziegler-johns@acf.hhs.gov,* Telephone: (202) 401–2344.

VIII. Other Information

Additional Information about this program and its purpose can be located on the following website: *http://www.acf.hhs.gov/programs/ocs.*

Dated: April 26, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–9818 Filed 4–29–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of a Funding Opportunity; The Community Services Block Grant (CSBG)

Federal Agency Name: Administration for Children and Families, Office of Community Services.

Funding Opportunity Title: The Community Services Block Grant Community Economic Development Discretionary Grant Program—Training and Technical Assistance.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–EC–0016.

CFDA Number: 93.570.

Due Date for Applications: The due date for receipt of applications is June 29, 2004.

I. Funding Opportunity Description

The Community Services Block Grant (CSBG) Act of 1981, as amended, (Section 680 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary of the U.S. Department of Health and Human Services to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Pursuant to this Announcement, OCS will make an award under Priority Area 5 Training and Technical Assistance (TT) to a non-profit organization to provide broad training and technical assistance to strengthen the network of CDC's funded by OCS. An applicant in this priority area must demonstrate its national experience and capability in working with a network of organizations and implementing projects that are nationwide in scope. The applicant must have the ability to collect and analyze data nationally that may be of benefit to CDCs and be able to disseminate information to all OCS-funded CDCs. The applicant must conduct an assessment of the needs of the CDC network and provide a work plan that includes projects to be completed with CED funds in order to respond to these needs.

Definitions of Terms

The following definitions apply:

Budget Period—The time interval into which a grant period is divided for budgetary and funding purposes.

Business Start-up Period—Time interval within which the grantee completes preliminary project tasks. These tasks include but are not limited to assembling key staff, executing contracts, administering lease out or build-out of space for occupancy, purchasing plant and equipment and other similar activities. The Business Start-Up Period typically takes three to six months from the time OCS awards the grant or cooperative agreement. Cash contributions—The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

Community Development Corporation (CDC)—A private non-profit corporation governed by a board of directors consisting of residents of the community and business and civic leaders, which has as a principal purpose planning, developing, or managing low-income housing or community development activities.

Community Economic Development (CED)—A process by which a community uses resources to attract capital and increase physical, commercial, and business development, as well as job opportunities for its residents.

Construction projects—Projects that involve land improvements and development or major renovation of (new or existing) facilities and buildings, fixtures, and permanent attachments.

Cooperative Agreement—An award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project.

Developmental/Research Phase—The time interval during the Project Period that precedes the Operational Phase. Grantees accomplish preliminary activities during this phase including establishing third party agreements, mobilizing monetary funds and other resources, assembling, rezoning, and leasing of properties, conducting architectural and engineering studies, constructing facilities, etc.

Displaced worker—An individual in the labor market who has been unemployed for six months or longer.

Distressed community—A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

Employment education and training program—A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations.

Empowerment Zone and Enterprise Community Project Areas (EZ/EC)—Urban neighborhoods and rural areas designated as such by the Secretaries of Housing and Urban Development and Agriculture.

Equity investment—The provision of capital to a business entity for some specified purpose in return for a portion of ownership using a third party agreement as the contractual instrument.

Faith-Based Community Development Corporation—A community development corporation that has a religious character.

Hypothesis—An assumption made in order to test a theory. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and its result must be measured in order to confirm the hypothesis. The following is a hypothesis: "Eighty hours of classroom training will be sufficient for participants to prepare a successful loan application." In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

Intervention—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan is an intervention.

Job creation—New jobs, *i.e.*, jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

Job placement—Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

Letter of commitment—A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities contingent only on OCS accepting the applicant's project proposal.

Loan—Money lent to a borrower under a binding pledge for a given purpose to be repaid, usually at a stated rate of interest and within a specified period.

Non-profit Organization—An organization, including faith-based and community-based, that provides proof of non-profit status described in the "Additional Information on Eligibility" section of this announcement.

Operational Phase—The time interval during the Project Period when businesses, commercial development or other activities are in operation, and employment, business development assistance, and so forth are provided.

Outcome evaluation—An assessment of project results as measured by collected data that define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for being replicated. It should answer the question: Did this program work?

Poverty Income Guidelines—Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http:www.hhs.aspe.gov/poverty/*.

Process evaluation—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer the questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred, how the problems were resolved and what recommendations are needed for future implementation.

Pre-Development Phase—The time interval during the Project Period when an applicant or grantee plans a project, conducts feasibility studies, prepares a business or work plan and mobilizes non-OCS funding. Program income—Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

Project Period—The total time for which a project is approved for OCS support, including any approved extensions.

Revolving loan fund—A capital fund established to make loans whereby repayments are re-lent to other borrowers.

Self-employment—The employment status of an individual who engages in self-directed economic activities.

Self-sufficiency—The economic status of a person who does not require public assistance to provide for his/her needs and that of his/her immediate family.

Sub-award—An award of financial assistance in the form of money, or property, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance

which is excluded from the definition of "award" in 45 CFR Part 74.

(**Note:** Equity investments and loan transactions are not sub-awards.)

Technical assistance—A problem-solving event generally using the services of a specialist. Such services may be provided on-site, by telephone or by other communications. These services address specific problems and are intended to assist with immediate resolution of a given problem or set of problems.

Temporary Assistance for Needy Families (TANF)—The Federal block grant program authorized in Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). The TANF program transformed "welfare" into a system that requires work in exchange for time-limited assistance.

Third party—Any individual, organization or business entity that is not the direct recipient of grant funds.

Third party agreement—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

Third party in-kind contributions—Non-cash contributions provided by non-Federal third parties. These contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and especially identifiable to the project or program.

Project Goals

CED projects should further HHS goals of strengthening American families and promoting their self-sufficiency, and OCS goals of promoting healthy families in healthy communities. The CED Program is particularly directed toward public-private partnerships that develop employment and business opportunities for low-income people and revitalize distressed communities.

Project Scope

The scope of this project is to undertake activities to strengthen the nationwide network of CDCs.

Priority Area

Community Economic Development Program (CED) Priority Area—Training and Technical Assistance

By statute, this is the only Community Economic Development Grant Program Priority Area for which an applicant is not required to be a CDC. An eligible applicant must be a private, nonprofit organization that provides technical assistance to aid CDCs in developing employment and business opportunities for low income individuals. Funds will be awarded to an organization to provide broad training and technical assistance to strengthen the network of CDC's funded by OCS. An applicant in this priority area must demonstrate its national experience and capability in working with a network of organizations and implement projects that are nationwide in scope. The applicant must have the ability to collect and analyze data nationally that may be of benefit to CDCs and be able to disseminate information to all OCS-funded CDCs. The applicant must conduct an assessment of the needs of the CDC network and a work plan that includes projects to be completed with CED funds in order to respond to these needs.

II. Award Information

Funding Instrument Types: Cooperative agreement.

Description of Federal Substantial Involvement in Cooperative Agreement: A cooperative agreement is Federal assistance in which substantial Federal involvement is anticipated. Responsibilities of Federal staff and the successful applicants are negotiated prior to an award. The duties and responsibilities of the applicant and the ACF/OCS in fulfilling the cooperative agreement will include the following:

Responsibilities of the grantee:

- To implement activities described in the approved project description.
- To develop and implement a work plan that will ensure that the training and technical assistance included in the approved application address the goals and objectives of the approved project in an efficient, effective and timely manner.
- To submit regular semi-annual Financial Status Report (Standard Form 269) and progress reports that describe activities undertaken under the training and technical assistance project.
- To work cooperatively and collaboratively with ACF officials, other Federal agency officials conducting related activities, and other entities or organizations contracted by ACF to assist in carrying out the purposes of the Community Economic Development Program. Such cooperation and collaboration shall include, but not be limited to, providing requested financial and programmatic information, creating opportunities for interviews with agency officials and staff and allowing on-site observation of activities supported under the cooperative agreement.
- To notify the Office of Community Services Project Officer in implementing the activities on an ongoing and frequent basis.
- To consult with the Office of Community Services Project Officer in implementing the activities on an ongoing and frequent basis.
- To comply with Community Economic Development Program regulations and all other applicable Federal statutes and regulations in effect during the time the applicant is receiving funding.
- To notify the Federal Project Officer of any key personnel changes in writing.
- To ensure that the executive director and/or project director attend a two-day OCS national grantee training workshop in Washington, DC The workshop will be scheduled shortly after the effective date of the grant award.
- To submit applications for continuation funding by July 1, 2004 if an applicant expects to receive a continuation cooperative agreement in FY 2005.

Responsibilities of ACF/OCS:

- To provide consultation to the grantee with regard to the development of the work plan approaches to address problems that arise and identification of areas needing technical assistance.
- To consult with and to provide the grantee the data collection requirements of OCS and to keep the grantee informed of policy developments as they affect the implementation of the project.
- To provide timely review, comment and decisions on significant project documents.
- To work with the grantee to address issues or problems with regard to the grantee's ability to carry out the full range of activities include in the approved application in the most efficient and effective manner.
- To promptly review written requests for approval of deviations from the project descriptions or approved budget. Any changes which affect the terms and conditions of the grant award or revisions/amendments to the cooperative agreement or to the approved scope of activities will require prior approval by the ACF Grants Management Officer.

Anticipated Total Program Funding: $23.4 Million is expected to be available for the entire Community Economic Development Program. The estimated level of funding available for this Training and Technical Assistance Priority Area is $269,060.

Anticipated Number of Awards: 1.

Ceiling on Amount of Individual Awards: $269,060.

An application that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor on Individual Award Amounts: None.

Project Periods for Award: This announcement is inviting applications for project periods up to 3 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

III. Eligibility Information

1. *Eligible Applicants:* Nonprofits recognized as exempt from Federal income tax under section 501(c) (3) of the Internal Revenue Code, other than institutions of higher education.

Nonprofits that do not have a 501 (c) (3) status with the IRS, other than institutions of higher education.

Faith-Based and Community-Based Organizations

Additional Information on Eligibility

Applications that do not include proof of nonprofit status with their application will be disqualified.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; a copy of a currently valid IRS tax exemption certificate; a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

2. *Cost Sharing or Matching:* None.

3. *Other:* On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services, Operations Center, Administration for Children and Families, 1815 North Fort Myer Drive Suite 300, Arlington, Virginia 22209, e-mail: *OCS@lcgnet.com*, Telephone: (800) 281–9519.

2. Content and Form of Application Submission

1. Application Content

Each application must include the following components:

1. Table of Contents.

2. Abstract of the Proposed Project—one or two paragraphs, not to exceed 350 words, that describe the community in which the project will be implemented, beneficiaries to be served, type(s) of business(es) to be developed, type(s) of jobs to be created, projected cost-per-job, any land or building to be purchased or building constructed, resources leveraged and intended impact on the community.

3. Completed Standard Form 424—that has been signed by an official of the organization applying for the grant who has legal authority to obligate the organization. Under Box 11. indicate the Priority Area for which the application is written.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

5. Standard Form 424B—Assurances—Non-Construction Programs.

6. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A.

Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

7. Project Narrative—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

2. Application Format

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides. Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one. Present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener. Each application should include one signed original and two additional copies.

3. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives, business and work plans must not exceed 60 pages. The page limitation does not include Standard Forms and Assurances, Certifications, Disclosures, appendices and any supplemental documents as required in this announcement.

An application that exceeds the page limitation specified will be considered "non-responsive" and be returned to the applicant without further review.

4. Required Standard Forms

Applicants requesting financial assistance must complete and submit an SF 424 "Application for Federal Assistance" SF 424A "Budget Information—Non Construction Programs and 424B, "Assurances: Non-Construction Programs."

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. Applicants provide certification by signing the SF424 and need not mail back the certification with the application. Applications provide certification by signing the SF 424 and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. Applicants provide certification by signing the SF 424 and need not mail the application back with the application.

Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Applicants may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov apply site.* If you use Grants.gov, you will be able to download a coy 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.

Please note the following if you plan to submit your application electronically via Grants. Gov

- Electronic submission is voluntary.
- 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, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on June 29, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209 Attention: Operations Center. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: "Attention: Operations Center". Applicants are responsible for express/overnight mail delivery services.

Late applications: Applications which do not meet the criteria above are considered late applications and will not be considered. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project.	Identifies project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Completed Standard Form 424.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

What to submit	Required content	Required form or format	When to submit
Completed Standard Form 424A.	As described above and per required form	May be found on *http://www.acf.hhs.gov/program/ofs/forms.htm.*	By application due date.
Completed Standard Form 424B.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Narrative Budget Justification.	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Certification regarding lobbying.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs.forms.htm.*	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

National Historic Preservation Act

If an applicant is proposing a project which will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the National Historic Preservation Act of 1996, as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant must consult with the State Historic Preservation Officer and describe in the narrative the content of such consultation.

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

Prohibited Activities

OCS will not consider applications that propose to establish Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

Pre-award costs will not be covered by an award.

6. Other Submission Requirements

Sufficiency of Financial Management System

Because CED funds are Federal, all grantees must be capable of meeting the requirements of 45 CFR part 74 concerning their financial management system. To assure that the applicant has such capability, applications must

include a signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the CDCs financial management system in accordance with 45 CFR 74 and financial statements for the CDC for the prior three years. If such statements are not available because the CDC is a newly formed entity, the application must include a statement to this effect. The CDC grantee is responsible for ensuring that grant funds expended by it and the third party are expended in compliance with Federal regulations of 45 CFR part 74 and OMB Circular A–122.

Work Plan

An applicant must include a detailed work plan covering the activities to be undertaken and benchmarks that demonstrate progress toward stated goals and measurable objectives.

Evaluation

Applications must include provision for an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in creating new jobs and business ownership opportunities. There must be a well-defined process evaluation, and an outcome evaluation whose design will permit tracking of project participants throughout the proposed project period. The evaluation must be conducted by an independent evaluator, *i.e.*, a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third-party evaluator selected, and implement their role at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the design of the program, in order to assure that data necessary for the evaluation will be collected and available.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The uniform project description is approved under Office of Management and Budget (OMB) Control Number 0970–0139.

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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in , for example such terms as the "number of people served." When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria

Criteria for Review and Evaluation of Applications Submitted Under Priority Area—Training and Technical Assistance

Evaluation Criterion I: Organizational Profiles (Maximum: 35 points)

Application has documented experience in working with a nationwide network of organizations. (0–5 points)

Application has documented the capability to provide leadership in addressing immediate and long-term issues in such areas as business development; commercial development; organizational board and staff development; and micro-entrepreneurship development. (0–5 points)

Application documents a capability to provide effective training and technical assistance skilled individuals and/or organizations in two or more of the following areas: Business management, including strategic planning and fiscal management; finance, including development of financial packages and provision of financial packages and provision of financial/accounting services; and regulatory compliance, including assistance with zoning and permit issues. (0–10 points)

The proposed project director and primary staff are well qualified and their professional experiences are relevant to the successful implementation of the proposed project. (0–5 points)

The application documents an understanding of poverty, distressed communities and effective intervention through economic development, including job creation. (0–10 points)

Evaluation Criterion II: Approach (Maximum: 30 Points)

The application includes a detailed and specific work plan that is both sound and feasible. Specifically, the work plan:

- Reports on findings from a CDC network assessment. (0–5 points)
- Demonstrates in some specificity the kinds of training and technical assistance to be provided to the network of community development corporations in response to the needs assessment. (0–5 points)
- Demonstrates that all activities are comprehensive and nationwide in scope, adequately described, and appropriately related to the goals of the program. (0–5 points)
- Delineates the tasks and sub-tasks involved in the areas necessary to carry out the responsibilities, *i.e.* training, technical assistance, research, outreach seminars, etc. (0–5 points)
- States the intermediate and end products to be developed by task and sub-task. (0–5 points)
- Provides realistic time frames and a chronology of key activities for the goals and objectives. (0–5 points)

Evaluation Criterion III: Results or Benefits Expected (Maximum: 15 points)

Project funds will be used for the purpose of providing training and technical assistance on a national basis to the network of community development corporations. The application describes how:

- The project will assure long-term program and management improvements for community development corporations. (0–5 points)
- The project will impact on a significant number of community development corporations. (0–5 points)
- The project will leverage or mobilize significant other non-federal resources for the direct benefit of the project. (0–5 points)

Evaluation Criterion IV: Objectives and Need for Assistance (Maximum: 10 points)

The application documents that the project addresses a vital, nationwide need related to the purposes of Community Development Corporations and provide data and information in support of its contention. (0–10 points)

Evaluation Criterion V: Budget Reasonableness (Maximum: 10 points)

- The resources requested are reasonable and adequate to accomplish the project. (0–5 points)
- Total costs are reasonable and consistent with anticipated results. (0–5 points)

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the

applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted: (a) The application must contain a signed Standard Form 424 Application for Federal Assistance, a Standard Form 424-A Budget Information and signed Standard Form 424B Assurance—Non-Construction Programs completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets requirements set for in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the "Additional Information on Eligibility" section of this announcement.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and the program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

VI. Award Administration Information

1. Award Notices: The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period and project period for which support is granted and the non-Federal share to be provided. The Financial Assistance Award will be signed and issued by an authorized Grants Officer and transmitted via postal mail.

2. Administrative and National Policy Requirements: 45 CFR part 74.

3. Reporting Requirements

Programmatic Reports: Semi-annually with a final report due 90 days after the project end date.

Financial Reports: Semi-annually with a final report due 90 days after the project end date.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact: Debbie Brown, Office of Community Services, 370 L'Enfant Promenade, SW., Aerospace Building 5th Floor West, E-mail: *dbrown@acf.hhs.gov*, Telephone: (202) 401–3445.

Grants Management Office Contact: Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW.—4th Floor West, Aerospace Building, Washington, DC 20447–0002, e-mail: *bziegler-johns@acf.hhs.gov*, Telephone: (202) 401–2344.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: April 26, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–9819 Filed 4–29–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Retraction of Notice on Training of Child Welfare Agency Supervisors in the Effective Delivery and Management of Federal Independent Living Services

AGENCY: Administration on Children, Youth and Families, ACF, HHS.

ACTION: Notice.

SUMMARY: The Administration on Children, Youth and Families' Children's Bureau is retracting the Notice of Availability for Grants and Cooperative Agreements for the Training of Child Welfare Agency Supervisors in the Effective Delivery and Management of Federal Independent Living Services that was published in the **Federal Register** on Monday, April 19, 2004, due to availability of funds.

FOR FURTHER INFORMATION CONTACT: Please contact Janice P. Shafer at 205–8172 if you have questions concerning this retraction.

Dated: April 23, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–9782 Filed 4–29–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Notice of Availability

Federal Agency Contact Name: Administration for Children and Families, Children's Bureau.

Funding Opportunity Title: Field Initiated Training Projects for Effective Child Welfare Practice with Hispanic Children and Families.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–CT–0014.

CFDA Number: 93.648.

Due Date for Applications: The due date for receipt of applications is June 29, 2004.

I. Funding Opportunity Description

The purpose of this funding opportunity is to support the development, implementation and evaluation of innovative child welfare training projects that address the needs

of Hispanic children and families. The Children's Bureau is interested in field initiated projects that will build the capacity of frontline and supervisory staff to achieve positive outcomes for Hispanic children and families in the child welfare system. The projects should be designed to increase the knowledge, skills and abilities of child welfare personnel to provide services in a culturally competent manner and to enable them to respond more effectively to the complex problems confronting Hispanic children and families in the child welfare system. Failure to make service adaptations in addressing the culturally defined needs of Hispanic children and families may result in under-use, overuse, or inappropriate use of child welfare services. This is especially true when language is a barrier and in view of the various subgroups of Hispanic origin populations in the United States (Hernandez & Isaacs, 1998). Topics of interest to the Children's Bureau include, but are not limited to:

- Developing and enhancing child welfare workers' culturally competent practice skills in achieving the Adoption and Safe Families Act of 1997 (ASFA) goals of safety, permanency and well-being for Hispanic children;
- Increasing the capacity of child welfare personnel to conduct culturally competent assessments throughout the life of a child welfare case, and to promote positive outcomes for Hispanic children and families, including their psychological, physical, educational and social development; and
- Supporting leadership training for child welfare supervisors in developing, testing, implementing and evaluating collaborative, culturally competent models of service delivery with Hispanic children and families.

It is critical that child welfare services are provided to Hispanic children and families within the context of the Hispanic culture. Therefore, these Child Welfare Training Field Initiated projects are expected to develop training curricula that incorporate knowledge and understanding of Hispanic culture(s) and to promote the use of this knowledge and understanding in order to better serve Hispanic children and families involved with the child welfare system. Indeed there is a growing realization that better outcomes for children and families are intrinsically related to understanding, acknowledging and adapting services to reflect cultural norms (Isaacs & Benjamin, 1991). Culturally competent approaches to service delivery are seen as necessary for: identifying factors that are stressful to families; assessing family strengths; assessing problems of abuse and neglect or other family problems; identifying community resources that can assist Hispanic families; and helping Hispanic children and families with presenting and ongoing problems that require child welfare interventions.

The project tasks must be accomplished in partnership with the State child welfare agency. The training curriculum will be field-tested with the State child welfare agency and evaluated for its effectiveness in developing skills for providing culturally relevant services that are designed to achieve safety, permanency and well-being for Hispanic children.

Background

Title IV B—Section 426 (a)(1)(C) of the Social Security Act as amended authorizes funds for grants to public or non-profit institutions of higher learning to train personnel to work in the field of child welfare. In keeping with the requirements of this Act, the focus of this field-initiated child welfare training project is to provide professional education opportunities to current public child welfare agency frontline workers and supervisory staff in order to better prepare them to meet emerging service delivery needs and challenges in the field of child welfare. If child welfare agencies are to be successful in meeting the challenges of providing appropriate services, in achieving desired child and family outcomes and in carrying out agency missions, they must have a high quality, well educated and trained staff (Terpestra,1992, Siu & Hogan, 1988). This is especially true since public child welfare agencies rely heavily upon training for introducing changes into their service delivery system, for implementing effective intervention strategies in addressing complex client situations and as a major tool for developing and maintaining sound practice (Wehrmann, Shin, & Poertner, 2002). Implementing effective training strategies is also necessary in order for child welfare staff to meet the requirements of the Adoption and Safe Families Act of 1997 and the Child and Family Services Review requirements.

A Rapidly Growing, Youthful and Concentrated Hispanic Population

According to the Census Bureau, Hispanics became the largest minority in the U.S. in 2002, numbering 38.8 million or 13% of the total population. The Census Bureau projects that by 2050 there will be 103 million Hispanics, which will be 24% of the U.S. population.

In the 2000 U.S. Census statistics, the relative youthfulness of the Hispanic population is reflected in the population under age 18 and in its median age. While 25.7 percent of the U.S. population was under age 18 years of age in 2000, 35.0 percent of Hispanics were less than age 18. The median age for Hispanics was 25.9 years while the median age for the entire U.S. population was 35.3 years. Moreover, in 2000, 27.1 million, or 76.8 percent of Hispanics lived in the seven States with Hispanic populations of 1.0 million or more (California, Texas, New York, Florida, Illinois, Arizona and New Jersey.)

Hispanic Families and the Child Welfare System

The importance of cultural competency in serving diverse ethnic and cultural groups has gained increasing recognition and has become an essential part of the definition of good child welfare practice. This is especially important when working with Hispanic children and families. It is critical that child welfare workers develop and enhance their culturally responsive practice skills in achieving the ASFA goals of safety, permanency and well-being for Hispanic children. Within this context, workers must be able to build collaborative working relationships with families, Hispanic communities, and agencies that provide support services.

Cultural competence requires that child welfare workers explore supports and resources within Hispanic communities, making family preservation and support services the first line of services when safety can be assured. Increasingly, child welfare practice is becoming community-based, requiring collaboration with schools, courts, health and mental health agencies, and faith and community-based organizations, to prevent the incidence or recurrence of child abuse and neglect.

The percent of children entering foster care who were identified as Hispanic has increased slightly in the last few years. In FY 2000 Hispanic children were 15% of all foster care entrants. By FY 2002 Hispanic children comprised 17% of the estimated 302, 000 children entering the foster care system.

The Child and Family Service Reviews look at case files of children in the child welfare system. The reviews found that in the 2002 cases reviewed, 64% of Hispanic children were in foster care and 36% were receiving services in their homes, whereas 53% of white children were in foster care and 47% were receiving services in their homes.

The Department of Health and Human Services Child Welfare Outcomes 2000 Annual Report concluded that many of the challenges to attaining positive outcomes for children who come into contact with the child welfare system are external to the system itself. This means that a key focus of training activities must be on supporting greater collaboration among child serving agencies if the multiple problems of children and families in the child welfare system are to be addressed. The capacity of the public child welfare system to improve safety, permanency and well-being outcomes for Hispanic children and families is contingent upon:

- The system's ability to understand the child, family and community conditions that contribute to the entry of Hispanic children and families into the child welfare system;
- The culturally competent leadership skills of child welfare supervisors and administrators in developing and maintaining collaborative partnerships with other community child-serving agencies for the purpose of gaining appropriate access to required community-based services for Hispanic children and families in the child welfare system; and
- The increased capacity of child welfare personnel to conduct culturally competent assessments and to implement successful intervention strategies in serving Hispanic children and families.

This field-initiated child welfare training project provides an opportunity for applicants to contribute to the expansion of effective child welfare services through training approaches specifically designed to improve child welfare outcomes for Hispanic children and families. Projects funded under this initiative should be innovative and should contribute to improving the safety, permanency, and well-being outcomes for Hispanic children and families, with special emphasis on culturally competent leadership, collaboration and practice skills.

I. Award Information

Funding Instrument Type: Grant.

Anticipated Total Program Funding: The anticipated total for all awards under this funding opportunity in FY2004 is $800,000.

Anticipated Number of Awards: It is anticipated that 4 projects will be funded.

Ceiling, if any, on Amount of Individual Awards: The grant amount will not exceed $200,000 in the first budget period. An application received that exceeds the upper value of dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor on Individual Award Amounts: None.

Average Projected Award Amount: $200,000 per budget period.

Project Periods for Awards: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

III. Eligibility Information

1. Eligible Applicants

State controlled institutions of higher education; private institutions of higher education.

Additional Information on Eligibility: Applicants must have an accredited social work education program or an accredited bachelor or graduate level program leading to a degree relevant to work in child welfare. Applicants should have a strong partnership with a public child welfare agency and should be prepared to re-design their curriculum to maximize student learning opportunities for work in public child welfare agencies. Applicants must have some experience and background in working with Hispanic populations. Preference will be given to applicants that are located in States with a Hispanic population of 1 million or above.

Applications that exceed the $200,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

2. Cost Sharing or Matching

The grantee must provide at least 25% of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 25% match amount for a $200,000 grant:

	$200,000	(Federal share)
divided by	.75	(100%–25%)
equals	$266,667	(total project cost including match)
minus	200,000	(Federal share)
equals	66,667	(required 25% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV-E training funds.

3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you

may request a number on-line at *http://www.dnb.com.*

IV. Application and Submission Information

1. Address to Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you 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.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- 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, you, as the applicant, must have a DUNS number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application form Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Electronic Address Where Applications Will Be Accepted: www.Grants.gov.

Address Where Hard Copy Applications Will Be Accepted: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street NE., Washington, DC 20002–2132.

Each application must contain the following items in the order listed:

—Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, email and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

—Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided and those in the Uniform Project Description. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

—Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following grant and cooperative agreement requirements:

Participation in any evaluation or technical assistance effort supported by ACYF; submission of all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer; and allocation of sufficient funds in the budget to provide for the project director, evaluator and a state child welfare representative to attend an early kick-off meeting for grantees funded under this priority area, to be held within the first three months of the project (first year only) in Washington, DC; and allocation of sufficient funds in the budget to provide for the project director, evaluator and a state child welfare representative to attend an annual 3-day grantees' meeting in Washington, DC (Attendance at these meetings is a grant requirement.); allocation of 10% of budget for program evaluation.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs.

Applicable DHHS regulations can be found in 45 CFR Part 74 or Part 92.

—Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant funding opportunity and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

—Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this funding opportunity announcement providing information that addresses all the components.

—Proof of non-profit status (if applicable).

—Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

—Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

—Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

—The application limit is 60 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline at the beginning of the announcement. The original copy of the application must have original signatures, signed in black ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this funding opportunity announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Tips for Preparing a Competitive Application: It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the applicable legislation. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A "responsive application" is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be "unresponsive" generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant Web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

Organizing Your Application: The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

Project Evaluation Plan: Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled "Program Manager's Guide to Evaluation." A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/core/pubs_reports/prog_mgr.html* or ordered by contacting the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447; phone (800) 394–3366; fax (703) 385–3206; e-mail *nccanch@calib.com.*

Logic Model: A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

Use of Human Subjects: If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe

their plans regarding an Institutional Review Board (IRB) review. For more information about use of human subjects and IRB's you can visit these Web sites: *http://ohrp.osophs.dhhs.gov/irb/irb_chapter2.htm#d2* and *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/ictips.htm*.

3. Submission Dates and Times

The closing date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 29, 2004. Mailed applications received after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before 4:30 p.m. Eastern Standard Time (EST) on June 29, 2004. Applications must be mailed to the following address: ACYF Operations Center, c/o The Dixon Group Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
3.b. Certification regarding lobbying.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	See application of due date.
4. Project Summary/Abstract	Summary of application request.	See instructions in this funding announcement	See application due date.
5. Project Description	Responsiveness to evaluation criteria.	See instructions in this funding announcement	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement.	See above	See above	See application due date.
8. Letters of agreement & MOUs.	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	Application limit 60 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the

Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds.

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time (EST) on or before the closing date. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time (EST) on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139 which expires 3/31/2004. 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.

Instruction

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

1. Criteria

General Instruction for Preparing Full Project Description

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers,

child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost

pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points).

(1) The extent to which the application demonstrates an understanding of the requirements of the Adoption and Safe Families Act of 1997 and the Child and Family Services Reviews, and the extent to which the proposed project will contribute to meeting those requirements. The extent to which the application demonstrates a clear understanding of child welfare training issues.

(2) The extent to which the application demonstrates a thorough understanding of the need for a curriculum and training program to strengthen child welfare staff ability to provide culturally competent services to Hispanic children and families involved in the child welfare system.

(3) The extent to which the application presents a thorough review of the relevant literature that reflects a clear understanding of the research on best practices and promising approaches as it relates to the proposed project. The extent to which the review of the literature sets a sound context and rationale for the project. The extent to which it provides evidence that the proposed project is innovative and, if successfully implemented and evaluated, likely to contribute to the knowledge base on improving child welfare training and practice in serving Hispanic children and families.

(4) The extent to which the application presents a clear vision for the proposed child welfare training project to be developed and implemented. The extent to which the applicant makes a clear statement of the goals (end products of an effective project) and objectives (measurable steps for reaching these goals) of the proposed project. The extent to which these goals and objectives closely relate to the training needs of public child welfare agency frontline workers and supervisory staff in serving Hispanic children and families.

(5) The extent to which the lessons learned through the proposed project would benefit policy, practice and theory development in addressing the training needs of child welfare staff providing services to Hispanic children and families in the child welfare system.

(6) The extent to which the proposed project would develop a strong university/child welfare agency partnership to further the goal of improving child welfare related training and technical assistance to frontline workers and supervisors.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points).

(1) The extent to which there is a sound timeline for effectively implementing the proposed project, including major milestones and target dates. The extent to which the proposed project would complete the development, field testing and revisions of an effective training program in a timely manner and conduct a thorough evaluation of its effectiveness within the 3 year project time frame.

(2) The extent to which the proposed project would enhance child welfare agency capacity to provide coordinated services through knowledge development and enhanced skills and abilities to transfer knowledge into practice. The extent to which specific measurable outcomes will occur as a result of the proposed training of public child welfare staff. The extent to which there will be a strong relationship between the proposed competency-based training and improved outcomes for Hispanic children and families.

(3) The extent to which there will be an effective administrative and organizational interface between the applicant and the appropriate State child welfare agencies, Hispanic Organizations, community agencies, academic departments, other disciplines, institutions, etc. The extent to which there are appropriate letters of commitment from these partner organizations.

(4) The extent to which the application demonstrates a thorough understanding of the challenges of improving the approaches to training within a public child welfare agency that provides services to Hispanic children and families with multiple problems. The extent to which the application demonstrates a thorough understanding of the challenges that the proposed project will have in providing training to support and enhance public child welfare agency staff capabilities for achieving child welfare outcomes for Hispanic children and families. The extent to which the applicant provides a sound plan explaining how the project would successfully overcome these challenges.

(5) The extent to which the proposed project will effectively train child welfare personnel to provide culturally competent services to the Hispanic population.

(6) The extent to which the design of the proposed project reflects up-to-date knowledge from child welfare training research and literature. The extent to which the proposed training project is innovative and involves training strategies that build on, or are an alternative to, existing strategies.

(7) The extent to which the project's evaluation plan would measure achievement of project objectives, customer satisfaction, acquisition of competencies, effectiveness of program services and project strategies, the efficiency of the implementation process, and the impact of the project. The extent to which the methods of evaluation would provide performance feedback, support periodic assessment of program progress and provide a sound basis for program adjustments. The extent to which the proposed evaluation plan would be likely to yield useful findings or results about effective strategies, and contribute to and promote evaluation research and evidence-based practices that could be used to guide replication or testing in other settings. The extent to which applicants that do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project present a sound plan for contracting with a third-party evaluator specializing in social science or evaluation, or a university or college to conduct the evaluation.

(8) The extent to which there is a sound plan for documenting project activities and results, including the development of a data collection infrastructure that is sufficient to support a methodologically sound and rigorous evaluation. The extent to which relevant data would be collected. The extent to which there is a sound plan for collecting these data, securing informed consent and implementing an Institutional Review Board (IRB) review, if applicable.

(9) The extent to which there is a sound plan for developing useful products during the proposed project

and a reasonable schedule for developing these products. The extent to which the intended audience (*e.g.*, researchers, policymakers, and practitioners) for product dissemination is comprehensive and appropriate. The extent to which the dissemination plan includes appropriate mechanisms and forums that would effectively convey the information and support successful replication by other interested agencies.

(10) The extent to which there is a sound plan for continuing this project beyond the period of Federal funding.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points).

(1) The extent to which the application evidences sufficient experience and expertise in training public child welfare staff, especially in the area of service delivery involving Hispanic populations; in developing child welfare curricula; in collaboration with child welfare agencies on training initiatives; in culturally competent service delivery; and in administration, development, implementation, management, and evaluation of similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations) in serving Hispanic populations.

(2) The extent to which the proposed project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively (*e.g.* resume). The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project with respect to serving Hispanic populations. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, for accomplishing project tasks and ensuring quality. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points).

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. They will be interested in your plans for sustaining your project without Federal funds if the evaluation findings are supportive. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on unserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

3. Anticipated Announcement and Award Dates

Applications will be reviewed during the Summer 2004. Grant awards will have a start date no later than September 30, 2004.

VI. Award Administration Information

1. Award Notices

Successful applicants will receive a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant or cooperative agreement, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, if applicable, and the total project period for which support is contemplated. The

Grants Management Office signs and issues the award notice.

The Commissioner will notify organizations in writing when their applications will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

2. Administrative and National Policy Requirements

45 CFR Part 74 and 45 CFR Part 92

Faith-based organizations that receive funding may not use Federal financial assistance, including funds, to meet any cost-sharing requirements or to support inherently religious activities, such as worship, religious instruction, or prayer.

3. Reporting

Reporting Requirements: Programmatic Reports and Financial Reports are required semi-annually with final reports due 90 days after the project end date. All required reports will be submitted in a timely manner, in recommended formats (to be provided), and the final report will also be submitted on disk or electronically using a standard word-processing program.

Within 90 days of project end date, the applicant will submit a copy of the final programmatic and financial reports, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect, 330 C Street, SW., Washington, DC 20447. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

VII. Agency Contacts

Program Office Contact

Marva Benjamin, 330 C St. SW., Washington, DC 20447, 202–205–8405, *mbenjamin@acf.hhs.gov.*

Grants Management Office Contact

William Wilson, 330 C St SW., Washington, DC 20447, 202–205–8913, *wwilson@acf.hhs.gov.*

General

The Dixon Group, ACYF Operations Center, 118 Q Street, NE., Washington, DC 20002–2132, Telephone: (866) 796–1591.

VIII. Other Information

Additional information about this program and its purpose can be located on the following website: *http://www.acf.hhs.gov/programs/cb/.*

Copies of the following Forms, Assurances, and Certifications are available online at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm:* Standard Form 424: Application for Federal Assistance, Standard Form 424A: Budget Information, Standard Form 424B: Assurances—Non-Construction Programs, Form LLL: Disclosure of Lobbying, Certification Regarding Environmental Tobacco Smoke, Standard Form 310: Protection of Human Subjects.

The State Single Point of Contact SPOC listing is available online at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: April 23, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–9781 Filed 4–29–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0045]

Agency Information Collection Activities; Proposed Collection; Comment Request; Health and Diet Survey—2004 Supplement; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of February 18, 2004 (69 FR 7642). The document announced an opportunity for public comment on the proposed collection of information by the agency on a voluntary consumer survey to gauge consumer understanding of diet-disease relationships, particularly those related to saturated fats, *trans* fatty acids, and omega-3 fatty acids, and consumer attitudes toward diet, health, and physical activity. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–3411, appearing on page 7642 in the **Federal Register** of Wednesday, February 18, 2004, the following correction is made:

1. On page 7642, in the second column, in the heading of the document, "[Docket No. 2003N–0045]" is corrected to read "[Docket No. 2004N–0045]".

Dated: April 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9837 Filed 4–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 2 and 3, 2004, from 8 a.m. to 5 p.m.

Location: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1091), Rockville, MD 20857, 301-827–7001, Fax: 301–827–6801, or e-mail: *topperk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 2, 2004, the committee will discuss trial design and endpoints for drugs for chronic gout, including new drug application (NDA) 21–740, oxypurinol (proposed tradename, OXIPRIM), Cardiome. On June 3, 2004, the committee will discuss trial design and endpoints for drugs for acute gout, including NDA 21–389, etoricoxib (proposed tradename, ARCOXIA), Merck.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. Written submissions may be made to the contact person by May 19, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 19, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 22, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–9801 Filed 4–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0051]

International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products; Guidance for Industry on Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals With Respect to Antimicrobial Resistance (VICH GL27); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#144) entitled "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals With Respect to Antimicrobial Resistance" (VICH GL27). This guidance has been developed for veterinary use by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This VICH guidance document is an initial step in developing harmonized technical guidance in the European Union, Japan, and the United States for approval of therapeutic antimicrobial veterinary medicinal products intended for use in food-producing animals with regard to characterization of antimicrobial resistance selection in bacteria of human health concern. The guidance outlines the types of studies and data which are recommended for assessing the potential for resistance to develop in association with the use of antimicrobial drugs in food-producing animals.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit electronic or written comments at any time on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified by the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514, e-mail: *wflynn@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH steering committee: One representative from the Government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the Government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Guidance on Antimicrobial Resistance

In the **Federal Register** of June 12, 2003 (68 FR 35234), FDA published the notice of availability of the VICH draft guidance, giving interested persons until July 14, 2003, to submit comments. After consideration of comments received, the draft guidance was changed in response to the comments and submitted to the VICH Steering Committee. At a meeting held on October 7 and 8, 2003, the VICH Steering Committee endorsed the guidance for industry, VICH GL27.

The VICH guidance document is an initial step in developing harmonized

technical guidance in the European Union, Japan, and the United States for approval of therapeutic antimicrobial veterinary medicinal products intended for use in food-producing animals with regard to characterization of antimicrobial resistance selection in bacteria of human health concern.

This guidance document outlines the types of studies and data that may be used to characterize the potential for resistance to develop in the target animal when an antimicrobial drug product is used under the proposed conditions. This includes information which describes the drug substance, drug product, nature of the resistance, and potential exposure of gut flora in the target animal species. This information may be used as part of an overall assessment of the potential impact of the product on human health. Information collection is covered under the Office of Management and Budget control number 0910–0032.

III. Significance of Guidance

This guidance document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." Because guidance documents are not binding, mandatory words such as "must," "shall," and "will" in the original VICH document have been substituted with "should" or "recommend."

This VICH guidance document is consistent with the agency's current thinking, on the type of pre-approval information that should be considered for new veterinary medicinal products for food-producing animals with regard to characterization of antimicrobial resistance selection in bacteria of human health concern. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register.**

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

V. Electronic Access

Persons with Internet access may obtain a copy of the guidance document entitled "Pre-Approval Information for Registration of New Veterinary Medicinal Products for Food-Producing Animals with Respect to Antimicrobial Resistance" (VICH GL–27) may be obtained on the Internet from the CVM Home Page at *http://www.fda.gov/cvm.*

Dated: April 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9836 Filed 4–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Care Infrastructure Forms for Funding Opportunities—NEW

HRSA Safety Net programs, including the Consolidated Health Center (CHC) Program and the Healthy Communities Access Program (HCAP), are administered by HRSA's Bureau of Primary Health Care (BPHC). HRSA/BPHC is committed to assisting communities in the development of integrated and comprehensive health care delivery systems which will improve the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals, resulting in higher quality care for these populations at less cost.

Grant funding opportunities are provided to health centers to support: The integration and coordination of primary, hospital, and specialty care; the enhancement of the network and the health centers ability to compete in the marketplace; and the strategic alignment of health center information systems and technology infrastructure to integrate uniform clinical information with business systems.

BPHC will assist in achieving this new health center infrastructure through various funding opportunities. Application forms are used by new and current health centers through (1) Health Center Network Planning and Development which includes the Integrated Service Development Initiative (ISDI), Shared Integrated Management Information System (SIMIS), Integrated Information and Communication Technology (ICT), (2) Healthy Communities Access Program (HCAP), and (3) Operational Health Center Networks (OHCN) which include the ISDI and Pharmacy Networks.

The burden estimate of for this activity is as follows:

Type of application	Number of respondents	Hours per response	Total burden hours
Healthy Communities Access Program	242	45	10,890
Health Center Network Planning and Development:			
Integrated Service Development Initiative	7	45	315
Shared Integrated Management Information System	7	45	315
Integrated Information and Communication Technology	9	45	405
Pharmacy Networks	12	45	540
Operational Health Center Networks:			
Pharmacy Networks	20	45	900

Type of application	Number of respondents	Hours per response	Total burden hours
Integrated Service Development Initiative	17	45	765
Total	314		14,130

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 23, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–9802 Filed 4–29–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Smallpox Vaccine Injury Compensation Program (OMB No. 0915–0282)—Extension

The Smallpox Emergency Personnel Protection Act (SEPPA) authorized the Secretary of Health and Human Services to establish The Smallpox Vaccine Injury Compensation Program, which is designed to provide benefits and/or compensation to certain persons harmed as a direct result of receiving smallpox covered countermeasures, including the smallpox vaccine, or as a direct result of contracting vaccinia through certain accidental exposures.

The benefits available under the Program include compensation for medical care, lost employment income, and survivor death benefits. To be considered for Program benefits, requesters (*i.e.*, smallpox vaccine recipients, vaccinia contacts, survivors, or the representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts), or persons filing on their behalf as their representatives, must file a Request Form and the documentation required under this regulation to show that they are eligible.

Requesters must submit appropriate documentation to allow the Secretary to determine if the requesters are eligible for Program benefits. This documentation will vary somewhat depending on whether the requester is filing as a smallpox vaccine recipient, a vaccinia contact, a survivor, or a representative of an estate.

All requesters must submit medical records sufficient to demonstrate that a covered injury was sustained by a smallpox vaccine recipient or a vaccinia contact.

The burden estimate is as follows:

Form	Number of respondents	Responses per respondent	Hourly response	Total burden hours
Request Form	1,250	1	5	6,250
Certification	1,250	1	1	1,250
Total	2,500			7,500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 23, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–9803 Filed 4–29–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA AIDS Drug Assistance Program Quarterly Report—New

HRSA's AIDS Drug Assistance Program (ADAP) is funded through Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act, which provides grants to States and Territories. The ADAP provides medications for the treatment of HIV disease. Program funds may also be used to purchase health insurance for eligible clients or for services that enhance access, adherence, and monitoring of drug treatments.

Each of the 50 States, the District of Columbia, and several Territories receive ADAP grants. As part of the funding requirements, ADAP grantees submit quarterly reports that include information on patients served, pharmaceuticals prescribed, pricing, and other sources of support to provide AIDS medication treatment, eligibility requirements, cost data, and coordination with Medicaid. Each quarterly report requests updates from programs on number of patients served, type of pharmaceuticals prescribed, and prices paid to provide medication. The first quarterly report of each ADAP fiscal year (due in July of each year) also requests information that only changes annually (*e.g.*, State funding, drug formulary, eligibility criteria for enrollment, and cost-saving strategies including coordinating with Medicaid).

The quarterly report represents the best method for HRSA to determine how ADAP grants are being expended and to provide answers to requests from Congress and other organizations. This new quarterly report will replace two current monthly progress reports plus information currently submitted annually. The new quarterly report should reduce burden, avoid duplication of information, and provide HRSA information in a form that easily lends itself to responding to inquiries.

The estimated annual burden per ADAP grantee is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
First quarterly report	57	1	57	3.0	171.0
Second, third, & fourth quarterly reports	57	3	171	1.5	256.5
Total	57		228		427.5

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 23, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–9804 Filed 4–29–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: Ryan White CARE Act: Title III Client Level Data Project, CDP (OMB No. 0915–0275)—Extension

The CDP was originally established in 1994 to collect information from grantees and their subcontracted service providers funded under Titles I and II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 (codified under Title XXVI) of the Public Health Service (PHS) Act. This effort will collect client level data from a limited number of Ryan White CARE Act Title III Grantees. HRSA's HIV/AIDS Bureau administers funds for all titles of the CARE Act. The Title III program is authorized by section 2651 of the PHS Act.

The PHS Act specifies that HRSA is responsible for the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records on the grantees receiving CARE Act funding, the services provided, and the clients served are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

Client level information will be collected from 25 CARE Act funded grantees regarding the number of clients served, services provided, demographic information about clients served, and health status of clients served. In addition, client level information will be collected that measures mortality status and additional indicators of health status and whether standards of care are being followed by providers.

The primary purposes of the CDP are to examine client level demographic and service data on HIV/AIDS infected/affected clients being served by the Ryan White CARE Act and demonstrate the usefulness of these data for planning and evaluation purposes. Through this system, HRSA seeks to supplement the information collected in the CARE Act Data Report (CADR). The CADR collects data aggregated at the grantee level and contains duplicated counts of clients who have received services from more than one provider during a given reporting period.

Based on clients served from eligible grantees, the number of clients that a grantee serves ranges from 125 to 2,748, with 422 being the median number of clients. About 30 minutes is required to

respond to the CDP per client and the data are collected 4 times a year.

The burden estimate for this project is as follows:

Grantee (By client population)	Number of respondents	Average number of responses per respondents	Total responses	Hours per response	Total burden hours
Less than 500 clients	15	250	3,750	2	7,500
500+ clients	10	1,232	12,320	2	24,640
Total	25		16,070		32,140

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: April 23, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–9805 Filed 4–29–04; 8:45 am]

BILLING CODE 4165–15–P

Department of Homeland Security

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: generic clearance of customer service surveys.

The Department of Homeland Security, Citizenship and Immigration Services (CIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 13, 2004 at 69 FR 1990, allowing for a 60-day public comment period. No comments were received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 1, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Homeland Security Desk Officer; 202–395–4318.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency. including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Generic Clearance of Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No agency form number (File No. OMB–9), Office of Policy and Strategy, Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information will be used to assess individual and agency needs, identify problems, and plan for programmatic improvements in the delivery of immigration services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4626–36, Washington, DC 20202.

Dated: April 27, 2004.

Richard A. Sloan

Department Clearance Officer, United States Department of Homeland Security Citizenship and Immigration Services

[FR Doc. 04–9835 Filed 4–29–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Meeting Cancellation: Advisory Committee of the Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), FEMA, Emergency Preparedness and Response, Department of Homeland Security.

ACTION: Notice of meeting cancellation.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting cancellation:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: May 6–7, 2004.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Dated: April 21, 2004.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 04–9829 Filed 4–29–04; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–15]

Notice of Proposed Information Collection: Comment Request; Application for FHA Insured Mortgage

AGENCY: Office of the Assistant Secretary for Housing, 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 comment on the subject proposal.

DATES: *Comments Due Date:* June 29, 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 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (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 Noticing 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: Application for FHA Insured Mortgage.

OMB Control Number, if applicable: 2502–0059.

Description of the need for the information and proposed use: The documents requested are used to determine the eligibility of a loan application for FHA's mortgage insurance. Without these documents, HUD would have difficulty in determining the eligibility of a loan application and, thus, put in jeopardy the insurance fund. For the Informed Consumer Choice Notice, OMB control number 2502–0537, which is being incorporated into this PRA package, please see the following:

Section 225(a) of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (HUD FY 1999 Appropriations Act) (Pub. L. No. 105–76; 112 Sat. 2461. approved October 21, 1998) amended section 203(b)(2) to the National Housing Act to add at the end of this section the following language: "In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and for which the borrower would qualify. This notice shall include: (i) a generic analysis comparing note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan insured by the Secretary under this subsection with note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with similar loan-to-value ratio in connection with a conventional mortgage * * * assuming prevailing interest rates; and (ii) a statement regarding when the mortgagor's requirement to pay mortgage insurance premiums for a mortgage insured under this section would terminate or a statement that the requirement will terminate only if the mortgage is refinanced, paid off, or otherwise terminated.".

Agency form numbers, if applicable: HUD–92900–A, HUD 92900–B, HUD–92900–WS, HUD–92900–PUR, HUD–92561, HUD–92544.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Number of respondents is 1,000,000. Some of the 1,000,000 will have to complete additional responses determined by their unique circumstances, so that each respondent will provide from one to four different responses. The frequency of responses is on occasion. Total responses will be 1,034,000. The various responses require from .005 hours to as much as .50 hours each, and respondents who complete all four will average .99 hours. Total burden hours are 244,550.

Type of information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total annual burden hours
HUD forms and Credit Report	1,000,000	1	1,000,000	.0235	235,025
Computations for buydowns	[1] 20,000	1	20,000	.250	5,000
Mortgagor Notice of Intent to Satisfy Occupancy Requirements	[1] 5,000	1	5,000	.005	25
Informed Consumer Choice Notice	[1] 9,000	1	9,000	.50	4,500

Type of information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total annual burden hours
Total burden [1]	1,000,000	From 1 to 4	1,034,000	From .2350 to .9900	244,550

[1] Included in 1,000,000 above.

Status of the proposed information collection: Revision of a currently approved collection 2502–0059 that will expire July 31, 2004, and termination of OMB control no. 2502–0537.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: April 26, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 04–9777 Filed 4–29–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–16]

Notice of Proposed Information Collection: Comment Request; Mortgage Record Change

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 29, 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: Silas C. Vaughn, Single Family Insurance Operations Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1994 (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 of 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: Mortgage Record Change.

OMB Control Number, if applicable: 2502–0422.

Description of the need for the information and proposed use: The Mortgage Record change information is used by FHA-approved mortgagees to comply with HUD requirements for reporting the sale of a mortgage between investors, 24 CFR 203.431, and/or the transfer of the mortgage servicing responsibility, 24 CFR 203.502, as appropriate. The information required is used to update HUD's Single Family Insurance System and other related systems. Current data is necessary to establish mortgage premium liability, forward annual premium mortgage data to the appropriate mortgagee/servicer, and maintain premium receivables and program data regarding investors/servicer activity. Without the required data, the premium collection/monitoring function would be severely impeded and program data would be unreliable. This information is essential because HUD does case level accounting in recording premium payments by mortgagees.

Agency form numbers, if applicable: Not applicable. Form HUD–92080 is now obsolete.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The public reporting burden for this collection of information is estimated to average 0.1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The number of respondents is approximately 9,100, the frequency of response is as required, and the volume per respondent is 20–20,000 annually.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 26, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–9778 Filed 4–29–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–18]

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 30, 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, 1998, 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: April 22, 2004.

Mark R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–9536 Filed 4–29–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Marking, Tagging, and Reporting Program for Polar Bear, Pacific Walrus, and Sea Otter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, will submit to OMB the collection of information described below for approval and renewal under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms, and explanatory material may be obtained by contacting our Information Collection Officer at the address or phone number listed below.

DATES: You must submit comments on or before June 29, 2004.

ADDRESSES: Your comments and suggestions on specific requirements should be sent to our Information Collection Clearance Officer, Anissa Craghead, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., MS 222, Arlington, VA 22203, telephone 703/358–2445, fax 703/358–2269.

FOR FURTHER INFORMATION CONTACT: Colleen Corrigan, Division of Habitat and Resource Conservation, Branch of Resource Management Support, Arlington, Virginia, at 703/358–2161, or Dean Cramer, Office of Marine Mammals Management, Anchorage, Alaska, at 907/786–3806.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). We are submitting a request to OMB to renew its approval of a collection of information concerning marking, tagging, and reporting requirements for the take of polar bear, northern sea otter, and pacific walrus. We are requesting a three-year term of approval for this information collection activity. Federal agencies 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 number for this collection of information is 1018–0066.

In October 1988, pursuant to provisions of section 109(i) of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361–1407), we implemented formal Marking, Tagging, and Reporting Regulations in 50 CFR 18.23(f) for Alaskan Natives harvesting polar bear (*Ursus maritimus*), northern sea otter (*Enhydra lutris kenyoni*), and Pacific walrus (*Odobenus rosmarus divergens*) in Alaska. Under section 101(b) of the MMPA, Alaskan Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest these species for subsistence or handicraft purposes. Section 109(i) of the MMPA authorizes us, acting on behalf of the Secretary of the Interior, to prescribe marking, tagging, and reporting regulations applicable to this Alaskan Native subsistence and handicraft take.

On June 28, 1988, under authority of section 109(i) of the MMPA, we published a final rule in the **Federal Register** (53 FR 24277) that added paragraph (f) to our marine mammal regulations at 50 CFR 18.23. These regulations have enabled us to gather data on the Alaskan Native subsistence and handicraft harvest, and on the biology of polar bear, northern sea otter, and Pacific walrus in Alaska in order to determine what effect such take may be having on these populations. The regulations have also provided us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA.

The information that we propose to continue to collect from Alaskan Natives beyond the currently authorized period that expires on October 31, 2004 (under OMB Clearance Number 1018–0066), will be used to improve our decision-making ability upon which we can base future management decisions. Further, it will provide us with the ability to make inferences about the condition and general health of these populations. Without authority to collect this harvest information, our ability to measure the take of polar bear, sea otter and walrus is inadequate. We believe that mandatory marking, tagging and reporting is essential for us, in concert with Alaskan Natives, to be able to improve the quality and quantity of harvest and biological data necessary to base future management decisions and allows us to make rational, knowledgeable decisions regarding the Alaskan Native harvest.

We estimate that the total annual burden associated with this request will be 639 hours for each year of the 3-year period of OMB authorization. We calculated this estimated burden based on previous experience suggesting that Alaskan Natives annually will take a combined total of approximately 2,556 polar bears, northern sea otter, and Pacific walrus for subsistence and handicraft purposes, and that 15 minutes will be needed to provide the required information for each animal taken.

Title: Marine Mammal Marking, Tagging, and Reporting Certificates, 50 CFR 18.23 (f).

OMB Control Number: 1018–0066.

Bureau form numbers: R7–50, R7–51, and R7–52.

Frequency of collection: Occasional.

Description of respondents: Individuals and households.

Annual number of respondents: Approximately 2,556.

Estimated completion time: 15 minutes per response.

Total annual burden hours: 639 hours.

Approval expires: October 31, 2004.

Your comments are invited on: (1) Whether this collection of information is necessary for us to properly perform our functions, including whether this information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we use; (3) ways to enhance the quality, utility, and clarity of the information we are proposing to collect; and (4) 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.

Dated: April 26, 2004.

Anissa Craghead,

Information Collection Officer, U.S. Fish and Wildlife Service.

[FR Doc. 04–9785 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Incidental Take of Marine Mammals During Specified Activities Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, will submit to OMB the collection of information described for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements and explanatory material may be obtained by contacting our Information Collection Clearance Officer at the address or phone number listed below.

DATES: You must submit comments on or before June 29, 2004.

ADDRESSES: Your comments and suggestions on specific requirements should be sent to our Information Collection Clearance Officer, Anissa Craghead, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., MS 222, Arlington, VA 22203, telephone 703/358–2445, fax 703/358–2269.

FOR FURTHER INFORMATION CONTACT: Diane Bowen, Division of Habitat and Resource Conservation, Branch of Resource Management Support Arlington, Virginia, at 703/358–2161, or Craig Perham, Office of Marine Mammals Management, Anchorage, Alaska, at 907/786–3810.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)). We are submitting a request to OMB to renew its approval of a collection of information concerning applications for the incidental take of marine mammals during specified activities. We are requesting a three-year term of approval for this information collection activity. Federal agencies 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 number for this collection of information is 1018–0070.

Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972 authorizes us, acting on behalf of the Secretary of the Interior, to allow the incidental, unintentional take of small numbers of marine mammals during a specified activity (other than commercial fishing) in a specified geographic region. Prior to allowing these takes, however, we must find that the total of such taking will have a negligible impact on the species or stocks, and will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses by Alaska Natives.

The information that we propose to collect will be used to evaluate applications for specific incidental take regulations from the oil and gas industry to determine whether such regulations, and subsequent Letters of Authorization (LOA), should be issued; the information is needed to establish the scope of specific incidental take regulations. The information is also required to evaluate the impacts of the activities on the species or stocks of the marine mammals and on their availability for subsistence uses by Alaska Natives. It will ensure that all available means for minimizing the incidental take associated with a specific activity are considered by applicants.

We estimate that the total annual burden associated with the request will be 2,027 hours (6,080 divided by 3). This represents an average annual estimated burden taken over a 3 year-period, which includes the initial 200 hours required to complete the request for specific procedural regulations (68 FR 66744). For each LOA expected to be requested and issued subsequent to issuance of specific procedural regulations, we estimate that 28 hours per project will be invested: 8 hours will be required to complete each request for a LOA, 12 hours will be required for on-site monitoring activities, and 8 hours will be required to complete each final monitoring report. We estimate that ten companies will be requesting LOAs and submitting monitoring reports annually for each of seven sites in the region covered by the specific regulations.

Title: Marine Mammals: Incidental Take of Marine Mammals During Specified Activities Applications, 50 CFR 18, Subpart J.

OMB Number: 1018–0070.

Bureau form number: None.

Frequency of collection: Semi-annually.

Description of respondents: Oil and gas industry companies.

Total Annual Responses: 140 (2 per project × 70 projects).

Total Annual Burden Hours: 2,027.

Your comments are invited on: (1) Whether this collection of information is necessary for us to properly perform our functions, including whether this information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we use; (3) ways to enhance the quality, utility, and clarity of the information we are proposing to collect; and (4) 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.

Dated: April 26, 2004.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 04–9786 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Petit Manan National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) is available for the Petit Manan National Wildlife Refuge (NWR) Complex. This CCP is prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. dd *et seq.*), and the National Environmental Policy Act of 1969, and describes how the Service intends to manage this five-refuge complex over the next 15 years.

DATES: Comments must be received within 60 days of this publication. Public hearings will be scheduled in the following communities: Milbridge, Augusta, Rockland, and Falmouth, Maine.

Send Comments to: Nancy McGarigal, Planning Team Leader, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or e-mail comments to *northeastplanning@fws.gov* with a subject line stating "Petit Manan NWR Complex."

ADDRESSES: Copies of the Draft CCP/EIS are available on compact diskette or hard copy, and may be obtained by writing: Nancy McGarigal, Planning Team Leader, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Copies of the Draft CCP/EIS may also be accessed and downloaded at the following Web site address: *http://northeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Nancy McGarigal, Planning Team Leader, at 413–253–8562, or e-mail *Nancy_McGarigal@fws.gov.*

SUPPLEMENTARY INFORMATION: A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd et seq). The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (System), consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These CCPs will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. dd *et seq.*), and the National Environmental Policy Act of 1969.

The Petit Manan NWR Complex lies along the Maine coast and is comprised of five NWRs: Cross Island, Seal Island, Franklin Island, Pond Island, and Petit Manan. Each have separate establishment histories and refuge purposes; however, they all have in common the purpose to protect and manage migratory birds. Seal Island (65 acres; established 1972), Franklin Island (12 acres; established 1973), and Pond Island (10 acres; established 1973) are single-island NWRs. Cross Island NWR (1,703 acres; established 1980) is a six-island complex, and Petit Manan NWR (5,771 acres; established 1974) includes 3 mainland divisions (Petit Manan, Gouldsboro Bay, and Sawyers Marsh) and 33 islands which span the Maine coast from the New Hampshire border to Machias Bay in downeast Maine.

In the Draft CCP/EIS we evaluate 4 management alternatives which address 14 major issues identified during the planning process. These issues were generated from several sources: The public; State or Federal agencies; our conservation partners; our planning team; or, other Service programs. The issues are described in detail in the document. Highlights of the alternatives are as follows:

Alternative A (Current Management): This alternative is the "No Action" alternative required by the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347 as amended, and by its implementing regulations 40 CFR 1500–1508. Alternative A defines our current management activities including those planned, funded, and/or under way, and serves as the baseline against which to compare the other three action alternatives. Funding and staffing levels would not increase appreciably over those in fiscal years 2002–2003. Our biological program priority would continue to be the six intensively-managed seabird habitat restoration projects on refuge islands. We manage vegetation, seabird predators, and public use and access, and collect detailed biological information at these project sites. In addition, we would continue to maintain the 70 acres of open field and the three freshwater impoundments on the Petit Manan Point mainland division, and continue baseline vegetation and wildlife inventories as staffing and funding allows.

There would be no change to our priority public use programs: hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These uses were established as a priority on refuges by the National Wildlife Refuge System Improvement Act of 1997. Our annual hunt program would continue, which includes waterfowl hunting on 22 islands, deer hunting on Bois Bubert Island, and small game, big game, and waterfowl hunting on the Sawyers Marsh and Gouldsboro Bay mainland divisions. The two interpretive trails on the Petit Manan Point Division would be maintained; otherwise, no new public use infrastructure would be developed.

We would continue to pursue Service acquisition from willing sellers of 467 acres within our currently approved boundary. We would also continue to facilitate the pending, no-cost land transfer of Corea Heath (400 acres) from the U.S. Navy. It would become a fourth mainland division on the Petit Manan NWR. In addition, we would seek an expansion of Petit Manan NWR to include 30 nationally significant seabird nesting islands (667.2 acres) and 153 acres of important coastal mainland habitat which are not permanently protected.

Alternative B (The Service's Preferred Alternative): This alternative represents those actions which we believe most effectively achieve the purposes and goals of Petit Manan NWR Complex, and address the major issues. Funding and staffing levels would increase to support the program expansions we propose. The protection and restoration of seabird habitat would continue to be the highest biological program priority and we would expand this program to initiate six new project areas over the 15-year planning time-frame. We would focus our habitat management, inventory, and monitoring activities to benefit seabirds, migratory landbirds, waterfowl, and shorebirds identified as a conservation priority in national and regional plans.

Our priority public use programs would notably expand, especially in the areas of environmental education and interpretation. New infrastructure would be developed, including interpretive kiosks, and new trails, observation platforms, and parking areas on the Gouldsboro Bay, Sawyers Marsh, and Corea Heath divisions. We would place interpreters on commercial wildlife viewing tour boats. Our seasonal island closures to protect nesting seabirds would be modified on certain islands to allow public access in August; a month earlier than is currently allowed. We would also continue to pursue our proposal for a new Headquarters and Coastal Education Center; a proposal we would further develop in a separate environmental analysis once prospective sites are identified. Our hunt program would be expanded to include white-tailed deer hunting on the Petit Manan Point Division.

We would enhance local community outreach and our partnerships with other Service programs, Maine Department of Inland Fisheries and Wildlife (MDIFW), numerous conservation organizations, and the

Friends of Maine Seabird Islands. All of these relationships would be integral to successfully accomplishing our goals and objectives.

We would pursue Service acquisition similar to Alternative A, except we would increase our proposed Petit Manan NWR expansion to include 87 nationally significant seabird and bald eagle nesting islands (2,314 acres) not permanently protected. According to our Gulf of Maine Program staff and MDIFW, these 87 islands are the highest priority seabird and bald eagle nesting islands in Maine in need of permanent protection. This proposal would make significant gains in the regional recovery of several species of seabirds and bald eagles. On our mainland divisions, we would await the recommendations of the inter-agency Maine Wetlands Protection Coalition Team before determining if an expansion proposal is warranted.

We would pursue wilderness designation of eight wilderness study areas (WSAs), comprised of 13 islands. Appendix D of the Draft CCP/EIS describes in detail the wilderness review process we conducted on all current refuge lands. Until a final decision on wilderness designation, or we choose to modify the recommendation, we would manage the WSAs to maintain their wilderness character to the extent it would not preclude fulfilling the respective refuge establishment purposes and the Refuge System mission. Existing, compatible priority public uses, including hunting and fishing, would not be affected by management to preserve wilderness character and values. If formally designated as wilderness, the purposes of the Wilderness Act would become additional purposes of the affected NWRs. We would manage to achieve the establishing purposes of these NWRs, the mission of the National Wildlife Refuge System and the purposes in the Wilderness Act.

Alternative C: This alternative builds on Alternative B with substantial expansions of our biological, public use, and land protection programs. Funding and staffing levels would increase commensurately. We would initiate 12 new seabird habitat restoration sites over the 15-year planning time-frame, substantially increasing our responsibilities for and leadership in seabird recovery in Maine. Our biological inventory and monitoring programs would notably increase in complexity and duration, but would remain focused on seabirds, migratory landbirds, waterfowl, and shorebirds identified as a conservation priority in national and regional plans.

Under this alternative, we would implement the expanded priority public use programs identified in Alternative B, and would further supplement the educational and interpretive programs. On some seabird habitat restoration sites, we would install a live-feed video camera, to be broadcast on our website for use with a curriculum we would develop. We would also pursue a partnership with State and Federal highway administrations to construct interpretive panels at rest stops and visitor facilities along major travel ways. With regards to non-priority public uses, we would open Petit Manan, Gouldsboro Bay, and Sawyers Marsh divisions and Cross and Bois Bubert islands to furbearer trapping according to State and refuge regulations. On the mainland divisions, trapping would not begin before December to protect the thousands of fall migrating waterfowl congregating on refuge wetlands.

Alternative C proposes the largest refuge expansion. We would pursue Service acquisition from willing sellers of all, or parts of, 151 nationally significant seabird and bald eagle nesting islands (approximately 6,310 acres) not permanently protected. This proposal includes all unprotected coastal Maine islands determined nationally significant and would substantially advance the regional recovery of seabirds and bald eagles. In addition to the mainland parcels identified in Alternative B, we would pursue Service acquisition of mainland tracts from willing sellers on a case-by-case basis within Atlantic Coast Joint Venture Focus Areas. Our priority would be to acquire those tracts with high quality migratory waterfowl habitat in proximity to existing refuge lands.

Similar to Alternative B, we would pursue formal wilderness designation of the eight WSAs.

Alternative D: This alternative is best described as a custodial, or low-intervention, approach to administering the complex and managing its resources. We would minimize human intrusion or intervention into ongoing ecological processes, except where necessary to protect threatened and endangered species, avoid catastrophic loss to seabird populations on refuge lands, control invasive and exotic species, or enforce regulations. Funding and staffing levels would remain at current levels, with the exception of added law enforcement capabilities.

We would reduce our effort at individual seabird restoration sites, limiting our activities to non-lethal gull control, and hand-treatment of vegetation. We would no longer use sheep, prescribed burning, or mowing to manage vegetation. Our monitoring of seabird nesting success would be curtailed to an annual census of nesting pairs.

We would maintain the priority public use infrastructure currently in place on the Petit Manan Point Division, but would keep the other mainland divisions undeveloped to minimize public use. Instead, our priority public use efforts would be focused on off-site environmental education and interpretation, such as at the proposed Coastal Education Center and in schools. Hunting would not be allowed on refuge lands. Further, all islands would be closed to public use and access year round, except when a tour is organized by our staff or led by a partner operating under a special use permit.

Under Alternative D, we would continue to pursue Service acquisition from willing sellers of the 467 acres within our currently approved boundary. No expansion would occur; however, we would continue to work with our land conservation partners to support their efforts in protecting important coastal habitats in Maine. We would not pursue formal wilderness designation under this alternative.

Dated: February 26, 2004.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 04–9783 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation facilities located on various Indian reservations throughout the United States. The BIA establishes irrigation assessment rates to recover its costs to administer, operate, maintain, and rehabilitate certain of those facilities. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation facilities where we are required to recover our full costs of operation and maintenance.

EFFECTIVE DATE: The irrigation assessment rates shown in the tables were effective on January 1, 2004.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation

facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or agency office where the facility is located.

SUPPLEMENTARY INFORMATION: A notice of proposed rate adjustment was published in the **Federal Register** on September 30, 2003 (68 FR 56302), to adjust the irrigation rates at several BIA irrigation facilities. The public and interested parties were provided an opportunity to submit written comments during the 60-day period subsequent to September 30, 2003.

Did the BIA Receive Any Comments on the Proposed Irrigation Assessment Rate Adjustments?

Written comments were received for the proposed rate adjustments for the Wind River Irrigation Project, Montana, and the San Carlos Irrigation Project, Arizona.

What Issues Were of Concern by the Commentators?

The commenters were concerned with one or more of the following three issues: (1) Consultation with stakeholders; (2) how funds collected from stakeholders are expended on operation and maintenance; and (3) the impact of an assessment rate increase on the local agricultural economy.

How Does BIA Respond to the Concern of Consultation With Stakeholders?

Consultations between stakeholders and any of the BIA irrigation facilities are ongoing through local meetings held periodically at different locations convenient to the stakeholders of the individual irrigation facilities. At these consultation meetings, any issue of concern by a stakeholder can be brought up and discussed such as water operations, facility maintenance, and financial management. Stakeholders also can contact BIA representatives at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section to discuss issues of concern.

How Does BIA Respond to the Concern of How Funds Are Expended for Operation and Maintenance?

The BIA's records for expenditures on all of its irrigation facilities are public records and available for review by stakeholders or interested parties. These records can be reviewed during normal business hours at the individual agency offices. To review these records, stakeholders and interested parties are directed to contact the BIA representative at the specific facility serving them using the tables in the **SUPPLEMENTARY INFORMATION** section.

How does BIA Respond to the Concern of an Irrigation Assessment Rate Increase and Its Impact on the Local Agricultural Economy?

All of the BIA's irrigation projects are important economic contributors to the local communities they serve contributing millions in crop value annually. Historically, BIA tempered irrigation rate increases to demonstrate sensitivity to the economic impact on water users. This has resulted in a rate deficiency at most of the irrigation projects.

Over the past several years the BIA's irrigation program has been the subject of several Office of Inspector General (OIG) audits. In the most recent audit, No. 96–I–641, March 1996, the OIG concluded, "Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of operation." This audit recommendation is still outstanding.

A previous OIG audit, No. 88–42, February 1988, reached the same conclusion. A separate audit performed on one of BIA's largest irrigation projects, No. 95–I–1402, September 1995, reinforced the general findings of the OIG on the BIA's irrigation program. This pointed out a lack of response by the BIA to the original findings of the OIG in addressing this critical issue over an extended period of time. The BIA must systematically review and evaluate irrigation assessment rates and adjust them when necessary to reflect the full costs to properly operate, and perform all appropriate maintenance on, the irrigation facility infrastructure for safe and reliable operation. If this review and evaluation is not accomplished, a rate deficiency can eventually accumulate. Overcoming rate deficiencies can result in the BIA having to raise irrigation assessment rates in larger increments and over shorter time frames than would have been otherwise necessary.

Did the BIA Receive Comments on Any Proposed Changes Other Than Rate Adjustments?

We received comments on the proposed change in billing procedures for the Colorado River Irrigation Project starting with the 2004 irrigation season. Due to the possible significant impact of the proposed change on stakeholders, the BIA has deferred implementation pending further review.

Where Can I Get Information on the Regulatory and Legal Citations in this Notice?

You can contact the individuals listed in the contact tables below or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

What Authorizes Us to Issue This Notice?

Our authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Does This Notice Affect Me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation facilities, or you have a carriage agreement with one of our irrigation facilities.

Who Can I Contact for Further Information?

The following tables list the regional and agency contacts for the irrigation facilities where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation.

Name	Contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone (503) 231–6702.	
Flathead Irrigation Project	Ernest T. Moran, Superintendent, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, Montana 59855–5555, Telephone: (406) 675–2700.

Name	Contacts
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Fort Hall Agency, P.O. Box 220, Fort Hall, Idaho 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Keith Beartusk, Regional Director, Bureau of Indian Affairs, Rock Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Ross Denny, Superintendent, Cliff Hall, Irrigation Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent; (406) 338–7519, Irrigation.
Crow Irrigation Project	Gordon Jackson, Superintendent, Dan Lowe, Irrigation Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent; (406) 638–2863, Irrigation.
Fort Belknap Irrigation Project	Cleo Hamilton, Superintendent, Dan Spencer, Irrigation Manager, R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent; (406) 353–2905, Irrigation.
Fort Peck Irrigation Project	Spike Bighorn, Superintendent, P.O. Box 637, Poplar, MT 59255, Rhonda Knutsen, Irrigation Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent; (406) 653–1752, Irrigation.
Wind River Irrigation Project	Steven Pollock, (Acting) Superintendent, Hilare Peck, Irrigation Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent; (307) 332–2596, Irrigation.
Southwest Region Contacts	
Larry Morrin, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 615 First Street, NW., Albuquerque, New Mexico 87102, Telephone (505) 346–7587.	
Pine River Irrigation Project	Michael Stancampiano, Superintendent, Kenneth Caveney, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent; (970) 563–1017, Irrigation.
Western Region Contacts	
Wayne Nordwall, Regional Director, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, Arizona 85001, Telephone (602) 379–6600.	
Colorado River Irrigation Project	Allen Anspach, Superintendent, R.R. 1 Box 9–C, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Paul Young, Superintendent, 1555 Shoshone Circle, Elko, Nevada 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	William Pyott, Land Operations Officer, P.O. Box 11000, Yuma, Arizona, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works.	Carl Christensen, Irrigation Manager, 13805 N. Arizona Boulevard, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works.	Joe Revak, Pima Agency, Land Operations, Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3372.
Uintah Irrigation Project	Lynn Hansen, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4341.
Walker River Irrigation Project	Robert Hunter, Superintendent, 1677 Hot Springs Road, Carson City, Nevada 89706, Telephone: (775) 887–3500.

What Will BIA Charge for the 2004 and Later Irrigation Seasons?

The rate tables below show the rates we will bill at each of our irrigation facilities for the 2004 and later irrigation seasons. An asterisk immediately following the name of the facilities notes the irrigation facilities where rates were adjusted.

Name	Rate category	2004 season rate
Northwest Region Rate Table		
Flathead Irrigation Project*	Basic per acre	$21.45
Fort Hall Irrigation Project	Basic per acre	22.00
Fort Hall Irrigation Project—Minor Units	Basic per acre	14.00
Fort Hall Irrigation Project—Michaud	Basic per acre	30.00
	Pressure per acre	43.50
Wapato Irrigation Project—Ahtanum Unit	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	13.00
	Farm unit/land tracts over one acre—per acre	13.00
Wapato Irrigation Project—Toppenish/Simcoe Units	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	13.00
	Farm unit/land tract over one acre—per acre	13.00
Wapato Irrigation Project—Wapato/Satus Unit	Billing Charge Per Tract	5.00
	Farm unit/land tracts up to one acre (minimum charge)	51.00
	"A" farm unit/land tracts over one acre—per acre	51.00
	Additional Works farm unit/land tracts over one acre—per acre	56.00
	"B" farm unit/land tracts over one acre—per acre	61.00.

Name	Rate category	2004 season rate
	Water Rental Agreement Lands—per acre	62.00
Rocky Mountain Region Rate Table		
Blackfeet Irrigation Project	Basic per acre	13.00
Crow Irrigation Project	Basic per acre	16.00
Fort Belknap Irrigation Project*	Indian per acre	7.75
	Non-Indian per acre	15.50
Fort Peck Irrigation Project	Basic per acre	14.00
Wind River Irrigation Project*	Basic per acre	14.00
Southwest Region Rate Table		
Pine River Irrigation Project	Minimum Charge per tract	25.00
	Basic per acre	8.50

Project name	Rate category	2004 season rate	2005 season rate
Western Region Rate Table			
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet	$47.00	
	Excess Water per acre foot over 5.75 acre-feet.	17.00	
Duck Valley Irrigation Project	Basic per acre	5.30	
Fort Yuma Irrigation Project	Basic per acre 0up to 5.0 acre-feet	60.00	
(See Note below)			
	Excess Water per acre-foot over 5.0 acre-feet.	10.50	
San Carlos Irrigation Project*	Basic per acre	20.00	$30.00
(Joint Works)			
San Carlos Irrigation Project	Basic per acre	56.00	
(Indian Works)			
Uintah Irrigation Project*	Basic per acre	11.00	
Walker River Irrigation Project	Indian per acre	7.32	
	Non-Indian per acre	15.29	

Note: The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation (Reclamation). The irrigation rates assessed for operation and maintenance are established by Reclamation and are provided for informational purposes only. The BIA only collects the irrigation assessments on behalf of Reclamation.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

The BIA irrigation facilities are vital components of the local agriculture economy of the reservations on which they are located. To fulfill its responsibilities to the tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation facilities by agency and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of the BIA's overall coordination and consultation process to provide notice and request comments from these entities on adjusting irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA owned and operated irrigation facilities, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Act of 1995

These rate adjustments impose no unfunded mandates on any governmental or private entity and are in compliance with the provisions of the Unfunded Mandates Act of 1995.

Takings Implications (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant "takings" implications. The rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant federalism effects because they pertain solely to Federal-tribal

relations and will not interfere with the roles, rights, and responsibilities of States.

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.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires April 30, 2006.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Dated: April 20, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–9832 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Class III Gaming Compact.

SUMMARY: This notice publishes the extension to an approved Class III Gaming Compact between the Crow Tribe and the State of Montana. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the **Federal Register** approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

EFFECTIVE DATE: April 30, 2004.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The Crow Tribe and the State of Montana have agreed to an extension of the existing agreement and will extend the compact until June 1, 2004. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Fourth Amendment to and Extension of the Agreement for Class III gaming between the Crow Tribe and the State of Montana is in effect.

Dated: March 18, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–9886 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Class III Gaming Compact.

SUMMARY: This notice publishes the extension to an approved Class III Gaming Compact between the State of Nevada and the Pyramid Lake Paiute Tribe. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the **Federal Register** approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

EFFECTIVE DATE: April 30, 2004.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. On January 6, 1988, the Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, approved the Compact between the Pyramid Lake Paiute Tribe and the State of Nevada, which was executed on August 4, 1997. Article X of that compact allows for automatic extensions of up to 20 years upon the mutual written consent of the parties.

On August 15, 2003, the Pyramid Lake Paiute Tribe and the State of Nevada agreed to a 1-year extension of the existing compact. This 1-year period will extend the compact until January 1, 2005. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Extension to the Tribal-State Compact for Class III gaming between the State of Nevada and the Pyramid Lake Paiute Tribe is in effect.

Dated: April 14, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–9887 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Park Service

[ID 079 1610 DP 051D]

Notice of Availability of the Draft Management Plan and Draft Environmental Impact Statement (EIS) for the Craters of the Moon National Monument and Preserve

AGENCIES: Bureau of Land Management and National Park Service.

ACTION: Issuance of a Notice of Availability of a Draft EIS for a Draft Resource Management Plan/General Management Plan (hereinafter, Draft Plan/EIS), for the Craters of the Moon National Monument and Preserve. The Monument is located in Blaine, Butte, Lincoln, Minidoka, and Power Counties, in Idaho.

SUMMARY: The Bureau of Land Management and the National Park Service have jointly prepared a Draft Plan/EIS for the Craters of the Moon National Monument and Preserve. The Draft Plan/EIS describes and analyzes four alternative management strategies, each presenting a different approach to resolving issues identified through public scoping. The Draft Plan/EIS is now available for public review and comment.

DATES: Written comments on the Draft Plan/EIS will be accepted for 90 days

following the date the Environmental Protection Agency publishes a notice of availability in the **Federal Register**. (As soon as possible after the Environmental Protection Agency's notice is published, the confirmed end date of the comment period will be posted on the two web sites listed below.) Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, and/or mailings. In addition, information regarding public meetings on the Draft Plan/EIS will be posted on the Internet at *http://www.id.blm.gov/planning/craters/index.htm* or *http://www.nps.gov/crmo* and sent to people who commented during scoping or asked to be on the mailing list. To receive full consideration, comments must be postmarked no later than the last day of the comment period.

ADDRESSES: The Draft Plan/EIS is posted on the web sites identified above and has been mailed to those who have indicated that they wanted to receive it in hard copy or on a compact disk. Additional copies in both paper and digital format are available in limited numbers. To receive a copy, write or call one of the individuals identified in the next paragraph. You may submit comments on the Draft Plan/EIS by any of the following methods:

- Mail: Craters of the Moon Planning Team, BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352–1522
- E-mail: ID_Craters_Plan@blm.gov.
- Web site: *http://www.id.blm.gov/planning/craters/index.htm* or *http://www.nps.gov/crmo.*
- Fax: (208) 732–7317

Comments, including names and street addresses of respondents, will be available for public review at the BLM Shoshone Field Office, in Shoshone, Idaho, during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the final EIS. 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.

FOR FURTHER INFORMATION CONTACT: Richard VanderVoet, Monument Manager, Bureau of Land Management, Shoshone Field Office, 400 West F Street, Shoshone, ID 83352–1522, phone (208) 732–7200 or Jim Morris, Superintendent, National Park Service, P.O. Box 29, Arco, ID 83213, phone (208) 527–3257.

SUPPLEMENTARY INFORMATION: Established in 1924, the Craters of the Moon National Monument was expanded by Presidential Proclamation 7373 on November 9, 2000, for the purpose of protecting the entire Great Rift volcanic zone and associated lava features, all objects of scientific interest. On August 21, 2002, Public Law 107–213 re-designated the National Park Service portion of the expanded Monument as a National Preserve. The Bureau of Land Management and National Park Service are managing the National Monument and Preserve cooperatively and are preparing one management plan to be implemented by both agencies.

Issues identified through public scoping to be addressed in the planning process are as follows:

(1) *Development:* What kinds of Monument facilities and services will be provided apart from the existing facilities?

(2) *Transportation and Access:* What type of road and trail system will be needed for travel to, and access within, the Monument?

(3) *Public/Visitor Use and Safety:* What will be the extent and location of public uses within the Monument?

(4) *Authorized Uses:* How will the different uses in the Monument be managed?

(5) *Natural and Cultural Resources:* How will natural and cultural resources be protected?

Four alternative strategies are described and analyzed, as follows: *Alternative A (No-Action Alternative):* Proposes no major changes in resource management, visitor programs, or facilities. It depicts current management under the Agencies' five existing management plans, as modified by Proclamation 7373, Public Law 107–213, and the Agencies' Interim Management Guidelines. Alternative A also serves as a baseline for comparison with the other three alternatives. *Alternative B:* Emphasizes a broad array of visitor experiences within the Monument. Alternative B provides the largest amount of multiple-use trail opportunities, improved access both inside and outside the Monument, and extensive educational/informational/directional signs and interpretive support facilities throughout the Monument. This alternative allocates areas to allow for potential new developments like designated rustic campsites, high standard motorized and non-motorized trail networks and a relatively high standard road system that provides easier access to many areas of the Monument. Alternative B also includes suggested management direction for access roads outside of the Monument. *Alternative C:* Emphasizes the Monument's primitive character. This alternative contains the least development of new visitor facilities. Management actions that influence resource conditions are as "light handed" and non-intrusive as possible including weed control and sagebrush steppe restoration. Alternative C has the fewest miles of maintained roads. Under this alternative, any new interpretive facilities would be located primarily outside the Monument. This alternative includes an 11,000 acre Area of Critical Environmental Concern (ACEC) designation in northern Laidlaw Park to provide special protective management for native plants. Management constraints associated with this ACEC would include prohibition of any new transportation routes and of any new livestock watering facilities within the designated ACEC. *Alternative D* (The agencies' Preferred Alternative. It is also identified as the Environmentally Preferred Alternative): Emphasizes restoration of physical and biological resources and processes. Alternative D contains the largest weed treatment and prevention program using all available tools. It prescribes the most aggressive fire management and sagebrush steppe restoration program. Alternative D places a greater emphasis than the other alternatives on promoting partnerships for visitor education and interpretation at existing facilities such as visitor centers, state parks, and gateway communities. This alternative also emphasizes the use of outfitters to meet recreation experience demands inside the expanded portion of the Monument.

Decision Process: Depending upon the degree of public interest and response from individuals, other agencies, and organizations, the Proposed Management Plan and final EIS for the Craters of the Moon National Monument and Preserve is expected to be published early in 2005. Availability of the document will be published in the **Federal Register** and through local news media. Subsequently, notice of an approved Record of Decision will be published in the **Federal Register** following the resolution of any protests regarding the Proposed Management Plan and final EIS. The officials responsible for the joint decision are the

Regional Director of the Pacific West Region of the National Park Service and the State Director of the Bureau of Land Management for Idaho.

(**Authority:** 40 CFR 1506.6.)

Dated: December 2, 2003.

K Lynn Bennett,

Bureau of Land Management, Idaho State Director.

Dated: December 4, 2003.

Jonathan B. Jarvis,

National Park Service, Regional Director, Pacific West Region.

[FR Doc. 04–9364 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Bureau of Land Management

[NM–930–03–1610–DS–005G]

Notice of Availability of Proposed Plan and Final Environmental Impact Statement

AGENCY: National Park Service (NPS), Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of a proposed plan and Final Environmental Impact Statement (FEIS) for El Camino Real de Tierra Adentro National Historic Trail, and proposed amendments to the Taos, Mimbres, and White Sands Resource Management Plans (RMPs), New Mexico.

SUMMARY: The NPS and the BLM announce the availability of the proposed El Camino Real de Tierra Adentro National Historic Trail Comprehensive Management Plan (CMP) and FEIS. The proposed plan would provide for active resource protection, preservation, and visitor use, reflecting the public's vision for managing the trail between El Paso, Texas, and San Juan Pueblo, New Mexico. Trail management would be conducted cooperatively with both public and private partners. The proposed plan also would amend the BLM's Taos, White Sands, and Mimbres RMPs related to protection of scenic values.

Added to the National Trails System in October 2000, El Camino Real de Tierra Adentro (Royal Road of the Interior) National Historic Trail (NHT) recognizes the primary route between the colonial Spanish capital of Mexico City and the Spanish provincial capitals at San Juan de Los Caballeros (1598–1600), San Gabriel (1600–1609), and then Santa Fe (1610–1821). The NHT, as designated, extends 404 miles from El Paso, Texas, to San Juan Pueblo, New Mexico. This CMP/FEIS focuses on the NHT's purpose and significance, issues and concerns related to current conditions along the NHT, resource protection, visitor experience and use, and long-term administrative and management objectives. Elements of the plan have been developed in cooperation with Federal, State, and local agencies, as well as nonprofit and nongovernmental organizations "the entities that will form the core of partnerships with the NHT. Community meetings were held in Alcalde, Española, Santa Fe, Albuquerque, Socorro, Truth or Consequences, Sunland Park, and Las Cruces, New Mexico, as well as in El Paso, Texas; meetings also were held with several North American Indian Pueblos. The preferred alternative from the Draft CMP/DEIS is carried forward in the proposed CMP/FEIS as the proposed comprehensive management plan. The preferred alternative (proposed plan) would implement the provisions of the National Trails Systems Act, reflect the public's vision for the administration and management of the trail, and implement an ambitious program of resource preservation and visitor use. Trail administration and partners would work cooperatively to provide coordinated programming and activities that integrate themes, resources, and landscapes at certified sites on private land or protected sites on public land. Resources that best illustrate the trail's significance would be identified and protected on both public and private land (high-potential sites and segments). Certification priorities would be placed upon sites and segments supporting interpretive and educational programming and protecting significant resources. An auto tour route would be established. A bi-national approach with Mexico would promote activities such as interpretation, events, and signage. The BLM's Taos, White Sands, and Mimbres RMPs would be amended to protect important scenic values.

DATES: Protests on the New Mexico BLM State Director's proposed decisions must be received within 30 days from the date that the Environmental Protection Agency publishes a notice of availability and filing of the proposed plan/FEIS in the **Federal Register**. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for instructions on filing protests.

FOR FURTHER INFORMATION CONTACT: Team Leader Harry Myers, El Camino Real de Tierra Adentro National Historic Trail, National Park Service, Long Distance Trails Office, P.O. Box 728, Santa Fe, New Mexico 87504–0728; or Team Leader Sarah Schlanger, El Camino Real de Tierra Adentro National Historic Trail, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

SUPPLEMENTARY INFORMATION: The Draft CMP/EIS was made available for public review and comment from October 18, 2002, to January 15, 2003. Six public meetings were held to solicit comments; comments were also provided by mail, e-mail, and through the project Web site *www.elcaminoreal.org*. A total of 54 individuals representing private concerns, State, or Federal agencies outside BLM and NPS submitted 47 comments documents. Of these, 18 were exact text duplicates printed on separate letterhead. Comment documents generated some 66 separate comments that were assessed and utilized in strengthening the CMP/FEIS. The preferred alternative presented in the draft CMP/EIS has been brought forward, with minor modifications, as the proposed CMP.

Copies of this document have been mailed to individuals who submitted original letters or e-mails, or who provided comments at the public meetings, as well as appropriate state and Federal agencies and local and tribal governments. In addition, copies have been sent to those persons who received copies of the draft and requested to be on the mailing list for the CMP/FEIS. The CMP/FEIS is available for review at the Camino Real Administration Office, 1100 Old Santa Fe Trail, Santa Fe, New Mexico 87505. The document is also available on the Internet at *www.elcaminoreal.org*.

The BLM planning regulations (43 CFR 1610.5–2) state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes the notice of receipt of the Proposed Plan/FEIS. All protests must be in writing and mailed to the following address:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

The protest must contain:

a. The name, mailing address, telephone number, and interest of the person filing the protest.

b. A statement of the part or parts of the plan and the issue or issues being protested.

c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

d. A concise statement explaining why the protestor believes the New Mexico BLM State Director's decision is wrong.

E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*.

Plan approval will be documented in a Record of Decision that will be made available to the public and mailed to all interested parties. The Camino Real Administration plans to use the CMP as the framework for pursuing collaborative management of trail resources. Comprehensive management plan implementation usually involves on-the-ground management actions and permitted uses that require further analysis and decision making including public involvement and allows for appeals of decisions under applicable regulations.

Carsten F. Goff,

Acting State Director, BLM—New Mexico/Oklahoma/Texas.

Michael D. Snyder,

Deputy Regional Director, NPS, Intermountain Region.

[FR Doc. 04–9745 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Final Environmental Impact Statement for the Lackawanna Valley National Heritage Area Management Pout

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of the final environmental impact statement for the Lackawanna Valley National Heritage Area Management Plan.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement (FEIS) for Lackawanna Valley National Heritage Area Management Plan. The Lackawanna Valley National Heritage Area Act of 2000 requires the Lackawanna Heritage Valley Authority, with guidance from the NPS, to prepare a Plan for the Lackawanna Heritage Valley. The Management Plan is expected to: (A) Take into consideration State, county, and local plans; (B) involve residents, public agencies, and private organizations working in the Heritage Area, (C) include actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area and specify the existing and potential sources of funding available to protect, manage, and develop the Heritage Area.; (D) develop an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the purposes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its historical, cultural, natural, recreational, or scenic significance; (E) recommend policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, natural, and recreational resources of the Heritage Area is a manner that is consistent with the support of appropriate and compatible economic viability, (F) establish a program for implementation of the management plan by the management entity that includes plans for restoration and construction and specific commitments of the partners for the first 5 years of operation; (G) perform an analysis of ways in which local, State, and Federal programs way best be coordinated to protect the heritage resources, and (H) develop an interpretation plan for the Heritage Area.

The study area, designated as the Lackawanna Valley National Heritage Area, includes parts of the counties of: Lackawanna, Luzerne, Wayne, and Susquehanna County, in northeastern Pennsylvania as associated with the Lackawanna River corridor.

The NPS maintains one park site within the region: Steamtown National Historic Site in Scranton. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The Lackawanna Heritage Valley Authority manages the national heritage area. The NPS has been authorized by Congress to provide technical and financial assistance for a limited period. The Act prohibits the Secretary of the Interior from providing any grant or other assistance pursuant to the Act after September 30, 2012.

DATES: The FEIS will remain on Public Review for thirty days from the publication of the notice in the **Federal Register** by the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, National Park Service, Northeast Regional Office, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA 19106,*peter_samuel&nps.gov*, 215–597–1848.

If you correspond using the Internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 16, 2003.

Marie Rust,

NPS Regional Director, Northeast Region

Editorial Note: This document was received at the Office of the **Federal Register** April 26, 2004.

[FR Doc. 04–9795 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement Fire Management Plan; Yosemite National Park; Madera, Mariposa and Tuolumne Counties, CA; Notice of Availbility

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement identifying and evaluating four alternatives for a Fire Management Plan for Yosemite National Park. Potential impacts, and appropriate mitigations, are assessed for each alternative. When approved, the plan will guide all future fire management actions in Yosemite National Park. The Yosemite Fire Management Plan and Final Environmental Impact Statement (YFMP/FEIS) documents the analyses of three action alternatives, and a "no action" alternative.

An updated fire management program is needed to meet public safety, natural and cultural resource management, and wildland/urban interface protection objectives, in Yosemite National Park and the El Portal Administrative Site. The action alternatives vary in their schedule for completing ecosystem restoration and wildland/urban interface community protection work, and in their mix of treatments available for completing work. The "no action" alternative describes the existing fire management program, which has been locally effective but unable to restore large areas of the park and administrative site to natural conditions or to keep more areas from progressing to the point of needing restoration. As a result, incidence of catastrophic fire has increased in recent decades.

Proposed Fire Management Plan: Under Alternative D, the Multiple Action Alternative, aggressive treatment strategies would be used in and near wildland/urban interface communities (homes, businesses, and administrative buildings) if needed, while achieving ecosystem restoration goals in other areas by using prescribed fire and wildland fire. The Multiple Action Alternative would decrease fuels in wildland/urban interface areas over a period of 6–8 years and restore fire to park ecosystems in 15–20 years; and would reduce fuels an average of 1,095 acres per year in the wildland/urban interface (6,425 acres total) and would restore the natural fire regime by treating between 1,817 and 9,194 acres per year (31,503 to 160,894 acres total). The diameter limit for thinning of live trees has been reduced from 31.5"; (in the draft EIS) to 20" in the final EIS, based on public responses received during the comment period. The area within which mechanical thinning would occur to reduce the threat of wildland fire and to restore more natural forest conditions was clarified in the final EIS to exclude Wilderness and to be limited to a ¼ mile wide zone around six wildland urban interface communities. This alternative would require more time to accomplish wildland/urban interface protection and ecosystem restoration than under Alternative B, Aggressive Action Alternative, but less than under Alternative A, No Action, and C, Passive Action Alternative. It would accomplish the work with a combination of NPS and other agency fire crews, the park forestry crew, and contract labor. As documented in the final EIS, this was also deemed to be the "Environmentally Preferred" Alternative.

Alternatives: Under the "no action" alternative (Alternative A), the existing direction and level of accomplishment in Yosemite's fire management program would continue. This alternative would use the strategies of the existing Fire Management Plan, written in 1990. These strategies include prescribed fire, management of natural ignitions (wildland fire used for resource benefits), fire suppression, and hand cutting followed by pile burning and prescribed fire. This program does not place emphasis on wildland/urban interface communities. The Fire Management Units for this alternative are the same as the "zones" used in the 1990 plan: Zone I—Prescribed Natural Fire Zone; Zone II—Conditional Fire Zone; and Zone III—Suppression Zone. Under this program the park has averaged 1,472 acres of prescribed burning and 2,567 acres of managed wildland fire each year. This does not approach the annual target of 16,000 acres that would need to burn annually to simulate natural conditions. While over the last decade the park has reduced hazardous fuel levels near developed areas, the goal of providing an open defensible forest in and around every community may not ever be met at the current rate of work, using the current techniques.

Under Alternative B, aggressive efforts would be taken to reduce fuels in and near developed areas (wildland/urban interface communities) within a period of five years and accomplish fire-related ecosystem restoration goals within 10–15 years. This alternative would reduce fuels on an average of 1,285 acres per year in the wildland/urban interface over five years (6,425 acres total) and restore the natural fire regime to between 2,520 and 12,872 acres per year, for a total of between 31,503 and 160,894 acres over the next 10–15 years. Prescribed burning would be increased dramatically over present levels and lightning fires would be managed where practicable. Smoke emissions would be the greatest among the four alternatives. Work under this alternative would apply aggressive fuel reduction treatments to wildland/urban interface areas and accomplish park restoration goals in the least amount of time compared to the other alternatives. Median and maximum fire return interval departure analyses were used to determine locations and set annual goals (range of acres) for treatments, using the various restoration, maintenance, and fuel reduction strategies.

Under Alternative C, the Passive Action Alternative, efforts would be taken to decrease fuels in wildland/urban interface areas within a period of 10 years, and accomplish ecosystem restoration goals in 25 years. Alternative C would reduce fuels in wildland/urban interface areas by an average of 766 acres per year (6,425 acres total over 10 years), and the fire regime would be restored in areas having missed three or more fire return intervals by treating between 1,260 and 6,436 acres per year (31,503 to 160,894 acres over 25 years). Prescribed burning would be increased over what the current program accomplished but not as much as under Alternative B and D. Fuel reduction work under this alternative would apply less aggressive treatments to wildland/urban interface areas. Under this alternative, it would take more time than under Alternative B and the proposed action, but less than would be needed under Alternative A to accomplish the park's minimum goals. By the time all areas were treated, however, many areas would have missed more fire return intervals; thus, the risk of stand replacement fire would remain high in some areas for a longer period. The basis for the difference in annual accomplishment, when comparing alternatives, is the time frame proposed for reaching the restoration targets and the type of treatments allowed. Because of this time frame, the number of acres to be treated each year under Alternative C would be the least among the action alternatives.

Planning Background: Early preliminary scoping for the YFMP/FEIS was initiated in April 1999. A Notice of

Intent was published in the **Federal Register** on March 20, 2001; public scoping comments were accepted until April 30, 2001. One planning meeting was held in Yosemite Valley. During this scoping period, the NPS held discussions and briefings with: Local communities; local residents and home owners associations (Forest, Wawona, Yosemite West, and El Portal); local, regional and state fire organizations; air quality regulators; other agency representatives; park staff, elected officials; public service organizations; and other interested members of the public. The major issues raised during this period are summarized in *Chapter 1, Purpose of and Need for the Action.*

The distribution of draft EIS and YFMP began during May, 2002. A notice of availability of the draft document was published in the **Federal Register** on June 18, 2002; it was available for public review and comment through August 27, 2002. In order to facilitate public review and understanding of the proposed plan, public open houses were held during July, 2002 in Oakhurst, Mariposa, Sonora, and Mammoth Lakes, and on three occasions (in June, July and August) in Yosemite Valley. The NPS received approximately 143 written responses. All of these comments were duly considered in preparing the YFMP/FEIS. All comments obtained are preserved in the administrative record.

The main issues and concerns expressed by the respondents included: the thinning of trees up to 31.5″ in diameter should not occur; mechanical thinning of trees to reduce wildland fire hazard and to restore more natural stand densities should only occur near wildland urban interface communities; no roads be constructed to remove mechanically thinned trees; that mechanical removal of trees should not occur in Wilderness; and that the park should not try to recreate forest stand compositions or densities to match a specific point in the past.

ADDRESSES: Copies of the YFMP/FEIS may be obtained from the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite, CA 95389, Attn: Fire Management Plan, or by email request to: *Yose_Planning@nps.gov* (in the subject line, type: Fire Management Plan). The YFMP/FEIS will be sent directly to those who have requested it. In addition, the document is to be posted on the Internet at the park's Web page (*http://www.nps.gov/yose/planning*), and it will also be available at local and regional libraries.

Decision: As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; a Record of Decision may be approved by the Regional Director not sooner than 30 days after EPA's publication of the notice of filing of the Final FMP/EIS in the **Federal Register**. Notice of the final decision will be also posted in the **Federal Register**. Following approval of the Fire Management Plan, the official responsible for implementation will be the Superintendent, Yosemite National Park.

Dated: March 26, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–9797 Filed 4–29–04; 8:45 am]

BILLING CODE 4312–FY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement; Notice of Availability

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS).

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)), the National Park Service (NPS) is preparing a General Management Plan and Environmental Impact Statement (GMP/EIS) for the Sagamore Hill National Historic Site (NHS), located in the town of Oyster Bay, Nassau County, New York. The park is composed of lands purchased by Theodore Roosevelt in Oyster Bay, New York in 1880. Theodore Roosevelt lived in the 28-room Queen Anne style home and maintained a working farm on the property from 1885 to his death in January 1919. Throughout Theodore Roosevelt's Presidency from 1902 to 1908, Sagamore Hill served as the Summer White House. Prepared by planners in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing Sagamore Hill NHS. Consistent with the site's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the site over the next 15 to 20 years. A range of alternatives will be formulated for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations. The EIS will assess the impacts of alternative management strategies that will be described in the GMP for Sagamore Hill NHS. The public will be invited to express concerns about the management of the site early in the process through public meetings and other media; and will have an opportunity to review and comment on the draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of the preferred alternative. The target date for the Record of Decision is June 2006.

Dated: March 22, 2004.

Gay Vietzke,

Superintendent, Sagamore Hill National Historic Site.

[FR Doc. 04–9796 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Wednesday, June 9, 2004, at 9 a.m. until 3:30 p.m., at White Hall Town Hall in White Hall, Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Pub. L. 100–192, establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include: (A) Review of last meeting Minutes; (B) review of Subcommittees structure; (C) update of 40th Anniversary Planning.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent, concerning the matters to be discussed. Persons wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334.727.6390 (phone), 334.727.4597 (fax) or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Dated: April 12, 2004.

Catherine F. Light,

Selma to Montgomery National Historic Trail Superintendent.

[FR Doc. 04–9798 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–04–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, June 14, 2004; 8:30 a.m. to 12 noon on Tuesday, June 15, 2004.

Place: The Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

Status: Open.

Matters to be Considered: Strategic planning Update; and Briefing: Division Reports; Prison Rape Elimination Act; Institutional Culture Initiative and Quarterly Report by Office of Justice Programs.

Contact Person for More Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 04–9780 Filed 4–29–04; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,203B, TA–W–54,203C, TA–W–54,203D, and TA–W–54,203E]

Coats American, Inc. Corporate Headquarters, Charlotte, North, NC Including Sales and Marketing Employees of Coats American, Inc. Corporate Headquarters, Operating at Various Locations in the States of: Regional Manager Southwest, Texas and California; Regional Manager Northeast, Pennsylvania; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 15, 2004, applicable to workers of Coats American, Inc., Corporate Headquarters, Charlotte, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Charlotte, North Carolina facility of Coats American, Inc., Corporate Headquarters operating at various locations in the states of Texas, California and Pennsylvania. These employees provide sales and marketing support function services for the production of specialty thread and cocoon bobbins produced by the subject firm.

Based on these findings, the Department is amending this certification to include sales and marketing employees of the Coats American, Inc., Corporate Headquarters, Charlotte, North Carolina, operating at various locations in the States of Texas, California and Pennsylvania.

The intent of the Department's certification is to include all workers of Coats American, Inc. who were adversely affected by a shift in production to Mexico. The amended notice applicable to TA–W–54,203B is hereby issued as follows:

All workers of Coats American, Inc., Corporate Headquarters, Charlotte, North Carolina (TA–W–54,203B), including sales and marketing employees of Coats American, Inc., Corporate Headquarters, Charlotte, North Carolina, Regional Manager Southwest, operating at various locations in the states of Texas (TA–W–54,203C), California (TA–W–54,203D), and Regional Manager Northeast, Pennsylvania (TA–W–54,203E), who became totally or partially separated from employment on or after February 3, 2003, through March 15, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–958 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,178]

Drexel Heritage Furniture Industries, Plant 2, Marion, NC; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

By letter dated March 27, 2004, the company requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification was signed on March 5, 2004. The determination notice will soon be published in the **Federal Register.**

The initial investigation determined that the workers possessed skills that were easily transferable.

The company provided new information to show that the workers possess skills that are not easily transferable. The initial investigation determined that at least five percent of the workforce at the subject firm is at least fifty years of age and that competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of at Drexel Heritage Furniture Industries, Plant 2, Marion, North Carolina, who became totally or partially separated from employment on or after January 30, 2003 through March 5, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–959 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,539 and TA–W–53,539A]

E.L. Mansure Company, a Division of Chf Industries, Inc., Clinton, SC, and E.L. Mansure Company Sales Office, a Division of Chf Industries, Inc., New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 22, 2003, applicable to E.L. Mansure Company, a division of CHF Industries, Inc., Clinton, South Carolina. The notice was published in the **Federal Register** on January 16, 2004 (69 FR 2623).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of cotton webbing and cotton knitted fringe.

Information shows that worker separations occurred at the New York, New York location of the subject firm. The workers provided sales functions for the subject firm's production facility located in Clinton, South Carolina.

Accordingly, the Department is amending the certification to include workers of E.L. Mansure Company, Sales Office, a division of CHF Industries, Inc., New York, New York.

The intent of the Department's certification is to include all workers of E.L. Mansure Company, a division of CHF Industries, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–53,539 is hereby issued as follows:

"All workers of E.L. Mansure Company, a division of CHF Industries, Clinton, South Carolina (TA–W–53,539) and E.L. Mansure, Sales Office, a division of CHF Industries, New York, New York (TA–W–53,539A), who became totally or partially separated from employment on or after November 11, 2002, through December 22, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 16th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–964 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,061, TA–W–54,061A, TA–W–54,061B, TA–W–54,061C, TA–W–54,061D, TA–W–54,061E, TA–W–54,061F, TA–W–54,061G, TA–W–54,061H]

Eastern Pulp and Paper Co., Inc. Lincoln Pulp and Paper Plant, Lincoln, ME, Eastern Pulp and Paper Co., Inc. Corporate Office, Amherst, MA, Including Employees of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant Operating at Various Locations in the Following States: Michigan, Connecticut, Georgia, New Jersey, Massachuetts, Ohio, and Wisconsin; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 30, 2004, applicable to workers of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, Maine. The notice was published in the **Federal Register** on February 6, 2004 (69 FR 5868).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Eastern Pulp and Paper Co., Inc., Corporate Office, located in Amherst, Massachusetts. The subject firm also separated workers at various locations in the states of Michigan, Connecticut, Georgia, New Jersey, Massachusetts, Ohio and Wisconsin, reporting to the Lincoln Pulp and Paper Plant. These employees provide administrative, sales and marketing support services for the production of paper, tissue paper and wood pulp produced at the Lincoln, Maine location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Amherst, Massachusetts location and employees of the Lincoln, Maine location of Eastern Pulp and Paper Co., Inc. operating at various locations in the following states: Michigan, Connecticut, Georgia, New Jersey, Massachusetts, Ohio and Wisconsin.

The intent of the Department's certification is to include all workers of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant who were adversely affected by increased imports. The amended notice applicable to TA–W–54,061 is hereby issued as follows:

All workers of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, Maine (TA–W–54,061), Eastern Pulp and Paper Co., Inc., Eastern Pulp and Paper Co., Inc., Corporate Office, Amherst, Massachusetts (TA–W–54,061A), and employees of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, Maine operating at various locations in the following states: Michigan (TA–W–54,0616B), Connecticut (TA–W–54,061C), Georgia (TA–W–54,061D), New Jersey (TA–W–54,061E), Massachusetts (TA–W–54,061F), Ohio (TA–W–54,061G) and Wisconsin (TA–W–54,061H), who became totally or partially separated from employment on or after January 16, 2003, through January 30, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–960 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,435 and TA–W–50,435A]

Foster Wheeler Energy Corporation, a Subsidiary Of Foster Wheeler Corporation, Now Known as Foster Wheeler North America, Inc., Dansville, NY, and Foster Wheeler Power Group, a Subsidiary of Foster Wheeler Corporation, Now Known as Foster Wheeler North America, Inc., Stuart, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 21, 2003, applicable to workers of Foster Wheeler Energy Corporation, a subsidiary of Foster Wheeler Corporation, Dansville, New

York. The notice was published in the **Federal Register** on March 10, 2003 (68 FR 11410).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of boilers and boiler parts.

New findings show that a worker was separated at the Foster Wheeler Power Group, Inc., Stuart, Florida. This employee provided support function services for the production of boilers and boiler parts produced at the Dansville, New York location of the subject firm.

Accordingly, the Department is amending the certification to include an employee of Foster Wheeler Power Group, Inc., a subsidiary of Foster Wheeler Corporation, now known as Foster Wheeler North America, Inc., Stuart, Florida. The intent of the Department's certification is to include all workers of Foster Wheeler Energy Corporation, a subsidiary of Foster Wheeler Corporation, now known as Foster Wheeler North America, Inc., who were adversely affected by a shift in production to China.

The amended notice applicable to TA–W–50,435 is hereby issued as follows:

All workers of Foster Wheeler Energy Corporation a subsidiary of Foster Wheeler Corporation, now known as Foster Wheeler North America, Inc., Dansville, New York (TA–W–50,435) and Foster Wheeler Power Group, Inc., a subsidiary of Foster Wheeler Corporation, now known as Foster Wheeler North America, Inc., Stuart, Florida (TA–W–50,435A), who became totally or partially separated from employment on or after December 20, 2001, through February 21, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–966 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,288 & NAFTA–06104]

International Truck And Engine Corporation, a Subsidiary of Navistar International Corporation, Springfield, OH; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *International Union, United Auto Workers (UAW), Region 2B* v. *Elaine L. Chao, U.S. Secretary of Labor* (Court No. 03–00642).

The Department's denial of certification for TA–W–41,288 and NAFTA–06104 were issued on August 9, 2002, and published in the **Federal Register** on September 10, 2002 (67 FR 57454 and 67 FR 57455, respectively). Workers were engaged in activities related to the production of trucks and related components.

The denial of Trade Adjustment Assistance (TAA) was based on a finding that criterion (3) of the Group Eligibility Requirements of section 222 of the Trade Act of 1974, as amended, was not met. Information gathered in the investigation indicated that imports did not contribute importantly to worker separations at the subject firm. The denial of NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) was based on the finding that criteria (3) and (4) were not met. Facts gathered during the investigation showed that imports from Canada or Mexico did not contribute importantly to workers separations and that there was no shift of production to Canada or Mexico.

The Department's denial of administrative reconsideration for TA–W–41,288 and NAFTA–06104 was issued on June 13, 2003, and published in the **Federal Register** on July 7, 2003 (68 FR 40296). The Department affirmed its conclusions that imports did not contribute importantly to worker separations at the subject firm and no production shift occurred within the relevant time period.

In the remand investigation, the Department contacted the company for additional and more comprehensive information. The company provided sales, production, import, and production shift figures which were meticulously compiled with detailed explanations of the various operations of the subject facility, the corporation, and its affiliates and also included an extensive list of its customers.

After careful review of the new and additional material provided in the expanded investigation, it has been determined that there was an ongoing shift in production to Mexico which began during the relevant period. Further, the investigation found that the ongoing shift in production resulted in increased shifts of production from the subject facility to an affiliated facility located in Mexico as well as increased company imports.

Conclusion

After careful review of the additional facts obtained on remand, I determine that a shift of production to Mexico and increases in imports (including from Canada and/or Mexico) of articles like or directly competitive with those produced by the subject firm contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of International Truck and Engine Corporation, a Subsidiary of Navistar International Corporation, Springfield, Ohio, who became totally or partially separated from employment on or after April 8, 2001, through two years from the issuance of this revised determination, are eligible to apply for worker adjustment assistance under section 223 of the Trade Act of 1974 and All workers of International Truck and Engine Corporation, a Subsidiary of Navistar International Corporation, Springfield, Ohio, who became totally or partially separated from employment on or after April 8, 2001, through two years from the issuance of this revised determination, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–967 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,995]

Lake Region Manufacturing, Inc., Lake Region Medical, Inc., Pittsburgh, PA; Notice of Revised Determination on Reconsideration Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

By letter dated March 31, 2004, the company requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification was signed on March 2, 2004. The notice was published in the **Federal Register** on April 6, 2004 (69 FR 18111).

The initial investigation determined that the workers possessed skills that were easily transferable.

The company provided new information to show that the workers possess skills that are not easily transferable. The initial investigation

determined that at least five percent of the workforce at the subject firm is at least fifty years of age and that competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of at Lake Region Manufacturing, Inc., Lake Region Medical, Inc., Pittsburgh, Pennsylvania, who became totally or partially separated from employment on or after January 12, 2003 through March 2, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–961 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,499]

Marion County Shirt Company, Ark Management Consultants, Marshall, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 10, 2003, applicable to workers of Marion County Shirt Company, Marshall, Arkansas. The notice was published in the **Federal Register** on March 26, 2003 (68 FR 14708).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's woven dress shirts.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Ark Management Consultants. Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Marion County Shirt Company, Marshall, Arkansas, who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,499 is hereby issued as follows:

All workers of Marion County Shirt Company, Ark Management Consultants, Marshall, Arkansas, who became totally or partially separated from employment on or after January 6, 2002, through February 10, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–965 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,798]

Mohican Mills, Inc., Lincolnton, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 22, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on February 2, 2004, and published in the **Federal Register** on March 12, 2004 (69 FR 11888).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information regarding the appropriate subject worker group. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–963 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,948]

Seagate Technology, LLC, Research and Development Division, Oklahoma City, OK; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 18, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Seagate Technology, LLC, Research and Development Division, Oklahoma City, Oklahoma was signed on February 3, 2004, and published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Seagate Technology, LLC, Research and Development Division, Oklahoma City, Oklahoma engaged in activities related to design and planning work for products further developed or produced elsewhere. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner alleges that the workers at the subject facility performed replication of the equipment that is used to build the head disk assemblies (HDA) stations at a Singapore assembly plant and that this replication function was terminated and transferred to Singapore.

The petitioner further states that "the last generation HDA assembly equipment ended prototype build by my group in Oklahoma City in October 2002, and Norelco was chartered with replication at that time."

A company official was contacted regarding these allegations. It was revealed that workers at Seagate Technology, LLC, Research and Development Division, Oklahoma City, Oklahoma were engaged in the procuring, machining and the assembly of the Mobile Stack Automation (MSA) robotics line and were responsible for designing and assembling of OKC prototypes which were further used by Seagate's production facility Norelco in Singapore to manufacture disc drives. In March 2001 and October 2002 the subject firm transferred replication responsibility for the FOF and Seal Lines from Oklahoma City to Norelco in Singapore. However, the petitioning workers were not affected by this transfer as they continued working at the subject facility on OKC prototype (MSA line) until December of 2003. In fact, according to the data provided by the company official, employment at Seagate Technology, LLC, Research and Development Division, Oklahoma City, Oklahoma increased from 2002 to 2003. The official further reported that the Oklahoma City group was terminated in December 2003. At that time, the work done by this group (the MSA Line) was transferred to Longmont, Colorado and was not sent to Singapore.

It was established upon the reconsideration that prototype functions performed at the subject facility during the relevant time period were shifted exclusively to a domestic site. It was also revealed that, although prototype function does occur at an affiliate in Singapore, there was no evidence of a shift from the subject facility to the Singapore affiliate within the relevant time period, or any U.S. imports resulting from this or any other foreign production.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 15th day of April, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–962 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–13–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 supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or in 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 decisions, 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:

New Hampshire
NH030005 (Jun. 13, 2003)
NH030007 (Jun. 13, 2003)

Volume II:

Maryland
MD030016 (Jun. 13, 2003)
Pennsylvania
PA030002 (Jun. 13, 2003)
PA030003 (Jun. 13, 2003)
PA030004 (Jun. 13, 2003)
PA030024 (Jun. 13, 2003)
PA030042 (Jun. 13, 2003)

PA030060 (Jun. 13, 2003)
PA030061 (Jun. 13, 2003)
PA030065 (Jun. 13, 2003)

Volume III:

Florida
FL030017 (Jun. 13, 2003)

Volume IV:

Illinois
IL030001 (Jun. 13, 2003)
IL030012 (Jun. 13, 2003)
IL030013 (Jun. 13, 2003)
IL030014 (Jun. 13, 2003)
IL030015 (Jun. 13, 2003)
IL030016 (Jun. 13, 2003)
IL030020 (Jun. 13, 2003)
IL030021 (Jun. 13, 2003)
IL030028 (Jun. 13, 2003)
IL030033 (Jun. 13, 2003)
IL030034 (Jun. 13, 2003)
IL030036 (Jun. 13, 2003)
IL030044 (Jun. 13, 2003)
IL030056 (Jun. 13, 2003)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted 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 no 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 22nd day of April 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–9533 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of "The Consumer Expenditure Surveys: The Quarterly Interview and the Diary." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 29, 2004.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I.Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) For CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the

continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over five calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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;
- 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.

III. Current Action

The BLS and the Census Bureau have completed a sample redesign based on the 2000 Census to be implemented for the Quarterly Interview in November, 2004 and for the Diary in January, 2005. While the new sample is introduced for the Quarterly Interview, there will be some overlap of old and new samples in some primary sampling units (PSUs) or areas in which CE data are collected.

The BLS also is introducing a new Diary in which respondents report their daily expenditures. The BLS has reduced the number of "parts" of the Diary from five to four, eliminating "Food and Drinks as Gifts" as a separate part. In the remaining parts, the subgroups have either decreased or been eliminated, making it easier for the respondent to record their purchases. In the "Food and Drinks Away From Home" part, there are check boxes that help the respondent report the type of information the BLS needs. There also are fold-outs that have helpful tips for reporting information and a pocket for receipts to aid in remembering expenditures. These changes will facilitate the task of filling out the Diary for the respondent.

Because of the implementation of Computer Assisted Personal Interview (CAPI) for the Quarterly Interview, the estimate of the time it takes to complete an interview has changed. Based on timing data maintained within the instrument, the BLS has determined the average interview time to be 70 minutes, down from an estimated 90 minutes. The BLS only recently implemented CAPI for the Diary Household Characteristics Survey and is unable to calculate the average at this time. The BLS is expecting a decrease in the average time for Diary interviews for the next clearance.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden (in hours)
CE Quarterly Interview CAPI Instrument	11,024	4	44,096	70	51,445
Quarterly Interview Reinterview CPI instrument	3,528	1	3,528	15	882
CE Diary: Household Questionnaire CAPI instrument	7,676	3	23,028	25	9,595
CE Diary: CE–801, Record of Your Daily Expenses	7,676	2	15,352	105	26,866
CE Diary Reinterview CAPI instrument	921	1	921	15	230
Totals	18,700		86,925		89,018

Please note: Reinterview respondents are a subset of the original number of respondents for each survey. Therefore, they are not counted again in the totals. Also, for the Diary, the "Record of Your Daily Expenses" respondents are the same as the "Household Questionnaire" respondents.

Affected Public: Individuals or households.

Total Burden Cost (capital/startup): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 21st day of April, 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–9807 Filed 4–29–04; 8:45 am]

BILLING CODE 4510–24–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–2 CARP CD 93–97]

Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of termination of proceeding.

SUMMARY: The Librarian of Congress is announcing the vacatur of his Order rejecting the initial and revised reports

of the Copyright Arbitration Royalty Panel ("CARP") in the Phase II proceeding to determine the distribution of 1997 cable royalty funds in the syndicated programming category. The Librarian's Order as well as the initial and revised CARP reports are being vacated as moot because the parties have resolved their dispute.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, DC 20024, Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On October 17, 2000, the Librarian of Congress convened a Copyright Arbitration Royalty Panel ("CARP") to resolve a dispute within the syndicated programming category between the Motion Picture Association of America ("MPAA") and the Independent Producers Group ("IPG") over the division of royalties collected in 1997 pursuant to 17 U.S.C. 111 for the retransmission of movies and syndicated television series by cable systems. 65 FR 60690 (October 12, 2000). At the conclusion of the six-month arbitration period, the CARP delivered to the Librarian its initial report setting forth its determination of the distribution of the 1997 cable royalty funds. Because of flaws in the CARP's decision, the Librarian, upon the recommendation of the Register of Copyrights, rejected the initial report and remanded the case to the CARP with instructions to alter the allocation of royalties and to explain its decisionmaking process. *See* Order in Docket No. 2000–2 CARP 93–97 (dated June 5, 2001). On June 20, 2001, the CARP delivered its revised report. On December 26, 2001, the Librarian issued an order identifying numerous flaws in the CARP's determination as well as in the cases presented by both IPG and MPAA. Because of these flaws, the Librarian concluded that no determination of the distribution of the 1997 cable royalties could be made based on the record presented to the CARP. Accordingly, he rejected the CARP's initial and revised reports and remanded the matter for a new proceeding before a new CARP. 66 FR 66433 (December 26, 2001).

MPAA and IPG each appealed the Librarian's decision to the United States Court of Appeals for the District of Columbia Circuit. *Motion Picture Association of America* v. *Librarian of Congress*, No. 02–1033; *Independent Producers Group* v. *Librarian of Congress*, No. 02–1040. However, they have recently settled the dispute. As part of the settlement, it was agreed that the Librarian's December 26, 2001, Order would be vacated. On April 21, 2004, the Court of Appeals dismissed the appeals. In order to facilitate the settlement, the Librarian issued an order vacating as moot the December 26, 2001, Order as well as the CARP reports of April 16, 2001, and June 20, 2001.

The text of the Order reads as follows:

Recommendation and Order

On December 26, 2001, the Library published an Order announcing the Librarian of Congress's decision to reject the initial and revised reports of the Copyright Arbitration Royalty Panel ("CARP") in this Phase II proceeding in the syndicated programming category for distribution of the 1997 cable royalty funds. The Order identified a number of flaws in the cases presented by both IPG and MPAA and in the determination made by the Copyright Arbitration Royalty Panel ("CARP"), and concluded that a distribution of royalties could not be made based on the current record. Accordingly, the Librarian remanded the matter for a new proceeding before a new CARP. Order, 66 FR 66433 (Dec. 26, 2001).

Both parties, Independent Producers Group ("IPG") and The Motion Picture Association of America, Inc. ("MPAA") petitioned the United States Court of Appeals for the District of Columbia Circuit to review the Librarian's determination. Motion Picture Association of America v. Librarian of Congress, No. 02–1033; Independent Producers Group v. Librarian of Congress, 02–1040.

The parties have now settled this dispute, making a remand for new proceedings unnecessary and making it possible to distribute the remaining funds that were in dispute. As part of the settlement, it has been agreed that the December 26, 2001 Order shall be vacated.

Because the parties have settled their dispute, and therefore there is no reason to remand the matter for further proceedings before a new CARP, the Register recommends that the December 26, 2001 Order be vacated as moot. Further, in light of the flaws in the determination made by the CARP as identified in the December 26, 2001 Order, the CARP's initial and final determinations should also be vacated, to make clear that those determinations have no precedential value. The recommendation that the December 26, 2001 Order be vacated is made in order to facilitate the settlement and because the matter is now moot; this recommendation should not be construed as a repudiation of the reasoning in the December 26, 2001 Recommendation and Order.

Order of the Librarian

Having duly considered the recommendation of the Register of Copyrights the Librarian accepts the recommendation in its entirety and orders that the December 26, 2001 Order, the April 16, 2001 initial Report of the CARP, and the June 20, 2001 revised Report of the CARP are hereby VACATED as moot.

In accordance with the Librarian's Order, this proceeding has been terminated.

Dated: April 27, 2004.

David O. Carson,

General Counsel.

[FR Doc. 04–9834 Filed 4–29–04; 8:45 am]

BILLING CODE 1410–33–P

MILLENNIUM CHALLENGE CORPORATION

[FR 04–05]

Public Outreach Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Corporation ("MCC") will hold a public outreach meeting on May 3, 2004. The MCC Interim CEO and MCC staff will update interested members of the public on MCC operations to date and discuss upcoming MCC activities, including the consideration by the MCC Board of Directors on May 6, 2004 of countries that will be eligible for Millennium Challenge Account assistance in FY2004 under the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D).

DATES: May 3, 2004, 2–3 p.m.

ADDRESSES: General Services Administration, main auditorium, 1800 F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Shirley Puchalski at (703) 875–7337.

SUPPLEMENTARY INFORMATION: Due to security requirements at the meeting location, all individuals wishing to attend the meeting are encouraged to arrive at least 20 minutes before the meeting begins and must comply with all relevant security requirements of the General Services Administration. Seating will be available on a first come, first served basis. (Section 614, Public Law 108–199, Division D.)

Dated: April 27, 2004.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 04–9933 Filed 4–29–04; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–058)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, May 20, 2004, from 9 a.m. until 6 p.m. and Friday, May 21, 2003 from 8 a.m. until 12 Noon.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 6H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Louis Ostrach, Code UF, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0870.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. The agenda for the meeting is as follows:

—Review Recommendations

—Program Overview

—Advisory Committee Restructuring

—Division Reports

—International Space Station Utilization Update

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. Louis Ostrach via e-mail at *louis.h.ostrach@nasa.gov* or by telephone at (202) 358–0870. Persons with disabilities who require assistance should indicate this. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–9817 Filed 4–29–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–059)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Rycom Instruments, Inc., of Raytown, MO, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,501,414 identified as NASA Case No. MSC–22839–1, and entitled, "Method for Locating a Concealed Object" and U.S. Patent No. 6,559,645 identified in NASA Case No. MSC–23307–1, and entitled, "Detection of Subterranean Metal Objects Using Differential Spectral Processing." The patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by May 17, 2004.

FOR FURTHER INFORMATION CONTACT: Theodore Ro, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 244–7148.

Dated: April 23, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–9851 Filed 4–29–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice; Correction.

SUMMARY: The National Endowment for the Humanities published a document in the **Federal Register** of April 21, 2004, concerning Humanities Panel meetings. The dates of the meetings are May 3, 2004 and May 10, 2004, and the room number of these meetings was incorrect.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider at (202) 606–8322.

Correction

In the **Federal Register** of April 21, 2004, on page 21585, in the third column, correct the room numbers of the Humanities Panel meetings for May 3, 2004 and May 10, 2004 to read:

1. *Date:* May 3, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the March 22, 2004 deadline.

2. *Date:* May 10, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the March 22, 2004 deadline.

Dated: April 27, 2004.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 04–9850 Filed 4–29–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board and Its Subdivisions; Sunshine Act Meetings

DATE AND TIME: May 3, 4, 2004.

May 3, 2004: 8 a.m.—4:30 p.m.

Concurrent Sessions:
8 a.m.–11 a.m.—Open Session
11 a.m.–12:15 p.m.—Open Session
11 a.m.–11:30 a.m.—Open Session
12:15 p.m.–12:30 p.m.—Closed Session
12:30 p.m.–1 p.m.—Closed Session
1 p.m.–1:45 p.m.—Open Session
1:45 p.m.–2:30 p.m.—Closed Session
2:30 p.m.–3:45 p.m.—Closed Session
3:45 p.m.–4:30 p.m.—Open Session

May 4: 8:30 a.m.—3 p.m.

Concurrent Sessions:
8:30 a.m.–10 a.m.—Open Session
10 a.m.–10:30 a.m.—Closed Session
10:30 a.m.–12:30 p.m.—Open Session
12:30 p.m.–1 p.m.—Closed Session
1 p.m.–1:15 p.m.—Closed Session
1:15 p.m.–3 p.m.—Open Session

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

FOR FURTHER INFORMATION CONTACT: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Monday, May 3, 2004

Open

Committee on Programs & Plans, Session I (8 a.m.–11 a.m.) Room 1235
- Report on Roadmap & MREFC Panel Process
- Continuing Discussion:

—Setting Priorities for Large Research Facilities

—Process for Prioritization of Large Facility Projects

Ad Hoc Task Group on High Risk Research (11 a.m.–11:30 a.m.) Room 1295
- Discussion of Workshop Plans and White Paper

Subcommittee on Polar Issues (11 a.m.–12:30 p.m.) Room 1235
- Acting Chairman's Remarks
- Approval of Minutes
- OPP Director's Remarks
- IceCube Neutrino Observatory
- Polar Instrastructure
- Environmental Protection and Remediation

Executive Committee (12:30 p.m.–12:45 p.m.) Room 1295
- Approval of Minutes
- Updates or New Business From Committee Members

Committee on Strategy & Budget (1 p.m.–1:45 p.m.) Room 1235
- Approval of March 2004 Minutes
- Discussion of Planning & Strategy for Transitioning ITR Priority Area
- Discussion of NSF Responses to CSB Inquiries made March, 2004
- NSF Long Range Planning

Committee on Programs and Plans, Session II (3:45 p.m.–4:30 p.m.) Room 1235
- Approval of Minutes, March 2004
- NSB Information Item: Underground Laboratory
- Updates:

—Subcommittee on Polar Issues

—Task Force on Long-Lived Data Collections

—*Ad Hoc* Working Group on High Risk Research

Closed

Subcommittee on Polar Issues (12 noon–12:30 p.m.) Room 1235
- NSB Action Item

Committee on Strategy & Budget (1:45 p.m.–2:30 p.m.) Room 1235
- Preliminary Discussion of FY 2006 Budget

Tuesday, May 4, 2004

Open

Committee on Audit & Oversight (8:30 a.m.–10 a.m.) (Room 1235)
- Approval of Memorandum of Discussion, March 2004
- CFO Update
- CIO Update
- FY 2003 Merit Review Report
- OIG Semiannual Report

Committee on Education and Human Resources (10:30 a.m.–12:30 p.m.) (Room 1235)
- Approval of Minutes
- Comments From the Chair
- Report From S&E Indicators
- Broadening Participation Workshop Revised Findings and Recommendations
- Report From EHR Assistant Director
- Other Business

Plenary Session of the Board (1:15 p.m.–3 p.m.) Room 1235
- Approval of Open Minutes From March, 2004
- Closed Session Items for August, 2004
- Chairman's Report, including

—NSB Meeting Calendar for 2005
- Director's Report, including

—NSF Long-Range Planning

—Update on Smithsonian MOU
- Committee Reports, including

—Executive Committee Report, 2003

—2003 Merit Review Report

Closed

Committee on Audit & Oversight (10 a.m.–10:30 a.m.) (Room 1235)
- Pending OIG Investigation

Plenary Session of the Board (12:30 p.m. to 1 p.m.) Room 1235
- Approval of Executive Closed Minutes from March, 2004
- Report of Nominating Committee
- NSB Elections

Plenary Session of the Board (1 p.m.–1:15 p.m.) Room 1235
- Approval of Closed Minutes from March, 2004
- Award Actions
- FY 2006 NSF Budget

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 04–9981 Filed 4–28–04; 12:36 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, Virgil C. Summer Nuclear Station, Unit 1; Notice of Issuance of Renewed Facility Operating License No. NPF–12 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License No. NPF–12 to South Carolina Electric & Gas Company (the licensee), the operator of Virgil C. Summer Nuclear Station, Unit No. 1 (V. C. Summer, Unit No. 1). Renewed Facility Operating License No. NPF–12 authorizes operation of Virgil C. Summer, Unit No. 1, by the licensee at reactor core power levels not in excess of 2900 megawatts thermal in accordance with the provisions of the Virgil C. Summer renewed license and its Technical Specifications.

The Virgil C. Summer Nuclear Station, Unit No. 1 is a Westinghouse pressurized water nuclear reactor located in Fairfield County, South Carolina.

The application for the renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter 1, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on October 4, 2002 (67 FR 62272).

For further details with respect to this action, see (1) the South Carolina's Electric & Gas Company's license renewal application for Virgil C. Summer, Unit No. 1 dated August 6, 2002; (2) the Commission's safety evaluation report dated March 2004 (NUREG–1787); (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement for Virgil C. Summer Nuclear Station (NUREG–1437, Supplement 15, dated February 2004). These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License No. NPF–12 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1787) and the final environmental impact statement (NUREG–1437, Supplement 15) for Virgil C. Summer may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), (703) 605–6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954 Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), (202) 512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this the 23rd day of April, 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–9812 Filed 4–29–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2004 Circular A–133 Compliance Supplement.

SUMMARY: On April 17, 2003 (68 FR 19039), the Office of Management and Budget (OMB) issued a notice of availability of the 2003 Circular A–133 Compliance Supplement (Supplement). The notice also offered interested parties an opportunity to comment on the 2003 Supplement. This notice announces the availability of the 2004 Supplement. The 2004 Supplement adds three programs, deletes three programs, updates for program changes, and makes technical corrections. A list of changes from the 2003 Supplement can be found at Appendix V of the 2004 Supplement. Due to its length, the 2004 Supplement is not included in this notice. See Addresses for information about how to obtain a copy. This notice also offers interested parties an opportunity to comment on the 2004 Supplement.

DATES: The 2004 Supplement will apply to audits performed under OMB Circular A–133, *Audits of States, Local Governments, and Non-Profit Organizations,* of fiscal years beginning after June 30, 2003 and supersedes the 2003 Supplement. All comments on the 2004 Supplement must be in writing and received by October 29, 2004. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 2004 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock number: 041–001–00604–4) at a cost of $73.00. The main GPO bookstore is located at 710 North Capitol Street, NW., Washington, DC 20401, (202) 512–0132. A copy may also be obtained under the "Grants Management" heading from the OMB home page on the Internet, which is located at *http://www.omb.gov/*, and then select "Circulars—Audit Requirements—A–133."

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to *Hai_M._Tran@omb.eop.gov*. Please include "A–133 Compliance Supplement—2004" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Gilbert Tran, Office of Management and Budget, Office of Federal Financial Management, telephone (202) 395–3993.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) received three comment letters on the 2003 Supplement. The comment letters dealt with various technical issues and changes were made where appropriate.

Linda M. Springer,

Controller.

[FR Doc. 04–9799 Filed 4–29–04; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Pay Rate Report; OMB 3220–0097.

Under section 2(a) of the Railroad Unemployment Insurance Act, the daily benefit rate for unemployment and sickness benefits depends on the claimant's last daily rate of pay in the base year. The procedures pertaining to the use of a claimant's daily pay rate in determining the daily benefit rate are prescribed in 20 CFR part 330.

The RRB utilizes Form UI–1e, Request for Pay Rate Information, to obtain information from a claimant about their last railroad employer and pay rate, when it is not available from other RRB records. Form UI–1e also explains the possibility of receiving a higher daily benefit rate if claimants report their daily rate of pay for railroad work in the base year. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes no changes to Form UI–1e. The completion time for Form UI–1e is estimated at 5 minutes per response. The RRB estimates that 350 Form UI–1e's are received annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *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 send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–9784 Filed 4–29–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 3, 2004: A Closed Meeting will be held on Wednesday, May 5, 2004, at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, May 5, 2004, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Consideration of amicus participation; and an adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 28, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–9973 Filed 4–28–04; 11:54 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27839]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 23, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 18, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 18, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. et al. (70–10166)

American Electric Power Company, Inc. ("AEP") a New York corporation and AEP Utilities, Inc., formerly Central and South West Corporation and a Delaware corporation ("AEP Utilities"), both registered holding companies; and the following direct and indirect subsidiaries of AEP: AEP Generating Company ("Generating"), AEP Texas Central Company, formerly Central Power and Light Company ("TCC"), AEP Texas North Company, formerly West Texas Utilities Company ("TNC"), Appalachian Power Company ("Appalachian"), Columbus Southern Power Company ("Columbus"), Indiana Michigan Power Company ("Indiana"), Kentucky Power Company ("Kentucky"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO"), and Wheeling Power Company ("Wheeling") (collectively, "Public Utilities"); Cedar Coal Company, Central Appalachian Coal Company, Central Coal Company, Colomet, Inc., Simco, Inc. Southern Appalachian Coal Company, Blackhawk Coal Company, Conesville Coal Preparation Company, (collectively, "Coal Companies"); Franklin Realty Inc.; Indiana Franklin Realty Company (collectively, "Real Estate Companies"); American Electric Power Service Corporation (together the Public Utilities, Coal Companies; Real Estate Companies, "Utility Money Pool Participants"); AEP Houston Pipeline Company, LLC; AEP Texas POLR GP, LLC; AEP Coal Marketing LLC; AEP Emissions Marketing, LLC; CSW Orange, Inc.; CSW Mulberry, Inc.; Noah I Power G.P., Inc.; CSW Orange II, Inc.; CSW Mulberry II, Inc.; CSW Sweeny GP I, Inc.; CSW Sweeny GP II, Inc.; CSW Sweeny LP I, Inc.; CSW Sweeny LP II, Inc.; CSW Services International Inc.; Trent Wind Farm LP; AEP Wind LP, LLC; AEP Wind GP, LLC; HPL GP LLC; AEP Desert Sky LP II, LLC; AEPR Ohio LLC; AEP Wind LP II, LLC; and AEP Wind Holding, LLC (collectively," New Nonutility Money Pool Participants") and the nonutility subsidiaries listed in Exhibit A as defined in Section IV.C below ("Prior Nonutility Money Pool Participants")(collectively, "Applicants"), all located at 1 Riverside Plaza, Columbus, Ohio 43215 have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, and 12(b), 12(c), 32, and 33, and rules 43, 45, 46, 53 and 54 under the Act.

I. Background and Summary

By Commission order dated December 18, 2002 (HCAR No. 27623) ("December Order"), AEP was authorized to conduct financing transactions until March 31, 2006, including among other things: the issuance of guarantees and other credit support; the creation of financing entities; the continuation of the public utilities' money pool; the creation of the

nonutility money pool; and the payment of dividends out of capital or unearned surplus. AEP currently has authority to issue commercial paper, promissory notes and other forms of short-term indebtedness in an aggregate amount not to exceed $7.2 billion to fund the money pools and for its own requirements. In addition, AEP and any existing direct or indirect nonutility subsidiary (including any exempt wholesale generator under section 32 of the Act ("EWG"), a foreign utility company under section 33 of the Act ("FUCO") or an exempt telecommunications company under section 34 of the Act ("ETC"), and any rule 58 company ("Rule 58 Company")) (collectively the "Nonutility Subsidiaries") were authorized in the December Order to participate in and form the nonutility money pool as a separate system of intercorporate borrowings. The nonutility money pool is administered in the same manner and subject to the same conditions as the utility money pool.

Prior to the December Order, the Commission by order dated April 11, 2002 (HCAR No. 27517) ("April Order"), authorized the formation of financing subsidiaries and special purpose subsidiaries through June 30, 2004 with the following limits:

- Neither AEP, any financing subsidiary ("Financing Subsidiary"), nor any special purpose subsidiary ("SPS") will publicly issue notes, debt securities, preferred securities, or, to the extent they are rated, stock purchase contracts and/or stock purchase units in this file unless it has maintained at least an investment grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency.
- The Financing Subsidiary or SPS will limit the aggregate amount of securities they will issue to no more than $1 billion out of the total $3 billion requested, and the Commission reserved jurisdiction over the additional $2 billion.
- No Financing Subsidiary or SPS shall acquire or dispose of, directly or indirectly, any interest in any "utility asset," as that term is defined under the Act.
- Financing Subsidiaries are authorized to transfer proceeds of any financing to their respective parent companies.

The Applicants request authorization to replace the December Order and the April Order with the following requests with respect to external financing activities, the provision of intrasystem financings, guarantees, and other matters through March 31, 2007 ("Authorization Period").

II. Financing Requests

A. Financing Parameters

The Applicants request authority to engage in financing transactions under the following terms ("Financing Parameters"):

1. Investment Grade Requirements

Applicants represent that, except for securities issued for the purpose of funding AEP money pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission, unless: (1) The security to be issued, if rated, is rated investment grade; (2) all outstanding securities of the issuer that are rated are rated investment grade; and (3) all outstanding securities of AEP that are rated are rated investment grade ("Investment Grade Condition"). For purposes of this Investment Grade Condition, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934, as amended.

2. Common Equity

AEP hereby represents that it will maintain during the Authorization Period for itself and for all the Public Utilities a minimum of 30% common equity as a percentage of consolidated capital (inclusive of short-term debt and inclusive of securitization bonds for the recovery of regulatory assets in connection with state-mandated utility restructuring); however TCC seeks authority to maintain a common equity ratio of 25% for so long as securitization bonds are outstanding. The 25% common equity as a percentage of consolidated capital is being sought because of the issuance of securitization bonds. Securitization bonds are expected to be outstanding until the currently outstanding TCC Transition Funding securitization bond issue is scheduled to be fully retired by January 15, 2016. However, TCC is anticipating an additional issuance which would remain outstanding for approximately 15 years after it is issued.

3. Effective Cost of Money

The effective cost of capital on Preferred Stock, equity-linked securities, Preferred Securities, Long-term Debt and Short-Term Debt will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality. Applicants state that in no event will the effective cost of capital (a) on any series of Long-term Debt, exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, (b) on any series of Preferred Stock, Preferred Securities or equity-linked securities, exceed 600 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, and (c) on Short-term Debt, exceed 500 basis points over the London Interbank Offered Rate ("LIBOR") for maturities of less than one year

4. Maturity

Maturity of indebtedness will not exceed 50 years for long term. Preferred Securities and equity-linked securities will be redeemed no later than 50 years after the issuance, unless converted into Common Stock. Preferred Stock issued directly by AEP may be perpetual in duration. Short-term borrowings will have maturities of less than one year from the date of issuance.

5. Issuance Expenses

The underwriting fees, commissions, or other similar expenses paid in connection with the issue, sale or distribution of a security pursuant to the Application will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued, or (b) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

6. External Financing

External financing will be at rates or prices and under conditions based upon, or otherwise determined, by competitive capital markets. The Applicants request authority to sell securities covered by this Application in any of the following ways: (a) Through underwriters or dealers; (b) directly to a limited number of purchasers or to a single purchaser, or (c) through agents or dealers. If debt securities are being sold, they may be sold pursuant to "delayed delivery contracts" which permit the underwriters to locate buyers who will agree to buy the debt at the same price but at a later date than the date of the closing of the sale to the underwriters. Debt securities may also be sold through the use of medium-term note and similar programs, including in transactions covered by Rule 144A under the Securities Act of 1933.

7. Borrowing Limits

Borrowing limits for the aggregate amount of outstanding external financing effected by the Applicants under the authorization requested during the Authorization Period, other than the refinancing of currently outstanding securities, which shall not be limited, will not exceed:

a. Long-term debt limits:

AEP—$3,000,000,000
Kingsport—$ 40,000,000
TCC—$600,000,000
TNC—$250,000,000
SWEPCO—$600,000,000
Wheeling—$40,000,000

b. Short-term limits:

i. Public Utility Subsidiaries through the money pool or external borrowings, or borrowings from AEP or from a Financing Subsidiary, are as follows:

Appalachian—$600,000,000
Columbus—$350,000,000
Indiana—$500,000,000
Kentucky—$200,000,000
Generating—$125,000,000
Kingsport—$40,000,000
Ohio—$600,000,000
PSO—$300,000,000
SWEPCO—$350,000,000
TCC—$600,000,000
TNC—$250,000,000
Wheeling—$40,000,000

ii. AEP requires an amount of authority for short-term borrowings sufficient to fund the utility money pool and the nonutility money pool, to make loans to other Subsidiaries, as well as for its own requirements in an amount not to exceed $7,200,000,000.

iii. AEP Utilities, Inc., a registered public utility holding company, requests authority to borrow up to $100,000,000 outstanding at any one time from external sources or from its parent AEP for its own corporate purposes. This authority is in addition to its authority to borrow to fund the utility money pool.

8. Use of Proceeds

The proceeds from the sale of securities in external financing transactions by the Applicants will be added to their respective treasuries and subsequently used principally for general corporate purposes including:

a. The financing, in part, of capital expenditures;

b. The financing of working capital requirements;

c. The acquisition, retirement or redemption of securities previously issued by such Applicant; and

a. Other lawful purposes, including direct or indirect investment in Rule 58 Companies by AEP, other subsidiaries approved by the Commission, EWGs and FUCOs.

The Applicants represent that no such financing proceeds will be used to acquire a new subsidiary unless such financing is consummated in accordance with an order of the Commission or an available exemption under the Act.

B. AEP External Financing

AEP seeks authority to increase its capitalization by issuing and selling from time to time during the Authorization Period: (1) Directly, additional common stock or options, warrants, equity-linked securities or stock purchase contracts convertible into or exercisable for common stock, and preferred stock; (2) indirectly through one or more financing subsidiaries as described in Section III.D ("Financing Subsidiaries"), other forms of preferred securities (including trust preferred securities) (collectively "Preferred Securities"); (3) directly or indirectly through one or more Financing Subsidiaries new long term debt securities ("Long-Term Debt"), in an amount up to $3 billion (excluding securities issued for purposes of refunding or replacing other outstanding securities where AEP's capitalization is not increased) as more fully described below.

Common Stock. AEP seeks authority to issue and sell Common Stock and to issue and sell options, warrants, equity-linked securities or other stock purchase rights exercisable for Common Stock. The aggregate amount of financing obtained by AEP during the Authorization Period from issuance and sale of Common Stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans), when combined with issuances of preferred stock, Preferred Securities, equity linked securities, and long-term debt, as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof, shall not exceed $3 billion. Any refunding or replacement of securities where capitalization is not increased from that in place at September 30, 2003, will be through the issuance of securities of the type and under the same terms and conditions authorized in this Application. Common Stock financings may be effected through underwriting agreements of a type generally standard in the industry. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents as discussed below or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such Common Stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

AEP may sell Common Stock covered by this Application in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; or (iii) directly through a limited number of purchasers or a single purchaser. If underwriters are used in the sale of the securities, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by AEP) or directly by one or more underwriters acting alone. If Common Stock is being sold in an underwritten offering, AEP may grant the underwriters a "green shoe" option permitting the purchase from AEP at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

Preferred Securities. AEP seeks to have the flexibility to issue Preferred Stock or other types of Preferred Securities (including, without limitation, trust preferred securities or monthly income preferred securities) directly or indirectly through one or more special-purpose Financing Subsidiaries organized by AEP specifically for such purpose as described. The aggregate amount of financing obtained by AEP during the Authorization Period from issuance and sale of preferred stock, Preferred Securities and equity linked securities, when combined with issuances of Common Stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans), and long-term debt, as described in this section, shall not exceed $3 billion for the uses set forth above. Any refunding or replacement of securities where capitalization is not increased from that in place at September 30, 3003, will be through the issuance of securities of the type authorized in this Application.

Preferred Stock or other types of Preferred Securities may be issued in one or more series with such rights, preferences and priorities as may be designated in the instrument creating each such series, as determined by AEP's Board of Directors. Dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for

such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of AEP Common Stock or indebtedness. Equity linked securities will be exercisable or exchangeable for or convertible, either mandatorily or at the option of the holder, into Common Stock or indebtedness or allow the holder to surrender to the issuer or apply the value of a security issued by AEP as approved by the Commission to such holder's obligation to make a payment on another security of AEP issued as permitted by the Commission. Any convertible or equity linked securities will be convertible into or linked to Common Stock, Preferred Securities or unsecured debt that AEP is otherwise authorized to issue by Commission order directly, or indirectly through Financing Subsidiaries on behalf of AEP.

Long-Term Debt. AEP requests Commission authorization during the Authorization Period to issue unsecured, Long-Term Debt securities in an aggregate principal amount outstanding at any time, when combined with issuances of common stock (other than for benefit plans or stock purchase and dividend reinvestment plans) preferred stock, Preferred Securities, and equity linked securities as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof from that in place at September 30, 2003, not to exceed $3 billion. Any refunding or replacement of securities where capitalization is not increased will be through the issuance of securities of the type authorized in this Application.

AEP may directly or indirectly issue unsecured Long-Term Debt through one or more Financing Subsidiaries in the form of bonds, notes, medium-term notes or debentures under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Each series of Long-Term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as AEP may determine at the time of issuance. Any Long-Term Debt (a) may be convertible into any other securities of AEP, (b) will have maturities up to 50 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon pursuant to a remarketing arrangement, (f) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (g) may be called from existing investors by a third party and (h) may be entitled to the benefit of affirmative or negative financial or other covenants.

The maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the Long-Term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Specific terms of any Long-Term Debt will be determined by AEP at the time of issuance and will comply in all regards with the Financing Parameters.

Short-Term Debt. AEP also seeks authority to issue directly or indirectly through a Financing Subsidiary commercial paper, promissory notes and other forms of short-term indebtedness having maturities of less than one year ("Short-Term Debt") in an aggregate amount not to exceed $7.2 billion to fund the Money Pools, to make loans to Subsidiaries and for its own corporate purposes. Commercial paper would be sold in established domestic or European commercial paper markets. Such commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from AEP, AEP Utilities, any Financing Subsidiary or the Public Utility Subsidiaries will re-offer such paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

AEP, AEP Utilities, any Financing Subsidiary or the Public Utility Subsidiaries may, without counting against their borrowing limits, maintain back up lines of credit in connection with a commercial paper program in an aggregate amount not to exceed the amount of authorized commercial paper.

AEP, AEP Utilities, any Financing Subsidiaries and the Public Utility Subsidiaries state that they require flexibility in the types of short-term debt issued externally to take advantage of new products being offered in the short-term securities market, including but not limited to, the extendible commercial notes program currently being offered by certain commercial paper dealers, and other new products to provide alternate backup liquidity for commercial paper and short-term notes.

AEP, AEP Utilities, any Financing Subsidiary and the Public Utility Subsidiaries propose to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as each individual entity may deem appropriate in light of its needs and market conditions at the time of issuance, including making borrowings from AEP, AEP Utilities or any Financing Subsidiary.

C. Public Utility Subsidiaries' Financing

Kingsport, SWEPCO, TCC, TNC, and Wheeling seek authority to issue secured or unsecured long-term debt in an amount not to exceed $50 million, $600 million, $600 million, $250 million, and $50 million, respectively, including the issuance of long-term debt to AEP, and to enter into hedging transactions.[1] This authorization would include any new pollution control financing by SWEPCO. Kingsport, SWEPCO, TCC, TNC, and Wheeling seek authorization to issue long-term debt to AEP at a rate designed to parallel AEP's effective cost of capital. Any long-term debt would have such designations, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, interest payment terms, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions in accordance with the Financing Parameters set forth in Section II.

The Public Utility Subsidiaries seek authority to issue short-term debt to the extent of the borrowing limits as set forth below in Section II through the Utility Money Pool, which is more fully described below, through external borrowings, or from AEP or a Financing Subsidiary.

D. AEP Utilities' Financing

AEP Utilities seeks authority to issue unsecured short-term debt in an amount up to $100,000,000 from external

[1] The Public Utility Subsidiaries must seek the authority of the public utility commission in the states of Indiana, Virginia, Tennessee, Ohio, Oklahoma and Kentucky for the issuance of long-term securities. Therefore, rule 52(a) provides an exemption from this Commission for the issuances of long term debt securities by all of AEP's public utility subsidiaries except: Kingsport, TCC, SWEPCO, TNC and Wheeling.

sources or from its parent AEP for its general corporate purposes under the terms described in Section II. This authority would not be used to fund the Utility Money Pool. AEP Utilities will not borrow from either the Utility Money Pool or the Nonutility Money Pool.

E. Financing Subsidiaries

AEP and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries. Financing Subsidiaries may be corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of AEP and the Subsidiaries through the issuance of long-term debt, short-term debt, including commercial paper, or Preferred Securities, to third parties and the transfer of the proceeds of such financings to AEP or such Subsidiaries in the case of the transfer of proceeds to the respective participants in the Nonutility Money Pool and Utility Money Pool. AEP and the Subsidiaries request authorization to issue their subordinated unsecured notes ("Subordinated Notes") to any Financing Subsidiary to evidence the transfer of financing proceeds by a Financing Subsidiary to its respective parent company. The amount of securities issued by any Financing Subsidiary to third parties under the authorization requested will be included in the overall external financing limitation, if any, authorized for the parent company of such Financing Subsidiary. However, the amount of Subordinated Notes issued by a parent company to its Financing Subsidiary will not be counted against such external financing limitation.

AEP or a Subsidiary may, if required, guarantee or enter into support or expense agreements in respect of the obligations of any such Financing Subsidiaries. Subsidiaries may also provide guarantees and enter into support or expense agreements, if required, on behalf of such entities. However, to avoid double counting, the guarantees of securities issued by Financing Subsidiaries shall not be counted against the limitation on AEP guarantees and subsidiary guarantees.

F. Credit Enhancement

Applicants request authority to obtain credit enhancement for the securities covered by this Application, which could include insurance, a letter of credit or a liquidity facility, if they were to issue floating rate securities, whereas the credit enhancement would be a purely economical decision for fixed rate securities. Applicants anticipate that they would be required to pay a premium or fee to obtain the credit enhancement, but a net benefit through a reduced interest rate would be realized. Applicants would obtain credit enhancement only if it is economically beneficial to do so taking into consideration the fees required.

G. Guarantees

AEP requests authorization to directly or indirectly through one or more Financing Subsidiaries to enter into guarantees, obtain letters of credit, enter into support or expense agreements, or otherwise provide credit support with respect to debt securities or other contractual obligations of any subsidiary from time to time through the Authorization Period on behalf of any of its direct or indirect Subsidiaries up to $5 billion, provided however, that the amount of any parent guarantees in respect of obligations of any subsidiaries shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(i), as applicable. AEP also requests authority to guarantee the obligations of its direct or indirect subsidiaries as may be appropriate or necessary to enable the subsidiaries to carry on the ordinary course of their businesses.

AEP Utilities seeks authority to provide guarantees and other credit support with respect to its direct or indirect subsidiaries in an amount not to exceed $1,000,000,000 outstanding at any one time.

Each of the Public Utility Subsidiaries seeks authorization to enter into guarantees and other credit support with respect to obligations of each of its subsidiaries in an aggregate amount not to exceed $125,000,000 outstanding at any one time.

Nonutility Subsidiaries also request authority for each Nonutility Subsidiary to provide guarantees of indebtedness or contractual obligations and other forms of credit support to other Nonutility Subsidiaries in an aggregate principal amount not to exceed an aggregate of $2 billion outstanding at any one time, exclusive of any guarantees and other forms of credit support that are exempt pursuant to rule 45(b) and rule 52(b), provided however, that the amount of Nonutility Subsidiary guarantees in respect of obligations of any Rule 58 Companies shall remain subject to the limitations of rule 58(a)(i).

Certain of the guarantees referred to above may be in support of the obligations of subsidiaries which are not capable of exact quantification. In such cases, AEP will determine the exposure of the instrument for purposes of measuring compliance with the total guarantee limit by appropriate means including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, these estimates will be made in accordance with Generally Accepted Accounting Principles ("GAAP") and these estimates will be re-evaluated periodically. Any guarantee that is outstanding at the end of the Authorization Period shall remain in force until it expires or terminates in accordance with its terms. AEP or a subsidiary issuing a guarantee, as the case may be, proposes to charge each subsidiary a fee for each guarantee provided on its behalf that is not greater than the costs, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

The aggregate amount of the guarantees will not exceed $8.125 billion (not taking into account obligations exempt pursuant to rule 45 and under other outstanding Commission orders).

H. Hedges

AEP and the subsidiaries seek authority to enter into and perform interest rate hedging transactions ("Interest Rate Hedges"). Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or whose parent companies' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Applicants will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding the swap or option payments) in connection with an Interest Rate Hedge will not exceed

those generally obtainable in competitive markets for parties of comparable credit quality.

Interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges") and subject to certain limitations and restrictions as set forth would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (i) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap ("Forward Sale"); (ii) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"); (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations ("Zero Cost Collar"); (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Each Applicant will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Applicants may decide to lock in interest rates and/or limit its exposure to interest rate increases. Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under GAAP. The Applicants will comply with Statement of Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). The Applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.

III. Intrasystem Financing Requests

AEP and the participants in each of the money pools request authorization to (A) continue to participate in the money pools and (B) establish Financing Subsidiaries to fund the money pools under the following terms during the Authorization Period.

A. Money Pool Operations

Participants in either the utility money pool ("Utility Money Pool") or the nonutility money pool ("Nonutility Money Pool") will make unsecured short-term borrowings from its applicable money pool, contribute surplus funds to its applicable money pool and lend to and or extend credit to other participants in its applicable money pool. All short-term borrowing needs of the participants may be met by funds in the money pools to the extent such funds are available. The money pools are composed from time to time of funds from the following sources: (i) Surplus funds of AEP; (ii) surplus funds of any of the participants; or (iii) short-term borrowings by AEP, any Financing Subsidiary or, in the case of the Utility Money Pool, AEP Utilities, Inc. All debt issued in connection with the money pools will be unsecured. AEP funds made available to the money pools will be used first to fund the Utility Money Pool and thereafter to fund the Nonutility Money Pool.

Each participant shall have the right to borrow from the respective money pool from time to time, subject to the availability of funds and the applicable borrowing limits set forth in orders of the Commission and other regulatory authorities, and agreements binding upon such participant. Each participant may borrow from the Utility Money Pool to the extent of its borrowing limits for short-term debt. Participants in the Nonutility Money Pool will not engage in lending and borrowing transactions with participants in the Utility Money Pool. Neither money pool will borrow from the other money pool. No participant shall be obligated to borrow from the money pool if lower cost funds can be obtained from its own external borrowing. Neither AEP nor AEP Utilities will borrow funds from either of the money pools or any participant. From the date of any order issued in this file, EWG's and FUCO's, which are participants in the Nonutility Money Pool, will only be lenders to, not borrowers from, the Nonutility Money Pool. Currently the following EWG's and/or FUCO's have outstanding loans from the Nonutility Money Pool ("EWG and FUCO Borrowers"): [2]

Company	Amount borrowed
AEP Desert Sky LP, LLC ...	$19,703,899
AEP Delaware Investment Co.	883
AEP Energy Services Ltd (UK)	245,278,195

Each participant will borrow pro rata from each funding source in the same proportion that the amount of funds provided by that funding source bears to the total amount of short-term funds available to the money pool.

Funds which are loaned from participants into the applicable money pool which are not required to satisfy borrowing needs of other participants will be invested on the behalf of the respective money pool in one or more short-term instruments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A–1" or "P–1" or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit, (vii) Eurodollar funds; (viii) short-term debt securities rated AA or above by Standard & Poor's, Aa or above by Moody's Investors Service, or AA or above by Fitch Ratings; (ix) short-term debt securities issued or guaranteed by an entity rated AA or above by Standard & Poor's, Aa or above by Moody's Investors Service, or AA or above by Fitch Ratings; and (x) such other investments as are permitted by Section 9(c) of the Act and Rule 40 thereunder. No funds from the Utility Money Pool or Nonutility Money Pool will be invested in EWG's or FUCO's.

The interest rate applicable on any day to then outstanding loans through the money pools will be the composite weighted average daily effective cost incurred by AEP, AEP Utilities, Inc. or any Financing Subsidiary for short-term borrowings from external sources for that money pool. If there are no borrowings outstanding then the rate would be the certificate of deposit yield equivalent of the 30-day Federal Reserve "A2/P2" Non Financial Commercial Paper Composite Rate ("Composite"), or if no composite is established for that day then the applicable rate will be the Composite for the next preceding day for which the Composite is established.

[2] The prior EWG and FUCO Borrowers represent that they will repay these outstanding loans in full. Such repayment will be reported on the appropriate Quarterly Rule 24 Report.

If the Composite shall cease to exist, then the rate would be the composite which then most closely resembles the Composite and/or most closely mirrors the pricing AEP would expect if it had external borrowings.

Each participant receiving a loan shall repay the principal amount of such loan, together with all interest accrued thereon, on demand and in any event not later than the expiration date of the authorization for the operation of the money pool. All loans made through the applicable money pool may be prepaid by the borrower without premium or penalty. If the money pool is in an invested position, interest income related to external investments will be calculated daily and allocated back to lending parties on the basis of their relative contribution to the investment pool funds on that date.

AEPSC, a rule 88 subsidiary service company, will be the administrative agent of the money pools. AEPSC will administer the money pools on an "at cost" basis and will maintain separate records for each Money Pool. Each participant, any Financing Subsidiary and AEP will determine the amount of funds it has available for contribution to the money pools. The determination of whether a participant or AEP at any time has surplus funds, or shall lend such funds to the money pool, will be made by such participant's treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in such participant's sole discretion. Each participant may withdraw any of its funds at any time upon notice to AEPSC.

B. Financing Subsidiaries To Fund Money Pools

AEP proposes to create two Financing Subsidiaries one to fund the Utility Money Pool ("Utility Money Pool FS") and a separate subsidiary to fund the Nonutility Money Pool ("Nonutility Money Pool FS"). Both the Utility Money Pool FS and the Nonutility Money Pool FS will be limited liability corporate subsidiaries of AEP formed under Delaware law. Each Financing Subsidiary will have a separate bank account for the separate money pool it funds. Any funds transferred to the money pools will flow through this Financing Subsidiary bank account.

AEP states it seeks to modify its corporate borrowing program to more fully separate the operations of the Utility Money Pool and the Nonutility Money Pool to further assure that there can be no cross-subsidization. This new structure will facilitate a separate external borrowing program for the Utility Money Pool.

The Financing Subsidiary formed to fund the Utility Money Pool may obtain funds from external sources or from AEP or AEP Utilities. It is anticipated that the Financing Subsidiary in the Utility Money Pool will have the ability to establish an external commercial paper program supported by the Public Utility Subsidiaries and should therefore obtain a higher credit rating than the AEP program currently has. AEP's current credit rating for commercial paper is A2/P3/F2—and it is anticipated that the Utility Money Pool Financing Subsidiary should initially be rated A2/P2/F2. This will result in lower financing costs depending on the market conditions.

When the Financing Subsidiary directly issues commercial paper to dealers to fund the Utility Money Pool, each Public Utility Subsidiary that borrows from the Financing Subsidiary must maintain comparable debt ratings equal to or greater than the Financing Subsidiary and maintain requisite backup facilities with one or more financial institutions. Each Public Utility Subsidiary will pay all liabilities incurred by the Financing Subsidiary relating to the offer and sale of the commercial paper the proceeds of which were used to make loans to that Public Utility Subsidiary and its pro rata share of other expenses and administrative costs of the Financing Subsidiary in connection with its funding of the Utility Money Pool. No Public Utility Subsidiary will be liable for the borrowings of any other affiliate under the Money Pool. The proceeds from the borrowings of the Financing Subsidiary will be used to repay its borrowings or be invested to continue funding the Utility Money Pool. The proceeds of borrowings by the Financing Subsidiary will not be loaned to AEP.

The Financing Subsidiaries that fund the Money Pools would be solely financial conduits. They will not have any business purpose other than to fund the Money Pools. Commission approval will be sought if other types of transactions are contemplated.

AEP will continue to fund the Nonutility Money Pool with the sale of commercial paper. If it is determined that AEP can borrow money at a cheaper rate than that obtained by the Financing Subsidiary that is funding the Utility Money Pool then AEP will fund the Utility Money Pool directly.

AEPSC administers the Money Pools by matching up, to the extent possible, short-term cash surpluses and loan requirements of AEP and the various participants. Participants' requests for short-term loans are met first from surplus funds of other participants which are available to the applicable money pool and then from AEP corporate funds to the extent available. To the extent that participant contributions of surplus funds to the applicable money pool are insufficient to meet participant requests for short-term loans, borrowings are made from outside the system.

C. Nonutility Money Pool Participants

In Exhibit A to this file, AEP lists the Prior Nonutility Money Pool Participants, which request to continue to participate in the Nonutility Money Pool. The following entities are no longer participants because they have been removed, dissolved, or sold: AEP Retail Energy LLC; AEP Credit, Inc.; Industry and Energy Associates LLC; AEP Gas Power Systems LLC; AEP Resource Services LLC; Mid-Texas Pipeline Company; Eastex Cogeneration LP; CSW Eastex LP I Inc.; Enershop Mutual Energy CPL LP; Mutual Energy CPL LP; Mutual Energy WTU LP; Mutual Energy Service Co., LLC; AEP Ohio Commercial & Industrial Retail Company LLC; and Universal Supercapacitors, LIG, Inc., LIG Pipeline Company, Tuscaloosa Pipeline Company, LIG Liquids Company, L.L.C., Louisiana Intrastate Gas Company, L.L.C., LIG Chemical Company. The New Nonutility Money Pool Participants seek authorization to participate in the Nonutility Money Pool.

D. Utility Money Pool Participants

Dolet Hills Lignite Company, currently a participant in the Nonutility Money Pool seeks to become a participant in the Utility Money Pool, which currently includes the Public Utilities, Coal Companies, and Real Estate Companies. Dolet Hills Lignite Company, a subsidiary of SWEPCO, seeks to become a participant in the Utility Money Pool because it is a mining company similar to the other mining companies, which are currently in the Utility Money Pool. It would no longer be a participant in the Nonutility Money Pool.

IV. Other Matters

A. Pollution Control Bonds

The following Public Utility Subsidiaries seek authority to refund and reissue currently outstanding pollution control revenue bonds as follows: TCC $450,000,000, TNC $45,000,000, and SWEPCO $185,000,000. Pollution control revenue bonds may be sold either currently or in forward refundings where the price of

the securities is established currently for delivery at a future date.

B. Payments of Dividends Out of Capital or Unearned Surplus

AEP and the Nonutility Subsidiaries hereby request authority for the direct and indirect Nonutility Subsidiaries to pay dividends out of capital or unearned surplus to the fullest extent of the law, provided, however, that without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if such Nonutility Subsidiary derives any material part of its revenues from the sale of goods, services or electricity to any Public Utility Subsidiary. In addition, the Nonutility Subsidiary will not declare any dividend out of capital or unearned surplus unless it:

(i) Has received excess cash as a result of the sale of assets;

(ii) Has engaged in a reorganization; and/or

(iii) Is returning capital to an associate company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9788 Filed 4–29–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49617; File No. SR–Amex–2001–46]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to the Adoption of a Facilitation Rule and Member Firm Guarantee for Index Shares

April 26, 2004.

On July 11, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a facilitation rule and a member firm participation guarantee for member firms facilitating transactions in Portfolio Depositary Receipts and Index Fund Shares ("index shares") on the Exchange, and to codify the Exchange's policy prohibiting the use of non-public information received during the facilitation process.

On November 7, 2001, September 24, 2003, and December 4, 2003, Amex filed Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.[3] The proposed rule change was published for comment in the **Federal Register** on January 13, 2004.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which, among other things, requires that the Exchange's rules be 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. The Commission believes that the proposal sets forth reasonable rules and procedures for member firms to follow when seeking to facilitate (*i.e.*, trade with) index share orders from their own public customers, and that these rules and procedures adequately provide for the exposure of the customer order to the trading crowd for the possibility of price improvement.

The proposal also would provide a member firm facilitating a public customer order of 25,000 index shares or more the right to trade with up to 50% of the order if the firm improves the price provided by the trading crowd, and up to 40% if it matches the trading crowd's price. The Commission believes that, in the context of index share trading, member firm guarantees of this size should not erode price competition to the detriment of investors. The Commission further notes that public customer orders on the specialist's book or represented in the trading crowd on the contra side of the public customer order that the member firm is seeking to facilitate would have priority over the member firm's guaranteed participation.

In addition, the proposed rule change provides that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person with knowledge of an imminent facilitation transaction to trade in index shares that are subject of the transaction or other related instruments before the proposed facilitation is disclosed. The Commission believes that this aspect of the proposal should help protect the integrity of the market and prevent disadvantage to other market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (File No. SR–Amex–2001–46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9823 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49611; File No. SR–BSE–2004–10]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., and Notice of Filing and Granting Accelerated Approval to Amendment No. 1 To Permit the Separation of the Chairman and Chief Executive Officer Positions

April 23, 2004.

I. Introduction

On March 2, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Constitution to permit the separation of the functions of Chairman and of Chief Executive Officer ("CEO"). The proposed rule change was published for comment in the **Federal Register** on March 17, 2003.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 5, 2001 (Amendment No. 1); and letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 23, 2003 and December 3, 2003 (Amendment Nos. 2 and 3, respectively).

[4] *See* Securities Exchange Act Release No. 49022 (January 5, 2004), 69 FR 2015 (January 13, 2004).

[5] In approving this 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).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49434, 69 FR 13922 (March 24, 2004).

Commission received no comments on the proposal.

Subsequently, on April 14, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[4] In Amendment No. 1, the Exchange proposes several changes to the original filing. Amendment No. 1 clarifies the duties the Chairman and the CEO would perform when those positions are held by the same person or by different persons. Amendment No. 1 also incorporates a provision governing executive sessions of the Board, and bars the CEO from attending all such executive sessions and the Chairman from attending such executive sessions relating to personnel or compensation issues of the Chairman.

This order approves the proposed rule change, as amended; grants accelerated approval to Amendment No. 1; and solicits comments from interested persons on Amendment No. 1.

II. Description of Proposed Rule Change

The BSE proposes to amend its Constitution to permit the separation of the Chairman and CEO positions. The separation would not be mandatory but, according to the Exchange, would be an option to be utilized by the Exchange's Board as deemed necessary and/or prudent to enhance the governance of the Exchange. The Exchange proposes the flexibility to separate the Chairman and CEO positions in the event the BSE's Board determines such a separation to be practical, in light of current or external events. The Exchange represents that any such separation also would allow for the independence of the Exchange's regulatory function from its marketplace function.[5]

To implement the possible separation of the two roles, the proposed changes to the BSE's Constitution would delineate the duties and functions of the Chairman and of the CEO in the event two individuals or the same individual should hold these positions. If the Chairman and CEO are not the same person, then according to the proposed revisions to the Constitution, the Chairman, as an executive officer of the Exchange, among other duties, would: (1) Preside over all meetings of the Board; (2) be responsible to the Board for the management of the BSE's regulatory affairs; (3) be responsible for management of the regulatory affairs of all exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party; and (4) act as Board liaison to the Exchange's CEO and management.[6] Similarly, if the Chairman and CEO positions are held by different individuals, then the CEO, among other duties, would: (1) Be responsible for the management and administration of the affairs of the Exchange's marketplace functions; (2) not participate in executive sessions of the Board; and (3) be subject to the authority of the Board.

If the Chairman and CEO are the same person, the proposal provides that the combined Chairman/CEO, among other duties, would: (1) Preside over all meetings of the Board; (2) be responsible to the Board for the management of the BSE's regulatory affairs; (3) be responsible for the management of the regulatory affairs of all Exchange facilities, subsidiaries, or other legal entities to which the Exchange is a party; (4) be responsible for the management and administration of the affairs of the Exchange's marketplace functions; and (5) be subject to the authority of the Board.

To further separate the CEO role from the regulatory functions of the Exchange, the Exchange also proposes that if a single individual serves as both the Chairman and CEO, the Board must designate a lead director to preside over executive sessions of the Board. The Chairman/CEO would not be permitted to participate in executive sessions of the Board. In addition, the Board would publicly disclose the lead director's name and a means by which interested parties may communicate with the lead director.

The Exchange further proposes to clarify when an executive session of the Board would be called. The Exchange proposes to add a provision to the Constitution noting that the Board will have the power to determine when to conduct proceedings in executive session, and that executive session proceedings will be commenced for matters involving the regulation of the Exchange, the compensation of the Chairman, Exchange staff personnel matters, or any other matter that the Board determines to require confidential and sensitive treatment. The proposal requires that the Chairman recuse himself from any executive session proceedings involving personnel or compensation issues of the Chairman. Additionally, the CEO would not be permitted to attend any executive sessions of the Board.

III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(1) of the Act,[8] which requires that the exchange be "so organized and [have] the capacity to carry out the purposes of [the Act]." The Commission also finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[9] in that it is designed, among other things 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.

In the Commission's view, the Exchange has taken an initial step toward strengthening its governance structure by providing itself with the flexibility to separate the functions of Chairman and CEO.[10] According to the Exchange, any such separation would allow for greater independence of the Exchange's regulatory function from its marketplace function. Although the Exchange has retained the ability to have the functions of Chairman and CEO reside in a single individual, the Commission notes that the Exchange's proposal has incorporated several features that are designed to help

[4] *See* letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 13, 2004 ("Amendment No. 1"). Amendment No. 1 superceded and replaced the original filing in its entirety.

[5] The Exchange noted in its filing that it did not submit this proposal in response to any internal issues arising from its current governance structure. Rather, the Exchange stated that it sought to be proactive in concert with changes occurring in the control mechanisms of other market centers, particularly the New York Stock Exchange ("NYSE"). The Exchange noted that it was not implementing all of the changes recently put in place by the NYSE because the Exchange's size would make such a governance structure unwieldy and unworkable.

[6] The Exchange also proposes a Constitutional provision to clarify that the general powers of the Board also would include the administration of the regulatory function of the Exchange. Thus, while the person serving in the capacity of Chairman or Chairman/CEO would be responsible for the management of the Exchange's regulatory affairs, the Exchange's Board would continue to have ultimate oversight responsibility for the Exchange's regulatory functions.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission is in the process of reviewing a range of governance issues relating to self-regulatory organizations ("SROs") and, depending on the results of that review, may determine further steps designed to strengthen the governance of SROs are necessary.

protect the integrity of the Exchange's regulatory function.

The Commission notes that the proposal sets forth the respective duties of the Chairman and the CEO in the event two individuals hold these positions. In this situation, the Exchange's proposal clarifies that the Chairman is responsible for the management of the BSE's regulatory function, while the CEO is responsible for the management and administration of the Exchange's marketplace function. In the Commission's view, the proposed rule change is designed to help improve the governance structure of the Exchange by ensuring that the Exchange's regulatory function is cordoned off from management of the marketplace function when two individuals hold the positions of Chairman and CEO.

In addition, the Exchange proposes to implement other revisions to its Constitution that are designed to reduce any potential conflicts of interest between its regulatory responsibilities and its marketplace functions, in the event a single individual holds the positions of Chairman and CEO. In this case, the Chairman/CEO would not be permitted to participate in Board executive sessions and a lead director would be appointed to preside over such sessions. Moreover, the Board must disclose the lead director's name and a means by which interested parties may communicate with the lead director. The proposed changes to the Constitution would require executive sessions to be commenced for matters involving the regulation of the Exchange, the compensation of the Chairman, Exchange staff personnel matters, or any other matter that the Board determines requires confidential and sensitive treatment. The Chairman would be recused from sessions involving personnel or compensation issues relating to the Chairman. The Commission believes that these additional safeguards proposed by the Exchange are designed to further the goal of independence of the Exchange's regulatory duties from its business functions.

In light of the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act.[11]

IV. Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Amendment No. 1 clarifies the proposed changes to the BSE's Constitution by setting forth expressly the duties of the Chairman and the CEO in the instances when those positions are held by the same individual or by two individuals. In addition, Amendment No. 1 incorporates provisions relating to executive sessions of the Board and specified that when the same individual serves as both Chairman and CEO, a lead director must be designated to preside over such sessions. Amendment No. 1 also specifies the kinds of matters, *i.e.*, the regulation of the Exchange, the compensation of the Chairman, Exchange staff personnel matters, or any other matter that the Board determines to require confidential and sensitive treatment, for which the Board must commence executive session proceedings. The proposed revisions in Amendment No. 1 were made for the purposes of clarifying the duties of Chairman and CEO, whether the same individual or two individuals hold those positions, and for clarifying the separation between the Exchange's regulatory and market functions. Amendment No. 1 raises no new issues.

Accordingly, the Commission finds good cause, consistent with sections 6(b)(1),[12] 6(b)(5)[13] and 19(b)(2)[14] of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-BSE–2004–10. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–10 and should be submitted on or before May 21, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–BSE–2004–10) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9789 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49601; File No. SR–CBOE–2004–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Relating to a DPM and Market Maker Transaction Fee

April 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 29, 2004, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On April 15, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3] 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 CBOE proposes to make a change to its Fee Schedule to establish a $.40 per contract license fee on all Designated Primary Market Maker ("DPM") and Market Maker transactions in the Russell 2000 (RUT) option class. The text of the proposed rule change, as amended, may be examined at the places specified in Item IV, below.

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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Christopher Hill, Attorney, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 15, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE made a technical correction to the rule text.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to establish a $.40 per contract license fee on all DPM and Market Maker transactions in the RUT option class. In January, 2003, the CBOE amended its Fee Schedule to require DPMs to pay period license fees in their appointed option classes.[4] This provision was initially applied to the RUT option class. The CBOE also established a separate $.16 per contract fee upon all DPM contracts traded in the RUT.[5] The $.16 per contract fee was eliminated later in 2003.[6]

Recently, the RUT DPM agreed to trade RUT via the CBOE's Hybrid Trading System. In light of RUT's move to Hybrid Trading, the CBOE proposes to recoup the periodic RUT license fee with a $.40 per contract license fee on RUT transactions by the DPM as well as by the other Market Makers in RUT. The RUT DPM will remain responsible for making up any shortfall between the proceeds the CBOE receives from the new $.40 per contract license transaction fee and the CBOE's RUT license fee obligations to the Russell company. The CBOE believes that this proposal will maintain an equitable allocation of the RUT license fee obligation in RUT's new Hybrid Trading environment, while maintaining the DPM's obligation, in recognition of its special status as the RUT DPM,[7] to ensure satisfaction of the overall license fee obligation.

2. Statutory Basis

The CBOE believes that the proposal is consistent with section 6(b) of the Act,[8] in general, and section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[4] *See* Securities Exchange Act Release No. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (SR–CBOE–2003–73).

[5] *See* Securities Exchange Act Release No. 47170 (January 13, 2003), 68 FR 2595 (January 17, 2003) (SR–CBOE–2002–72).

[6] *See* Securities Exchange Act Release No. 48223 (July 24, 2003) (SR–CBOE–2003–26).

[7] *Cf.* Securities Exchange Act Release Nos. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (SR–CBOE–2002–73); 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000) (SR–CBOE–00–33) (each noting the special status afforded to a DPM in connection with the equitable allocation of license fee obligations).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder because it changes a fee imposed by the CBOE. 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.[12]

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–19. This file number should be included on the subject line if e-mail is used. To help the

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] *See* 15 U.S.C. 78(b)(3)(C). For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 15, 2004, the date the CBOE filed Amendment No. 1.

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–19 and should be submitted on or before May 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9792 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49614; File No. SR–CBOE–2004–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 Thereto To Permanently Approve the Modified ROS Opening Procedure Pilot Program, Which Occurs on the Settlement Date of Futures and Options on Volatility Indexes

April 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 April 21, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by CBOE. On April 23, 2004, CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE seeks permanent approval of the modified Rapid Opening System ("ROS") opening procedure, which was approved by the Commission on a pilot basis through November 17, 2004.[4] The proposed rule change retains the text of CBOE Rule 6.2A.03 as currently approved on a pilot basis. The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 24, 2004, the Commission approved, on a pilot basis, the implementation of a modified ROS procedure. The modified ROS opening procedure pilot program facilitates the trading of options and futures on volatility indexes intended to be traded on CBOE or on the CBOE Futures Exchange, LLC ("CFE") by modifying certain of the rules that govern ROS for index option series whose prices are used to derive the volatility indexes on which options and futures will be traded. The modified ROS opening procedure also expanded the types of orders for these index options that may be included in ROS at the time when settlement values for volatility index options and futures are being determined. CBOE believes that the modifications permit a more accurate determination of these settlement values, and assure that these values more closely converge with the prices of the index options from which they are derived. The modified ROS opening procedure pilot program is due to expire on November 17, 2004. CBOE now proposes that the modified ROS opening procedure pilot program be approved on a permanent basis.

CBOE requested approval of the modified ROS opening procedure on a pilot program basis following CBOE's proposal to list and trade options on several volatility indexes; specifically, the CBOE Volatility Index ("VIX"); the CBOE Nasdaq 100 Volatility Index ("VXN"); and the CBOE Dow Jones Industrial Average Volatility Index ("VXD").[5] CBOE states that it may file additional proposed rule changes to provide for the listing of options on other volatility indexes in the future. CFE, which is a designated contract market approved by the Commodity Futures Trading Commission ("CFTC") and a wholly-owned subsidiary of CBOE, filed a rule change with the CFTC to provide for the listing and trading of futures on the VIX on CFE, and may list additional futures products on other volatility indexes in the future. CBOE believes that approval of the modified ROS opening procedure pilot program on a permanent basis will provide certainty as to the settlement process for market participants that trade those futures and options contract months on volatility indexes that expire beyond November 17, 2004.

Volatility Index Description

In general, CBOE states that volatility indexes (including, without limitation, the VIX, VXN and VXD (each, a "Volatility Index")) provide investors with up-to-the-minute market estimates of expected near-term volatility of the prices of a broad-based group of stocks by extracting volatilities from real-time index option bid/ask quotes. Volatility Indexes are calculated using real-time

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, Commission, dated April 23, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE deleted its proposed change to the cut-off time for the submission of orders for placement on the electronic book. According to CBOE, the CBOE intends to submit the modification to the cut-off time as a separate proposed rule change.

[4] See Securities Exchange Act Release No. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004) (SR–CBOE–2004–11).

[5] See Securities Exchange Act Release Nos. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (Notice of filing of File No. SR–CBOE–2003–40); 49563 (April 14, 2003), 69 FR 21589 (April 21, 2004) (Order approving File No. SR–CBOE–2003–40).

quotes of the nearby and second nearby index puts and calls on established broad-based market indexes, referred to herein as a "Market Index." For example, the VIX measures the near-term volatility of the S&P 500 Index ("SPX"), the VXN measures the near-term volatility of the Nasdaq 100 Index ("NDX") and the VXD measures the near-term volatility of the Dow Jones Industrial Average ("DJX"). The futures and options on a Volatility Index expire on the Wednesday immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire (the "Settlement Date"). For example, May 2004 VIX futures and options would expire on Wednesday, May 19, 2004, which is the Wednesday immediately prior to the third Friday of May, which is the month preceding the expiration of the June 2004 SPX options. Since Volatility Indexes will be A.M.-settled, CBOE uses the modified ROS functionality to facilitate the calculation of a settlement price for futures and options contracts on Volatility Indexes.

Market Index Opening Procedures

ROS is CBOE's automated system for opening classes of options at the beginning of the trading day or for re-opening classes of options during the trading day. In brief, the current ROS opening procedure involves market-makers participating on ROS by logging on each morning and identifying the classes of options in which they will participate for the opening. If ROS is being employed in a Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM") trading crowd, the DPM and LMM are required to participate on ROS. A single opening price for each option series is calculated based on the orders contained in the electronic book and on the Autoquote values set by the DPM, LMM, or other market-maker, as applicable, which Autoquote values may be adjusted based on input from other LMMs and market-makers present at the opening. ROS then determines an opening price based on an algorithm that maximizes the number of public customer orders able to be executed at the opening. Currently, public customer orders, other than public customer contingency orders, are the only orders that can be placed in the electronic book for ROS. To ensure the participation of broker-dealer orders in the opening price calculation, CBOE Rule 6.2A(ii) requires the member representing a broker-dealer order to inform the DPM or Order Book Official ("OBO"), as applicable, and the logged-in ROS market-makers of the terms of such orders prior to the time the class is locked. However, under current ROS opening procedures, these broker-dealer orders are not eligible to be entered in the electronic book that is used by ROS to calculate opening prices.

Modified ROS Opening Procedure Pilot Program

Since ROS partially calculates the opening prices of Market Index option series based upon orders contained in the electronic book, and since these opening prices will be used to derive the settlement values of corresponding Volatility Indexes for purposes of Volatility Index options and futures, CBOE believes it is necessary to modify the ROS opening procedures to permit all orders (including public customer, broker-dealer, CBOE market-maker and away market-maker and specialist orders), other than contingency orders, to be eligible to be placed on the electronic book solely for the purpose of the ROS opening. These orders may be placed on the book in those Market Index option contract months the prices of which are used to derive the volatility indexes on which options and futures will be traded. CBOE believes that expanding the scope of orders eligible for entry into the electronic book for purposes of the ROS opening will make it easier for all market participants to participate fully in the establishment of the settlement values of Volatility Indexes in an efficient and automated manner. This modified ROS opening procedure will be used only on the final Settlement Date of the options and futures contracts on the applicable Volatility Index in each expiration month, which is when Volatility Index settlement values are determined. The ROS opening procedures currently set forth in the CBOE rules will continue to govern ROS openings of Market Index option classes on all other days.

To ensure market-maker participation in the modified ROS opening procedure, the modified ROS opening procedure pilot program provides that all market-makers, including LMMs and Supplemental Market-Makers ("SMMs"),[6] if applicable, who are required to log on to ROS or Retail Automatic Execution System ("RAES") for the current expiration cycle are required to log on to ROS during the modified ROS opening procedure if the market-maker is physically present in the trading crowd for that Market Index option class. Although it has previously been CBOE's observation that few, if any, non-bookable orders (including broker-dealer orders) are represented by firms for participation in the ROS opening,[7] CBOE believes that CBOE market-makers and other broker-dealers that trade Volatility Index futures and options and that use Market Index options for hedging purposes will want their Market Index option orders to be included in ROS to ensure the convergence of the values of their settled Volatility Index positions with the values of their positions in related Market Index options. For example, a market participant that opens a position in a VIX futures contract may hedge that position by opening a position in SPX options, which prices are used in the calculation of VIX. If the market participant holds the VIX futures contract through settlement, the market participant must close out the hedge position that remains open in the SPX options. Since the settlement value of the VIX futures and options contracts are based on the opening prices of certain SPX option series, CBOE believes that the hedge will only be fully effective if the prices at which the market participant closes its SPX option positions converge with the corresponding prices of the SPX option series that determine the settlement value of the VIX. The ROS modified opening procedure pilot program allows this convergence to be achieved by allowing market participants to close out their open SPX positions and obtain the exact prices (*i.e.*, the opening prices) for those SPX series that will be used to calculate the VIX settlement value.

To participate in the modified ROS opening procedure pilot program on Settlement Date, all orders for placement on the electronic book are required to be submitted electronically. For market-makers on CBOE's trading floor, compliance with this requirement may be fulfilled through the submission of the order to a floor broker that has access to CBOE's Order Routing System or through the submission of the order through a hand-held terminal that has futures and options routing functionality. CBOE will also permit market-makers on the trading floor to submit paper ticket market orders to the OBO for placement in the electronic book. Paper ticket limit orders may not be submitted because CBOE believes these orders, which would rest on the electronic book if not executed at the

[6] CBOE Rule 8.15 and Interpretation .02 to CBOE Rule 24.13 permit the appropriate Market Performance Committee to appoint one or more market-makers in good standing with an appointment in an option class for which a DPM has not been appointed as an LMM and SMM.

[7] *See* Securities Exchange Act Release No. 48529 (September 24, 2003), 68 FR 56658 (October 1, 2003) (SR–CBOE–2002–55) ("ROS Permanent Approval Order").

opening, may not be able to be cancelled within the time period set forth in CBOE Rule 6.2A.03, as further explained below. In all circumstances, orders for placement on the electronic book must be received by 8:25 a.m.

The current ROS procedures pursuant to CBOE Rule 6.2A(i) would then take effect and calculate the opening price, at which point the maximum number of orders (including broker-dealer or market-maker orders) would be crossed and the balance of orders, if any, to be traded at the opening price will be assigned to participating market-makers. If the ROS system is implemented in an option contract for which LMMs have been appointed, the LMMs will review the order imbalances and collectively set the Autoquote values that will be used by ROS in calculating the opening prices for the Market Index option series. CBOE believes that having all of the LMMs participate in this process will contribute toward the establishment of a fair and accurate final settlement price for the Volatility Index futures and options since it will allow for the primary market-makers in the applicable Market Index option contract, as reflected by their designation as LMMs, to all have input in the ROS calculation that will ultimately derive that price. Other than the role of collectively setting the Autoquote values that will be used by ROS, LMMs are treated the same as market-makers in all respects under the modified ROS opening procedure provided for in CBOE Rule 6.2A.03.

Pursuant to CBOE Rule 6.2A.03(iv), contracts traded in ROS for a Market Index option series will be assigned equally, to the greatest extent possible, to all logged-on market-makers, including any LMMs and SMMs if applicable.[8] Any customer orders not executed at the ROS opening will remain in the electronic book.

CBOE states that it is in the process of modifying the ROS system software to prevent a market-maker who is logged on to ROS from trading against an order on behalf of the market-maker or the market-maker firm that may be resting in the electronic book.[9] CBOE states that it will also implement a ROS system change to automatically generate cancellation orders for those broker-dealer and market-maker orders that are not executed during the ROS opening. CBOE expects this work to be completed in approximately five months. Meanwhile, CBOE will use an interim process whereby market-maker and broker-dealer orders remaining on the electronic book because they were not executed in ROS (*e.g.*, limit orders) would be required to be cancelled immediately following the opening of those option contracts to prevent market-maker and broker-dealer orders from remaining in the electronic book. In interpreting the requirement of immediate cancellation in this context, CBOE expects market-makers and broker-dealers to make a good faith effort to cancel these orders as soon as possible, taking into consideration the applicable circumstances. For example, it may take a member slightly longer to cancel an order submitted through a floor broker than if the member has a hand-held terminal with futures and options routing functionality.

Surveillance

As described in the Commission's order granting permanent approval to the ROS system,[10] CBOE currently has in place surveillance procedures that are designed to ensure, among other things, that market-makers exercise their discretion to set certain Autoquote values consistent with their obligation to price options fairly. CBOE has also established supplemental ROS surveillance procedures for the modified ROS opening.[11] In addition to these procedures, CBOE's Department of Market Regulation will conduct surveillance to identify any broker-dealer or market-maker orders that may have been improperly executed on the electronic book which should have been cancelled following the modified ROS opening procedure. CBOE will also work with the Commission's Office of Compliance and Inspections and Examinations ("OCIE") to finalize any surveillance reports used in connection with the modified ROS opening procedure that is acceptable to OCIE.

2. Statutory Basis

CBOE states that the proposed rule change is designed to facilitate the calculation of the final settlement values of Volatility Indexes in an efficient and automated fashion that reflects all buying and selling interest in the associated Market Index. Permanent approval of the proposed rule change will provide certainty as to the settlement process for market participants that trade those futures and options contract months on Volatility Indexes that expire beyond the Pilot's expiration of November 17, 2004. Accordingly, CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, in that it should 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

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[8] For example, if the opening imbalance is twenty contracts and ten market-makers are logged on to ROS, each market-maker will be assigned two contracts. If the opening imbalance is twenty-one contracts and ten market-makers are logged on to ROS, the algorithm will assign the greatest amount to the first market-maker chosen in the rotation (three contracts) with each remaining nine market-makers receiving two contracts.

[9] CBOE has represented that prior to implementation of the system change, it will file a rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act to amend proposed CBOE Rule 6.2A.03 to reflect this system change.

See Securities Exchange Act Release No. 49468, *supra* note 4.

[10] *See* ROS Permanent Approval Order, *supra* note 7.

[11] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division, dated March 24, 2004 ("Supplemental ROS Surveillance Procedures"). CBOE requested confidential treatment for these surveillance procedures pursuant to 17 CFR 200.83.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–23. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–23 and should be submitted on or before May 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9825 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49618; File No. SR–DTC–2003–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change Relating to the Processing of Maturity Presentments in DTC's Money Market Instrument Program

April 26, 2004.

On September 30, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–DTC–2003–12 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on November 19, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

I. Description

The purpose of this filing is to allow DTC to implement new procedures regarding the processing of Maturity Presentments ("MP") to its Money Market Instrument ("MMI") Program.[3] Specifically, the new procedures allow DTC to implement an alignment approach in processing MPs and will allow an Issuing/Paying Agent ("IPA") to assign processing priorities to the MMI issuers for which the IPA acts as agent.

Under DTC's current procedures for the processing of MPs, early on the maturity date (generally around 2 a.m. eastern standard time) DTC initiates deliveries of the maturing paper from the accounts of participants having positions in the maturing paper to the MMI participant account of the IPA. Each MP is processed as the equivalent of a book-entry delivery-versus-payment transfer. As such, MPs "recycle" just as any delivery would if the net debit cap or collateralization controls applicable to an IPA's account prevent the delivery from updating (*i.e.*, being completed). Recycling MPs update once additional funds (*e.g.*, from intraday settlement progress payments ("SPP") or from new issuances) are credited to the IPA's account.

With the exception of a recent DTC rule change enabling an IPA to target settlement credits from an SPP to a specific issuer's maturity presentments, MPs update on a random basis.[4] There is no provision in DTC's current procedures enabling an IPA to assure that the recycling MPs of a specific issuer update by allocating to that issuer's MPs all or a specified portion of the IPA's net debit cap or by applying new issuance settlement credits of a specific issuer to that issuer's MPs. By the same token, because of the random nature of MP processing, the IPA is unable to prevent a portion of its net debit cap as well as any "excess" or "residual" credits from being used to update the MPs of an issuer to which the IPA would prefer not to extend credit.[5]

The rule change provides for the application of new issuance settlement credits to the MPs of the same issuer on a best efforts basis and would give IPAs the option to prioritize the order and manner in which MPs are processed, including the option to designate an issuer as self-funding.[6] Systemically, it is DTC's intention to align activities within the MMI system so that monies from Issuer A's credits are generally applied to Issuer A's MPs, subject to existing collateral monitor and net debit controls.

Under the alignment approach, once an IPA has incurred a net debit up to its applicable net debit cap (or the IPA's collateral is fully used), subsequent MPs presented to the IPA's account will still recycle as they do today. When an IPA processes a new issuance of an MMI into the system and the issuance transaction updates into the receiving participant's account, the resulting credit will then become available in the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48775 (November 12, 2003), 68 FR 65333 (November 19, 2003).

[3] The references to maturity presentments are intended to cover, in addition to MPs, other payment obligations of MMI issuers, such as periodic principal payments and periodic interest payments.

[4] Securities Exchange Act Release No. 48145 (July 9, 2003), 68 FR 42442 (July 17, 2003)[File No. SR–DTC–2003–03](proposed rule change allowing DTC to modify its settlement progress payment procedures to allow DTC participants to direct proceeds from a specific SPP be used to fund a particular transaction).

[5] "Excess" credits refer to credits resulting from an issuer's new issuances that exceed that issuer's offsetting MPs, SPPs that are not targeted to a specific issuer's MPs, and any unallocated net debit cap. "Residual" credits refer to credit balances from new issuances and targeted SPPs that are not large enough to completely offset the same issuer's MPs.

[6] IPAs will be able to prioritize between issuers by using new Participant Terminal System ("PTS") functions. IPAs logged into DTC's MMII PTS function would select "Issuer Priority Control" to access the main menu of IPA-issuer options. This new functionality would allow IPAs to select which issuers' MPs would recycle at the bottom of the ATP queue, perform an issuer control inquiry on selected issuers, maintain an audit trail for selected issuers, and inquire about MPs for selected issuers.

IPA's account to fund a recycling MP. At that time, the revised MMI system will inquire against the queue of recycling MPs to determine if there is an MP for the same issuer with the same base CUSIP that could be processed against the available credit. Once the appropriate MP is identified, that MP will be taken off the recycle queue and will be processed into the IPA's account. As further issuances for that issuer occur, additional MPs for the issuer will be processed so that MP processing will remain in rough alignment with the related issuance activity. If no offsetting MP is available in the recycle queue, the credit would be applied to an MP from another issuer, as is the case today, to make use of the available liquidity in the IPA's settlement account.

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. The rule change addresses concerns that IPAs have raised about the random nature of DTC's process for updating maturity presentments by providing IPAs with the means to exercise greater control of their intra-day liquidity requirements and credit risks.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. By implementing a targeted, rather than random, processing methodology that provides for a better correlation of MP activity with issuance activity, DTC's proposed rule change will enable IPAs to better manage their intraday risk and liquidity exposures. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

[7] 15 U.S.C. 78q–1(b)(3)(F).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–2003–12) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9824 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49602; File No. SR–ISE–2003–26]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval to a Proposed Rule Change by the International Securities Exchange, Inc. To Amend Its Rules Governing Limits on the Entry of Orders of Less Than Ten Contracts and Revising the Quotation Size Requirements for Market Makers

April 22, 2004.

On October 14, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to repeal the limits on the entry of orders and revise the quotation requirements of market makers. On January 13, 2004, the ISE filed Amendment No. 1 to the proposed rule change.[3] On January 30, 2004, the ISE filed Amendment No. 2 to the proposed rule change.[4] On March 8, 2004, the ISE filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 17, 2004.[6] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change revises the ISE's restrictions on the entry of orders of less than 10 contracts, along with related market maker quotation requirements. Specifically, the proposed rule change removes the prohibition on Electronic Access Members ("EAMs") submitting orders for non-customers that cause the ISE's best bid and offer ("BBO") to be for less than 10 contracts, and removes the prohibition on EAMs entering multiple orders for the same trading interest if one or more orders are for less than 10 contracts. Further, the proposed rule change repeals the obligation of the Primary Market Maker ("PMM") either to "trade out" customer orders of less than 10 contracts or "derive" additional size to maintain a 10-contract displayed size. PMMs must continue, however, to "derive" size by buying or selling the number of contracts needed to maintain a firm quote for at least 10 contracts to incoming orders from the Options Market Linkage. Finally, the proposed rule change repeals the requirement that market makers refresh their quotations if there is an execution that results in the size of the ISE's BBO falling below 10 contracts. The proposed rule change, however, retains the obligation that market makers initially enter quotations for a size of at least 10 contracts, which the ISE believes is a necessary obligation for market makers to provide reasonable liquidity to the market place.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of section 6 of the Act[8] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] which, among other things, requires that the ISE's rules be 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.

The Commission believes that the proposed rule change, as amended,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 12, 2004 ("Amendment No. 1").

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 29, 2004. ("Amendment No. 2").

[5] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 5, 2004. ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 49393 (March 10, 2004), 69 FR 12724.

[7] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

should provide greater transparency to investors and the marketplace and should better reflect the true state of liquidity in the marketplace. Specifically, as proposed, the actual size of customer limit orders representing the ISE's BBO will be disseminated rather than an artificial minimum size. In addition, the Commission notes that this aspect of the proposal is similar to rules on other options exchanges.[10] In addition, the proposal will permit non-customer orders of less than 10 contracts that improve the ISE BBO to be disseminated.

Finally, the Commission notes that market makers will be permitted to maintain a quote that represents the ISE's BBO for a size less than 10 contracts when executions have decremented their initial quote to less than 10 contracts. However, because market makers will be required to initially enter a quote for at least 10 contracts, the Commission believes that market makers would still be obligated to add liquidity to the market.[11]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–ISE–2003–26) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9793 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

[10] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (SR–CBOE–2001–56); 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05); and 48957 (December 18, 2003), 68 FR 79254 (December 30, 2003) (SR–AMEX–2003–24)

[11] The Commission notes that ISE market makers must maintain a continuous quote for the options in which they make a market. *See* ISE Rules 803(b) and 804(e).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49604; File No. SR–NASD–2004–066]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Related to Direct ECN Connection to SuperMontage

April 22, 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 April 19, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to require "Order-Delivery" Electronic Communications Networks ("ECNs") that participate in the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to access the system using solely direct, dedicated point-to-point communication linkages. Nasdaq will implement the proposed rule change 90 days after approval by the Commission. The exact date will be provided to market participants via a Head Trader Alert on *http://www.nasdaqtrader.com.*

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4623. Alternative Trading Systems

(a) No Change.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) through (6) No Change.

(7) provide orders to Nasdaq only through a dedicated communications linkage as prescribed by Nasdaq.

(c) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A)–(B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) through (iii) No Change.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time [(as measured by the ECN's Service Delivery Platform)] over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market. *The 5-second response time shall be measured by timestamps generated by NNMS.*

(v) No Change.

(D) No Change.

(2)–(8) No Change.

(c) through (e) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ECNs have two options when participating in Nasdaq's SuperMontage system. They can be "Auto-Ex" ECNs, in which case their quotes/orders are subject to automatic execution, or they can elect to be Order-Delivery where the system instead delivers a buy or sell

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

trading message to the ECN that, in response, either executes or rejects the message. Today, all ECNs in Nasdaq's SuperMontage system participate as Order-Delivery ECNs.

Under current SuperMontage rules, Order-Delivery ECNs must respond to messages sent to them by the system within 5 seconds on average, and in no event later than 30 seconds for any one message. The 5-second average response standard is measured by timestamps generated at the ECN's Service Delivery Platform ("SDP") at the ECN's trading location.

Recently, Nasdaq has experienced several instances of ECN response times materially slower than other market participants. While reasons for these delays can vary between issues related to ECN internal message processing capacity and delivery queuing in SuperMontage, the result is a disruption in trading—particularly during the crucial period immediately before the Nasdaq close. In response, Nasdaq is proposing the creation of mandatory dedicated "point-to-point" linkages between the SuperMontage host computer and individual Order-Delivery ECNs. These linkages will connect directly to a participating ECN's host computers, bypassing the ECN's SDP. By creating these dedicated linkages, Nasdaq expects to significantly reduce response delays that can be encountered in the current environment where order delivery messages directed to ECNs use existing SuperMontage application programming interfaces ("APIs") to reach their destination and are commingled, and compete with, other SuperMontage messaging (Executions, Cancels, etc.) for bandwidth to reach the ECN's SDP. Nasdaq notes that the proposed linkage would only speed delivery and receipt of messages between the SuperMontage host computer and the ECN, it would not give such messages any special priority in the SuperMontage execution process. Nasdaq believes that the new linkages will enhance the speed and efficiency of the SuperMontage system as a whole and provide a more accurate understanding of whether Nasdaq or an ECN's own internal system is at fault when ECN order processing is unduly delayed.

Since Nasdaq's current rules governing ECN responsiveness are based on timestamps generated by the SDP, Nasdaq is also proposing modifying its rules to reflect that in the new environment the 5-second time period will be measure by data generated by Nasdaq's host computer. In short, Nasdaq will calculate and monitor, on a real-time basis, the difference between the following time stamps: (1) The time the SuperMontage host dispatched a message to the ECN using the dedicated linkage, and (2) the time the SuperMontage host received a response back from the ECN over the dedicated link. On an ongoing basis, Nasdaq will monitor individual ECN response times and provide each ECN with its own order responsiveness time statistics, which will not be made public. Like the current rule, if an ECN regularly fails to meet the 5-second response time over a number of orders, Nasdaq will place that ECN's quote in a closed quote state. Also like the current rule, the closed quote state will be lifted when the ECN can certify that it can meet the 5-second response time requirement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[3] in general and with section 15A(b)(6) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–066 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–066. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–066 and should be submitted on or before May 21, 2004.

[3] 15 U.S.C. 78*o*–3.

[4] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9791 Filed 4–29–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49603; File No. SR–NASD–2004–062]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify the Pricing for Trading Nasdaq-Listed Securities on SuperMontage

April 22, 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 April 9, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for trading Nasdaq-listed securities on Nasdaq's SuperMontage system. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. Nasdaq plans to implement the proposed rule change on April 15, 2004.

The text of the proposed rule change is below.[5] Proposed new language is in italic; proposed deletions are in brackets.

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

(1) The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members *for Nasdaq-listed securities:*

Order Entry

Non-Directed Orders (excluding Preferenced Orders)—No charge.

Preferenced Orders: Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order)—No charge; Other Preferenced Orders—$0.02 per order entry; Directed Orders—$0.10 per order entry.

Order Execution

Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:

Charge to member entering order:

Average daily shares of liquidity provided through the NNMS by the member during the month: 400,000 or less—$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share); 400,001 to 5,000,000—$0.0027 per share executed (but no more than $108 per trade for trades in securities executed at $1.00 or less per share); 5,000,001 or more—$0.002[5]*6* per share executed (but no more than $10[0]*4* per trade for trades in securities executed at $1.00 or less per share).

Credit to member providing liquidity:—[$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share)].

Average daily shares of liquidity provided through the NNMS by the member from April 15 to April 30, 2004, or during any month thereafter: 20,000,000 or less—$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share); 20,000,001 or more—$0.0025 per share executed (but no more than $100 per trade for trades in securities executed at $1.00 or less per share).

Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS:

Charge to member entering order:

Average daily shares of liquidity provided through the NNMS by the member during the month: 400,000 or less—$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share); 400,001 or more $0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share, and no more than $10,000 per month).

Directed Order—$0.003 per share executed.

Non-Directed or Preferenced Order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member—No charge.

Order Cancellation

Non-Directed and Preferenced Orders—No charge; Directed Orders—$0.10 per order cancelled

(2)–(3) No change.

(j)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recently implemented reduced pricing for execution of Non-Directed and Preferenced Orders in the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"), by reducing order execution fees for members that provide significant liquidity through the NNMS.[6] Under the fee schedule currently in effect, the per share fee charged to a member to access liquidity during a particular month depends on the extent to which such

[5] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *www.nasd.com*, and also reflects the addition of NASD Rule 7010(i)(3) by SR–NASD–2004–048, which was filed on an immediately effective basis. *See* Securities Exchange Act Release No. 49576 (April 16, 2004) (Notice of filing and immediate effectiveness of File No. SR–NASD–2004–048).

[6] *See* Securities Exchange Act Release No. 48972 (December 22, 2003), 68 FR 75301 (December 30, 2003) (Notice of filing and immediate effectiveness of File No. SR–NASD–2003–185) ("December 2003 Notice").

member provided liquidity through the NNMS during that month. Liquidity provision is measured by adding the number of shares executed through transactions in which the member's Quote/Order was accessed by another market participant.[7]

Thus, if a member provides a daily average of more than 5,000,000 shares of liquidity through the NNMS during a month, the member currently pays $0.0025 per share executed in trades during that month in which the member accesses liquidity provided by a market participant that does not charge an access fee (*i.e.*, in which the member's Non-Directed or Preferenced Orders access the Quotes/Orders of other market participants).[8] If a member provides a daily average of 400,001 to 5,000,000 shares of liquidity during a month, the member pays $0.0027 per share executed in trades executed during the month in which the member accesses liquidity provided by a market participant that does not charge an access fee.[9] Finally, if a member provides a daily average of 400,000 or fewer trades during a month, the member pays $0.003 per share executed during the month.[10] Nasdaq also currently provides a $0.002 per share credit to a member that provides the liquidity for an execution and does not charge an access fee.[11]

Similarly, the fee paid by a member to access the Quote/Order of a market participant that charges an access fee depends upon the shares of liquidity provided by the member during that month. If a member provides a daily average of more than 400,000 shares of liquidity during a month, the member will pay $0.001 per share executed for trades during the month in which the member accesses liquidity provided by a market participant that charges an access fee;[12] however, the member's total charge for that month will be capped at $10,000. If a member provides a daily average of 400,000 shares of liquidity or less during a month, the member will also pay $0.001 per share, but no monthly cap will be applicable.[13]

As Nasdaq noted in SR–NASD–2003–185,[14] it believes that it is appropriate and equitable to allocate SuperMontage's operational and regulatory costs in a manner that takes account of the economies of scope and lower per share costs associated with higher volumes of liquidity provision. Nasdaq believes that the extent to which members provide liquidity through SuperMontage is the single most important factor in determining whether SuperMontage provides an attractive destination for routing orders, and in turn, whether SuperMontage will generate sufficient revenues to cover the costs of operating and regulating a market. According to Nasdaq, a member that offers significant liquidity at prices that establish, or that are near, the national best bid/best offer makes SuperMontage a more attractive destination for market participants seeking to access liquidity by enhancing the likelihood that they will be able to execute orders at favorable prices.

Nasdaq notes that the costs of operating SuperMontage and regulating the Nasdaq market are largely fixed, rather than variable, costs. As SuperMontage's volume increases (*i.e.*, as more and more liquidity is provided through SuperMontage), Nasdaq's costs, on a per share basis, decrease. Accordingly, Nasdaq believes that it is appropriate and equitable to allocate these costs in a manner that takes account of the lower per share costs associated with higher volumes of liquidity provision. Nasdaq believes that lower volumes would translate into higher per share costs for market participants; higher volumes reduce per share costs, and Nasdaq believes that the benefits of these reduced costs can and should be made available to those market participants that make the higher volumes possible in the first place. Moreover, Nasdaq believes that there are economies of scope associated with higher volumes of liquidity provision, because trades executed through SuperMontage also have market data revenue and (in some cases) trade reporting fees associated with them.

Nasdaq notes that several of the electronic communications networks ("ECNs") that compete with Nasdaq to offer liquidity have implemented increases in the credits they offer to major liquidity providers.[15] Although Nasdaq had hoped that charging reduced fees for liquidity accessing to firms that provided significant liquidity would obviate the need to increase credits to liquidity providers, Nasdaq has now concluded that an increase in credits will be necessary to remain competitive. Accordingly, Nasdaq is proposing that during a month in which a member that does not charge an access fee provides a daily average of more than 20,000,000 shares of liquidity, the credit for transactions in which the member provided liquidity would be $0.0025 per share executed.[16] For firms providing lower levels of liquidity, the credit will remain $0.002 per share executed.[17] Because the change is being implemented in the middle of a month, the higher credit will be provided for trades beginning on April 15, 2004, for firms with an average daily volume of more than 20,000,000 shares during the period from April 15 to April 30, 2004, and thereafter will be provided to firms with an average daily volume of more than 20,000,000 shares during a particular month.

In addition, effective April 15, 2004, Nasdaq will increase the liquidity-accessing fee for members providing a daily average of more than 5,000,000 shares of liquidity, from $0.0025 to $0.0026 per share executed in trades in which the member accesses liquidity provided by a market participant that does not charge an access fee.[18] Thus, a firm providing an average daily volume of more than 5,000,000 shares during the month of April would pay $0.0025 per share for its liquidity accessing trades prior to April 15 and $0.0026 for its trades from April 15 through April 30. A firm providing an average daily volume of more than 5,000,000 shares during any subsequent month would pay $0.0026 for all of its trades during that month. In the proposed rule change, Nasdaq is also modifying the lead-in text of NASD Rule 7010(i) to make it clear that the rule applies to

[7] If a particular corporate entity has multiple market participant identifiers ("MPIDs") associated with the Central Registration Depository ("CRD") number under which it conducts business, Nasdaq aggregates shares of liquidity provided through all of its MPIDs. However, Nasdaq does not aggregate one corporate entity's trade reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[8] Transactions in a security priced under $1.00 ("low-priced trades") are subject to fee caps applicable to trades in excess of 40,000 shares. Accordingly, when the fee that the member pays is $0.0025, the maximum per transaction charge for a low-priced trade is $100.

[9] When the fee that the member pays is $0.0027, the maximum per transaction charge for a low-priced trade is $108.

[10] When the fee that the member pays is $0.003, the maximum per transaction charge for a low-priced trade is $120.

[11] The maximum credit for a low-priced trade is currently $80.

[12] The maximum per transaction charge for a low-priced trade is $40.

[13] The maximum per transaction charge for a low-priced trade is $40.

[14] *See* December 2003 Notice, *supra* note 6.

[15] *See, e.g., www.island.com/prodserv/bd/fee/fee.asp*. Nasdaq understands that another major ECN is also offering similarly higher credits to major liquidity providers on an *ad hoc* basis and therefore has not made details on these credits publicly available.

[16] When the credit is $0.0025, the maximum credit for a low-priced trade would be $100.

[17] When the credit is $0.002, the maximum credit for a low-priced trade would be $80.

[18] When the fee that the member pays is $0.0026, the maximum per transaction charge for a low-priced trade would be $104.

trades in Nasdaq-listed securities through the NNMS. Although ITS Securities are now traded on SuperMontage, the fees for trades in these securities continue to be governed by NASD Rule 7010(d).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[19] in general, and with section 15A(b)(5) of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. According to Nasdaq, the proposed rule change bases the level of credits for providing liquidity through SuperMontage on the extent to which a member provides liquidity during the month, thereby taking account of the lower per share costs and the economies of scope associated with higher volumes of liquidity provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [21] and Rule 19b–4(f)(2) thereunder,[22] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[19] 15 U.S.C. 78*o*–3.

[20] 15 U.S.C. 78*o*–3(b)(5).

[21] 15 U.S.C. 78s(b)(3)(a)(ii).

[22] 17 CFR 240.19b–4(f)(2).

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment for (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–062 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–062. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–062 and should be submitted on or before May 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9794 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49582; File No. SR–OCC–2004–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Member Accounts

April 19, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 11, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's by-laws and rules to permit clearing members to open and maintain with OCC two new types of accounts and to clarify that clearing members may carry multiple combined market makers' accounts that are separate from one another.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is twofold. First, the rule change permits clearing members to open and maintain with OCC two new types of accounts: (1) A segregated futures professional account, in which a clearing member may carry the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

positions and assets of futures floor traders and similar futures market professionals that are required to be segregated in accordance with Section 4d of the Commodity Exchange Act ("CEA")[3] and the regulations of the Commodity Futures Trading Commission ("CFTC") and (2) an account in which a clearing member may carry the positions and assets of futures professionals that are not required to be segregated under those provisions. These new account types are intended to accommodate clearing members' requests in connection with the anticipated start of trading of the CBOE Futures Exchange, LLC ("CFE"). Second, the rule change clarifies that a clearing member is permitted to carry its market maker positions and the positions of proprietary market makers in a combined market makers' account, separate from other combined market makers' accounts; and that similarly a clearing member may commingle positions of associated market makers in a combined market makers' account, separate from other combined market makers' accounts.

Futures clearing organizations have traditionally used only two account types: a "firm" or "proprietary" account and a "customer" account. OCC anticipated that clearing members clearing futures products would follow this practice and carry the positions of futures professionals in the same account as positions of all other futures customers. However, some clearing members view the structure of the combined market makers' account, which allows clearing firms to carry the positions of multiple options market makers, as providing a significant benefit from an administrative perspective. Although the combined market makers' account is margined on a net basis and treated as a single account for most purposes, it contains subaccounts so that positions of different market makers can be separately identified as a convenience to market makers and their clearing firms. In anticipation of the start of trading on CFE, clearing members have asked OCC to provide similar accounts for clearing the transactions of futures floor traders or other members of futures markets performing similar market making or liquidity providing functions ("futures professionals"). One account would be for futures professionals whose funds and positions are required to be segregated pursuant to Section 4d of the CEA and the CFTC's regulations governing customer segregated funds. The other account would be for futures professionals whose funds and positions are required to be treated as proprietary and therefore are not required to be segregated.

In order to accommodate this request, OCC proposes to add three new defined terms to Article I, Section 1, Definitions, of its By-Laws. The new term "futures professional" means floor traders and persons who serve similar market making functions. The new term "proprietary futures professional" account means an account carrying positions only of futures professionals who are not futures customers. And the new term "segregated futures professional" account means a segregated futures account that carries positions only of futures professionals that are futures customers. Thus, these new definitions incorporate existing Article, I, Section 1 defined terms: segregated futures account, which is an account that carries positions only of futures customers, and futures customer, which is a person whose positions are carried by a futures commission merchant in a futures account required to be segregated under Section 4d of the CEA and the CFTC regulations.

OCC also proposes to amend Article VI, Clearance of Exchange Transactions, of its By-Laws and Chapters VI, Margins, and XI, Suspension of a Clearing Member, of its Rules. New paragraph (j) to Article VI, Section 3, permits clearing members to open a segregated futures account solely for the positions of futures professionals who are futures customers and new paragraph (k) to that section permits clearing members to open a proprietary futures professional account for futures professionals who are not futures customers. Both accounts would be functionally identical to the existing combined market makers' account. Article VI, Section 3(f), is amended to clarify that a clearing member need not maintain a segregated futures account other than the segregated futures professional account if the clearing member effects transactions only for futures customers that are futures professionals and will carry the positions of such futures professionals in the segregated futures professional account instead of in the segregated futures account. Parenthetical language is added to Article VI, Section 4, merely as a reminder that a segregated futures professional account is a segregated futures account and, therefore, that upon liquidation of a clearing member all amounts in such accounts will be commingled in the segregated liquidating settlement account as segregated customer funds, reserved to pay the claims of future customers. Similarly, Rules 604 and 606 are amended to make clear that a clearing member may maintain more than one segregated futures account (*i.e.*, a "segregated futures account" and a "segregated futures professional account"), and Rules 1104 through 1107 are amended to provide that all segregated futures accounts will be liquidated together in the segregated liquidating settlement account. Finally, OCC is amending Rule 1105(c) to state that assets in the proprietary futures professional account of a suspended clearing member will be placed in the regular liquidating settlement account.

OCC will not require clearing members to clear transactions of futures professionals in either futures professional account. Because the segregated futures professional account would be separately margined without regard to positions or assets in the segregated futures account, some clearing members may prefer to keep the positions of futures professionals in the regular segregated futures account in order to obtain the benefit of such offsets or for other reasons.

Likewise, a clearing member may wish to maintain positions that could be carried in the proprietary futures professional account in the regular Article VI, Section 3(a), firm account. OCC believes that these alternatives should be preserved.

Article VI, Section 3(c), of OCC's By-Laws currently states that a clearing member may not include the positions of a proprietary or associated market maker in a combined market makers accounts. The prohibition on carrying proprietary market maker positions in a combined market makers' account was intended to avoid any commingling with customer positions that might be interpreted as violating Rules 8c–1 and 15c2–1 under the Exchange Act ("hypothecation rules"). With respect to associated market makers, the prohibition was intended to exclude from the combined market makers' account persons who, although customers for purposes of the hypothecation rules, are closely related to the clearing member and whose positions commingled in an account with positions of independent market makers could pose difficulties in transferring the account to another clearing member in an insolvency situation.[4]

Notwithstanding the foregoing prohibitions, it is fully consistent with

[3] 7 U.S.C. 1.

[4] *See* Securities Exchange Act Release No. 33492 (January 19, 1994), 59 FR 3896 (January 27, 1994) [File No. SR–OCC–90–11].

the intent of Article VI, Section 3(c), to permit OCC clearing members to use a combined market makers' account to carry the positions of multiple proprietary market makers or to carry the positions of multiple associated market makers, so long as such accounts are restricted to positions of proprietary market makers or associated market makers, respectively. OCC now proposes to amend Article VI, Section 3(c) to expressly so provide. In order to avoid compliance issues under the hypothecation rules, OCC would continue to prohibit the commingling of the positions of customer market makers, including associated market makers that have not elected to be treated as proprietary market makers, in the same combined accounts with proprietary market makers. And in order to avoid the difficulties associated with transferring a combined market makers' account holding the positions of both independent and associated market makers to another clearing member in an insolvency situation, OCC would continue to prohibit the commingling of the positions of associated market makers with the positions of independent market makers. As in the case of a separate market maker's account used for proprietary positions under Section 3(b) of Article VI, a combined market makers' account holding the positions of the clearing member or a proprietary market makers' account would be subject to a lien by OCC on all assets in such account to secure all of the clearing member's obligations to OCC, as provided in proposed subpart (v) of Section 3(c). Therefore, such proprietary market maker accounts are properly firm lien accounts, and the definition of firm account in Article 1 of the By-Laws, and related provisions in Article VI, Sections 3(b) and (c) and Interpretation and Policy .02, Rules 601 and 602, and Rule 1105(b) and (c) are amended to identify those accounts as such.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it is designed to promote the prompt and accurate clearance and settlement of derivative transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC, and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an E-mail to *rule-comments@sec.gov. Please include File Number SR–OCC–2004–02 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–02 and should be submitted on or before May 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9790 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 4699]

List of April 22, 2004, of Participating Countries and Entities (Hereinafter Known as "Participants") Under the Clean Diamond Trade Act of 2003 (Public Law 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of November 17, 2003 (68 FR 66523–66524, November 26, 2003).

FOR FURTHER INFORMATION CONTACT: Jay L. Bruns, Special Negotiator for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–2857.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the "Act") requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, "controlled through the Kimberley Process Certification Scheme" means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR Part 592 ("Rough Diamond Control Regulations")(68 FR 45777, August 4, 2003).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines "Participant" as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines "Exporting Authority" as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines "Importing Authority" as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to section 3 of the Clean Diamond Trade Act (the Act), section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as of April 20, 2004, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by section 6(b) of the Act. This list revises the previously published list of November 17, 2003 (68 FR 66523–66524, November 26, 2003).

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Bulgaria—Ministry of Finance.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.
Republic of the Congo—Ministry of Mines and Geology.
Croatia—Ministry of Economy.
Czech Republic—Ministry of Finance.
European Community—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
Hungary—Ministry of Economy and Transport.
India—The Gem and Jewellery Export Promotion Council.
Israel—The Diamond Controller.
Ivory Coast —Ministry of Mines and Energy.
Japan —Ministry of Economy, Trade and Industry.
Republic of Korea —Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lesotho—Commissioner of Mines and Geology.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
Poland—Ministry of Economy, Labour and Social Policy.
Romania—National Authority for Consumer Protection.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
Slovenia—Ministry of Finance.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 04–9846 Filed 4–29–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clay and Jackson Counties, Missouri

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to Interstates 29 & 35 in Kansas City and North Kansas City, Jackson and Clay Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone Number 573–636–7104; or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2803.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS on a proposal to reconstruct and widen the I–29/I–35 (U.S. Route 71) facility with new interchange configurations, bridges including the bridge over the Missouri

River, and roadways in Jackson and Clay Counties, Missouri. It is intended that the reconstructed facility will meet current interstate standards. A location study will run concurrently with the preparations of the EIS and will provide definitive reasonable alternatives for evaluation in the EIS.

The proposed action will accomplish several goals: (1) Replace the deteriorating facility and substandard interchanges, (2) improve traffic safety, (3) improve the interstate system linkage across the Missouri River, (4) provide sufficient vehicle capacity to accommodate travel demands, (5) improve traffic operation and decrease congestion, (6) improve access to the CBD and other major activity centers, (7) facilitate the movement of trucks, and (8) enhance the movement of international trade.

The proposed project, which includes the north side of the downtown loop designated as I-35/I-70 (U.S. Routes 24/40), begins at the northwest corner of the downtown freeway loop in the city of Kansas City in Jackson County and continues north on I-29/I-35/US 71 to just north of Missouri Route 210 in Clay County. The project length is 4.7 miles (7.6 kilometers). Known potential impacts include access changes; residential, commercial, and institutional acquisitions/relocations; acquisition of or impacts to National Register of Historic Places—eligible properties including the Paseo Bridge, the Western Union Telegraph Building, and the Old Town and Wholesale Historic Districts; and impacts to parklands including the River Forest Park, Kessler Park, Columbus Park, Margaret Kemp Park, and West Terraces Park, which are eligible for protection under section 4(f) of the Department of Transportation Act of 1966. A Department of the Army Section 404 Permit, a US Coast Guard Bridge Permit, and a floodplain development permit from the State Emergency Management Agency may be required.

Alternatives under consideration include (1) no build, (2) build alternatives, and (3) transportation management options. The 2002 Northland-Downtown Major Investment Study (MIS) recommended widening and upgrading mainline lanes from US 169 to the Downtown Loop to generally provide an eight-lane section with auxiliary lanes as needed, including a new Paseo Bridge. The Kansas City Area Transportation Authority (KCATA) will examine the MIS transit recommendation in a separate environmental document.

To date, substantial preliminary coordination has occurred with local officials and other interested parties. As part of the scoping process, an interagency coordination meeting will be held with federal, state, and local agencies on May 12, 2004. In addition, public information meetings and further meetings for community officials will be held to solicit public and agency input on the reasonable range of alternatives. A location public hearing will be held to present the findings of the Draft EIS (DEIS). Public notice will be given announcing the time and place of all public meetings and the hearing. The DEIS will be available for public and agency review and comment prior to the public meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 122372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: April 21, 2004.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 04–9821 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 23, Notice No. 1]

Emergency Order To Prohibit the Continued Use of Certain Railroad Tank Cars Equipped With a Truck Bolster Bearing Either Association of American Railroads (AAR) Identification Number B–2410 and National Castings of Mexico (NCM) Pattern Number 52122 or AAR Identification Number B–2409 and NCM Pattern Number 52202

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels the issuance of this Emergency Order directing all persons, including, but not limited to owners, shippers, consignees, and railroads, to discontinue the loading and transportation of any railroad tank car with an original built date of 1995, 1996, 1997, or 1998 and stenciled with DOT specification and the packaging requirements of the commodity table at 49 CFR 172.101, amplified in Part 173 identifying it as capable of transporting hazardous material; that is equipped with a truck bolster bearing either (1) AAR Identification Number B–2410 and NCM Pattern Number 52122 or (2) AAR Identification Number B–2409 and NCM Pattern Number 52202, until each of the described bolsters is removed from the car and replaced with a bolster of suitable design and manufacture.

Authority

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. The laws apply to all railroads (except self-contained urban rapid transit) and convey on FRA the authority to issue rules and orders covering every area of railroad safety. 49 U.S.C. 20102 and 20103. FRA is authorized to issue emergency orders where "an unsafe condition or practice * * * causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may impose such "restrictions and prohibitions * * * that may be necessary to abate the situation." (*Id.*) Any person who violates such an order is subject to civil penalties (49 U.S.C. 21301) and injunctive relief (49 U.S.C. 20112). FRA also enforces the hazardous materials transportation laws. 49 U.S.C. 5101 *et seq;* 49 CFR 1.49.

Background

On December 24, 2002, FRA issued Safety Advisory 2002–03, which identified a problem with potentially defective NCM truck bolsters bearing both AAR Identification Number B–2410 and NCM Pattern Number 52122, which are used in 263,000-pound and 286,000-pound gross rail load freight cars. *See* 67 FR 79686–87 (December 30, 2002). In that advisory, FRA referenced AAR Maintenance Advisory MA–81 and AAR Early Warning Letters EW–5191, EW–5191–S1, and EW–5191–S2 indicating that there were as many as 15,000 freight cars in revenue service that may be equipped with the NCM bolsters.

Subsequent to the publication of the Safety Advisory, FRA was made aware of second series of bolsters, bearing both AAR Identification Number B–2409 and NCM Pattern Number 52202, which pose a similar safety hazard. The NCM bolsters with NCM Pattern Number 52202 were also referenced in AAR Early Warning Letters EW–5194, EW–5195, EW–5196, and EW–5197.

During March 2003, the AAR conducted fatigue testing under AAR

Specification M–202–97 (7 loading blocks of 100,000 cycles) on 19 randomly selected bolsters from the NCM-Sahagun facility at the AAR Transportation Test Center, Inc., (TTCI) in Pueblo, CO. Of the 19 randomly selected bolsters tested, 18 broke under test for a failure rate of 94.7%. In addition to quality control defects (welding and grinding), there were casting defects, hot tears, sand inclusions, and porosity in all tested bolsters. The bolsters under test failed at the end transition radius, and catastrophic failures occurred at lightening holes under the center bowl on the bottom half of the bolsters in tension. These test results indicated that subject bolsters were much more likely to fail in service than other normal bolsters.

On March 31, 2003, the AAR issued the Industry Safety Action Plan (the Plan) for dealing with the orderly inspection and removal of these potentially defective truck bolsters based on a unique risk assessment matrix which included hazardous material commodity classification, mileage (utilization), loading factor/impact, and original equipment manufacturer bolster supply. The Plan divided cars with defective truck bolsters into three classes:

- Group I, Hazardous Materials Tank Cars;
- Group II, Coal Cars and Mill Gondolas; and
- Group III, All Other Cars.

The Plan, approved and implemented by AAR's Technical Services Working Committee (TSWC), provided the following proactive safety measures:

1. Tank car owners must complete bolster replacements on 20% of their hazardous material cars no later than May 31, 2003, and a minimum of 20% per month thereafter, with 100% replacement no later than September 30, 2003.

2. Mill gondola and coal cars (subject to vertical loading impacts) must have bolsters either replaced or requalified (via radiographic inspection) no later than December 31, 2003.

3. All other cars must either have bolsters replaced or requalified (via radiographic inspection) no later than April 1, 2004.

On November 18, 2003, FRA issued Safety Advisory 2003–03, which further outlined the scope and severity of the two defective bolster patterns manufactured by NCM between the period of 1995 and 1998. *See* 68 FR 65982–83 (November 24, 2003). The total estimated population of defective truck bolsters from both of these NCM patterns is 58,373 bolsters, which represents a population of approximately 30,000 freight cars which may be equipped. In Safety Advisory 2003–03, although FRA recognized that the timetables established in AAR's Industry Safety Action Plan had not been met primarily due to the industry's not having a sufficient quantity of replacement bolsters, FRA recommended that railroads, manufacturers, and car owners make every attempt to adhere to the Plan as closely as possible. At the time that FRA issued Safety Advisory 2003–03, there had been no reported in-service bolster failures.

Recently, two in-service failures of the above-noted bolsters have occurred that have caused FRA to reconsider the industry's course of action. Both in-service failures occurred on cars other than tank cars carrying hazardous material. One in-service failure occurred on January 16, 2004, and resulted in the derailment of one car in a 135-car loaded coal train. This car could have caused serious damage to a bridge or track structure or both, and if it had been a tank car loaded with hazardous material and there was a release, the car could have potentially caused serious damage, injury, or death. The other in-service failure was discovered on January 14, 2004, and did not result in any derailment or injury. Concern has also been expressed that these wintertime temperatures and conditions may lead to accelerated brittle metal failure of the subject bolsters. At present a total of 442 tank cars are assigned to hazardous material service that have not yet had these defective truck bolsters removed and replaced despite the fact that the industry plan called for completing this task by September 30, 2003.

Finding and Order

Based on the information detailed in FRA Safety Advisories 2002–03 and 2003–03, the two recent in-service failures, and the fact that the timetable for replacing bolsters hazardous material tank cars as set forth in AAR's Industry Safety Action Plan has not been met, FRA believes that additional failures may be imminent and that it is in the interest of public safety to ensure that the industry take immediate steps to eliminate the potential hazards that could be caused by an in-service failure of such a bolster on a tank car carrying a hazardous material. Such a failure could cause derailment of the car, release of its contents, and serious injury or death. Accordingly, I find that an emergency situation involving a hazard of death or injury exists. Consequently, I hereby direct and order that no person may transport, offer for transportation, load, or continue in service any tank car with an original built date of 1995, 1996, 1997, or 1998 and stenciled with DOT specification and the packaging requirements of the commodity table at 49 CFR 172.101, amplified in Part 173; that is equipped with a truck bolster bearing either (1) AAR Identification Number B–2410 and NCM Pattern Number 52122 or (2) AAR Identification Number B–2409 and NCM Pattern Number 52202, until each of the described bolsters is removed from the car and replaced with a bolster of suitable design and manufacture, except as necessary to effectuate such removal and replacement. Railroads are permitted to haul such a car if necessary to effectuate such removal and replacement, but only to the nearest available location where the removal and replacement of the subject bolster can be made. If found empty do not reload the car in movement to the repair location.

Relief

Relief from this order will occur, for each affected tank car, when each of its subject bolsters has been replaced with a non-defective bolster. If persons subject to the order desire specific relief (*e.g.*, permitting use of a defective car for a purpose other than necessary moving for repair), such persons must submit a request for special approval in accordance with 49 CFR 211.55, which may be granted or denied by FRA's Associate Administrator for Safety.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. *See* 49 U.S.C. 21301. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. *See* 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect on April 30, 2004 and applies to each tank car with an original built date of 1995, 1996, 1997, or 1998 and stenciled with a STCC identifying it as capable of transporting hazardous material, that is equipped with any of the above-described NCM truck bolsters. Notice of this Emergency Order will be provided by publishing it in the **Federal Register**. A copy of this Emergency Order will also be sent by e-mail or facsimile to the AAR for distribution to its members.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and 5 U.S.C. 554. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC on April 27, 2004.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 04–9947 Filed 4–29–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 20, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 1, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0181.

Form Number: IRS Form 4768.

Type of Review: Extension.

Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 18,500.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—26 min.

Learning about the law or the form—22 min.

Preparing the form—43 min.

Copying, assembling, and sending the form to the IRS—24 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 36,075 hours.

OMB Number: 1545–0959.

Regulation Project Number: LR–213–76 Final.

Type of Review: Extension.

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

Description: Section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1038.

Form Number: IRS Form 8703.

Type of Review: Extension.

Title: Annual Certification of a Residential Rental Project.

Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code (IRC) section 142(d). Operators are required to file this certification under section 142(d)(7).

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—3 hr., 49 min.

Learning about the law or the form—1 hr., 17 min.

Preparing and sending the form to the IRS—1 hr., 24 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 39,180 hours.

OMB Number: 1545–1579.

Notice Number: Notice 98–1.

Regulation Project Number: REG–108639–99 NPRM.

Type of Review: Extension.

Title: Notice 98–1: Nondiscrimination; and REG–108639–99 NPRM: Retirement Plans; Cash or Deferred Arrangements Under section 401(k) and Matching Contributions or Employee Contributions Under section 401(m).

Description: The notice and regulation provide guidance for discrimination testing under section 401(k) and (m) of the Internal Revenue Code as amended by section 1433(c) and (d) of the Small Business Job Protection Act of 1996. The guidance is directed to employers maintaining retirement plans subject to these Code sections.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Recordkeepers: 147,000.

Estimated Burden Hours Recordkeeper: 20 minutes.

Estimated Total Recordkeeping Burden: 49,000 hours.

OMB Number: 1545–1580.

Regulation Project Number: REG–105885–99 Final.

Type of Review: Extension.

Title: Compensation Deferred Under Eligible Deferred Compensation Plans.

Description: REG–105885–99 provides guidance regarding the trust requirements for certain eligible deferred compensation plans enacted in the Small Business Job Protection Act of 1996.

Respondents: State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 10,260.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour, 2 minutes.

Frequency of response: Other (one time).

Estimated Total Reporting/ Recordkeeping Burden: 10,600 hours.

OMB Number: 1545–1736.

Revenue Procedure Number: Revenue Procedure 2001–24.

Type of Review: Extension.

Title: Advanced Insurance Commissions.

Description: Insurance companies that want to obtain automatic consent to change their method of accounting for cash advances that qualify as loans to their agents must attach a statement to their Federal income tax return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,270.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: Other (once).

Estimated Total Reporting Burden: 1,318 hours.

OMB Number: 1545–1872.

Form Number: IRS Form 4506–T.

Type of Review: Extension.

Title: Request for Transcript of Tax Return.

Description: 26 U.S.C. 7513 allows for taxpayers to request a copy of a tax return or return information. Form 4506–T is used by a taxpayer to request a copy of Federal Tax information, other than a return. The information provided will be used to search the taxpayers account and provide the requested

information; and to ensure that the requester is the taxpayer or someone authorized by the taxpayer.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 720,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Learning about the law or the form—10 min.

Preparing the form—12 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 555,600 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–9815 Filed 4–29–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 22, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 1, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0232.

Form Number: IRS Form 6497.

Type of Review: Extension.

Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.

Description: Form 6497 is used by any governmental agency or its agents that make nontaxable grants or subsidized financing for energy conservation or production programs. We use the information from the form to ensure that recipients have not claimed tax credits or other benefits with respect to the grant or subsidized financing (no "double dipping").

Respondents: Business or other for-profit, Federal Government, State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 250.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—2 hr., 52 min.

Learning about the law or the form—24 min.

Preparing, copying, and sending the form to the IRS—27 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 933 hours.

OMB Number: 1545–0242.

Form Number: IRS Form 6197.

Type of Review: Extension.

Title: Gas Guzzler Tax.

Description: Form 6197 is used to compute the gas guzzler tax on automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is reported quarterly on Form 720. Form 6197 is filed each quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 605.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—4 hr., 18 min.

Learning about the law or the form—12 min.

Preparing and sending the form to the IRS—16 min.

Frequency of response: Quarterly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,892 hours.

OMB Number: 1545–0763.

Regulation Project Number: LR–200–76 Final.

Type of Review: Extension.

Title: Qualified Conservation Contributions.

Description: The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conversation purposes of a partial interest in real property.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, local or tribal government.

Estimated Number of Recordkeepers: 1,000.

Estimated Burden Hours Recordkeeper: 1 hour, 15 minutes.

Estimated Total Reporting/ Recordkeeping Burden: 1,250 hours.

OMB Number: 1545–1117.

Notice Number: Notice 89–61.

Type of Review: Extension.

Title: Imported Substances; Rules for Filing a Petition.

Description: The notice sets forth procedures to be followed in petitioning the Secretary to modify the list of taxable substances in section 4672(a)(3).

Respondents: Business or other for-profit .

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 1 hour.

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1574.

Form Number: IRS Form 1098–T.

Type of Review: Extension.

Title: Tuition Payments Statement.

Description: Section 6050S of the Internal Revenue Code require eligible education institutions to report certain information regarding tuition payments to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 7,000.

Estimated Burden Hours Respondent/ Recordkeeper: 13 minutes.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,848,090 hours.

OMB Number: 1545–1578.

Regulation Project Number: REG–106542–98 Final.

Type of Review: Extension.

Title: Election to Treat Trust as Part of an Estate.

Description: REG–106542–98 and Revenue Procedure 98–13 relate to an election to have certain revocable trusts treated and taxed as part of an estate, and provides procedures and requirements for making the section 645 election.

Respondents: Individuals or households .

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: Other (once).

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1721.

Form Number: IRS Form 8875.

Type of Review: Extension.

Title: Taxable REIT Subsidiary Election.

Description: A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in section 856(l).

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—6 hr., 56 min.

Learning about the law or the form—18 min.

Preparing, and sending the form to the IRS—25 min.

Frequency of response: Other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 7,660 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–9816 Filed 4–29–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled "Treasury/IRS 42.031—Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records."

DATES: Comments must be received no later than June 1, 2004. This new system of records will be effective June 9, 2004, unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying upon request in the Freedom of Information Reading Room (1621), at the above address.

FOR FURTHER INFORMATION CONTACT: Maureen Sanders, National Anti-Money Laundering Program Manager S:C:CP:RE:AML, 19th Floor, 1601 Market Street, Philadelphia, PA 19106. Phone: (215) 861–1547.

SUPPLEMENTARY INFORMATION: The strategic outcome for the IRS Anti-Money Laundering (AML) Program is to increase compliance of non-bank financial institutions and non-financial trades and businesses (including the individuals who operate these institutions, trades, and businesses) with the registration, reporting and recordkeeping requirements of the Bank Secrecy Act and I.R.C. Sec. 6050I.

To accomplish this strategic outcome, the IRS will be monitoring compliance with these obligations, educating individuals and businesses where patterns of noncompliance have been identified, and taking enforcement actions where necessary. A proposed rule to exempt the system of records from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) is being published separately in the **Federal Register**.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed new system of records entitled "Treasury/IRS 42.031—Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records" is published in its entirety below.

Dated: April 21, 2004.

Jesus Delgado-Jenkins,

Acting Assistant Secretary for Management.

TREASURY/IRS 42.031

SYSTEM NAME:

Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records.

SYSTEM LOCATION:

Internal Revenue Service, Detroit Computing Center, 985 Michigan Avenue, Detroit, MI 48226, and IRS Area Offices. (*See* IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals whose businesses provide any of the financial services which subject them to the reporting, recordkeeping or registration requirements of the laws commonly known as the Bank Secrecy Act (BSA), or the related reporting and recordkeeping requirements of I.R.C. Sec. 6050I, (2) individuals acting as employees, owners or customers of such institutions or involved, directly or indirectly, in any transaction with such institutions. Examples of institutions that offer financial services are: currency dealers, check cashiers, money order or traveler's check issuers, sellers, or redeemers, casinos, card clubs, and other money transmitters, and (3) persons who may be witnesses or may otherwise be providing information concerning these individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may be paper or electronic, relating to the administration of the IRS anti-money laundering program including the registration, reporting and recordkeeping requirements of the BSA and I.R.C. Sec. 6050I. They may also relate to individuals who, based upon certain tolerances, exhibit patterns of financial transactions suggesting noncompliance with the registration, reporting and recordkeeping requirements of the BSA and I.R.C. Sec. 6050I. Records may also relate to IRS administrative actions, such as notification, educational efforts, compliance examination results, and civil or criminal referrals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 5311–5332; 26 U.S.C. 6050I, 7801, and 7803.

PURPOSE:

The purpose of the system is for IRS to administer 26 U.S.C. 6050I and 31 U.S.C. 5311 *et seq.* to promote compliance with anti-money laundering laws. These records will also be used to prepare periodic reports for the Department and Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be disclosed:

(1) To the Department of Justice for the purpose of litigating an action and seeking legal advice;

(2) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the Service becomes aware of an indication of a potential violation of civil or criminal law or regulation, or the use is required in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism;

(3) To a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual or issuance of a security clearance, license, contract, grant, or other benefit;

(4) In a proceeding before a court, adjudicative body, or other administrative body, before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that the litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary and not otherwise privileged;

(5) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings, unless release would constitute an unwarranted invasion of personal privacy;

(7) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) To any agency, including any State financial institutions supervisory agency, United States intelligence agency or self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, upon written request of the head of the agency or organization. The records shall be available for a purpose that is consistent with title 31, as required by 31 U.S.C. 5319; and

(9) To representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THIS SYSTEM:

STORAGE:

Paper, electronic, and magnetic media.

RETRIEVABILITY:

Name and Taxpayer Identification Number (Social Security Number or Employee Identification Number).

SAFEGUARDS:

Access controls will not be less than those provided for by the Managers Security Handbook IRM 1.16 and the Automated Information System Security Handbook IRM 25.10.2.

RETENTION AND DISPOSAL:

Record retention will be in accordance with the National Archives and Records Administration Regulations Part 1228, Subpart B—Scheduling Records.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Commissioner, Small Business/Self-Employed Division, New Carrollton Federal Building, Lanham, MD.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. Title 31 records may only be contested under the provisions of title 31.

SOURCE CATEGORIES:

The system contains material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records maintained in this system have been designated as exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* 31 CFR 1.36.

[FR Doc. 04–9814 Filed 4–29–04; 8:45 am]
BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 84
Friday, April 30, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release No. 34–49505; File No. S7–18–04]

RIN 3235–AJ20

Proposed Rule Changes of Self-Regulatory Organizations

Correction

In proposed rule document 04–7538 beginning on page 17864 in the issue of Monday, April 5, 2004 make the following correction:

On page 17879, in the third column, after the second paragraph, "Jonathan G. Katz" should be deleted.

[FR Doc. C4–7538 Filed 4–29–04; 8:45 am]

BILLING CODE 1505–01–D

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 04–1(9)]

Howard on behalf of Wolff v. Barnhart; Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process—Title XVI of the Social Security Act

Correction

In notice document 04–9337 beginning on page 22578 in the issue of Monday, April 26, 2004, make the following correction:

On page 22579, in the first column, in the second paragraph, in the thirteenth line, "*(Insert Federal Register publication date)*" should read "April 26, 2004."

[FR Doc. C4–9337 Filed 4–29–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
April 30, 2004

Part II

Environmental Protection Agency

40 CFR Part 81

40 CFR Parts 50, 51, and 81

8-Hour Ozone National Ambient Air Quality Standards; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0083; FRL–7651–8]

RIN 2060–

Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule sets forth the air quality designations and classifications for every area in the United States, including Indian country, for the 8-hour ozone national ambient air quality standard. We are issuing this rule so that citizens will know whether the air where they live and work is healthful or unhealthful and to establish the boundaries and classifications for areas designated as nonattainment. Children are at risk when exposed to ozone pollution because their lungs are still developing, people with existing respiratory disease are at risk, and even healthy people who are active outdoors can experience difficulty breathing when exposed to ozone pollution. In this document, EPA is also promulgating the first deferral of the effective date, to September 30, 2005, of the nonattainment designation for Early Action Compact areas that have met all milestones through March 31, 2004. Finally, we are inviting States to submit by July 15, 2004, requests to reclassify areas if their design value falls within five percent of a high or lower classification. This rule does not establish or address State and Tribal obligations for planning and control requirements which apply to nonattainment areas for the 8-hour ozone standard. Two separate rules, one of which is also published today, set forth the planning and control requirements which apply to nonattainment areas for this standard. The second rule will be published at a later date.

EFFECTIVE DATE: This final rule is effective on June 15, 2004.

ADDRESSES: EPA has established dockets for this action under Docket ID No. OAR–2003–0083 (Designations) and OAR–2003–0090 (Early Action Compacts). All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: *http://www.epa.gov/oar/oaqps/glo/designations* and on the Tribal Web site at: *http://www.epa.gov/air/tribal*. Materials relevant to Early Action Compact (EAC) areas are on EPA's Web site at: *http://www.epa.gov/ttn/naaqs/ozone/eac/w1040218_eac_resources.pdf*. In addition, the public may inspect the rule and technical support at the following locations.

Regional offices	States
Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Pamela Blakley, Acting Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–4447.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Donna Ascenzi, Acting Associate Director, Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–2725.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907, (913) 551–7606.	Iowa, Kansas, Missouri, and Nebraska.
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6005.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Steven Barhite, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3980.	Arizona, California, Guam, Hawaii, and Nevada.
Bonnie Thie, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1189.	Alaska, Idaho, Oregon, and Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Reinders, Designations, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5284 or by e-mail at: *reinders.sharon@epa.gov*.

Ms. Annie Nikbakht, Part 81 Code of Federal Regulations, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246 or by e-mail at: *nikbakht.annie@epa.gov*.

Mr. Doug Grano, Classifications, Office of Air Quality Planning and

Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3292 or by e-mail at: *grano.doug@epa.gov*.

Mr. David Cole, Early Action Compacts, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov*.

Mr. Barry Gilbert, Technical Issues, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5238 or by e-mail at: *gilbert.barry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

The following is an outline of the preamble.

I. Preamble Glossary Of Terms And Acronyms

The following are abbreviations of terms used in the preamble.

CAA—Clean Air Act
CFR—Code of Federal Regulations
CBI—Confidential Business Information
CMAQ—Congestion Mitigation Air Quality
CMSA—Consolidated Metropolitan Statistical Area
D.C.—District of Columbia
EAC—Early Action Compact or Compact
EPA—Environmental Protection Agency or Agency
FR—Federal Register
MPO—Metropolitan Planning Organization
MSA—Metropolitan Statistical Area
NAAQS—National Ambient Air Quality Standard or Standard
NO_X—Nitrogen Oxides
NOA—Notice of Availability
NPR—Notice of Proposed Rulemaking
NSR—New Source Review
OMB—Office of Management and Budget
PPM—Parts Per Million
RFG—Reformulated Fuel
RTC—Response to Comment
SIP—State Implementation Plan
TAR—Tribal Authority Rule
TEA–21—Transportation Equity Act for the 21st Century
TPY—Tons Per Year
TSD—Technical Support Document
U.S.—United States
VOC—Volatile Organic Compounds

II. What Is the Purpose of This Document?

The purpose of this document is to announce and promulgate designations, classifications, and boundaries for areas of the country with respect to the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) in accordance with the requirements of the CAA. We took several steps to announce that this rule was available. We posted the rule on several EPA Web sites and provided a copy of the rule, which was signed by the Administrator on April 15, 2004, to States and Tribes.

III. How Is Ground-Level Ozone Formed?

Ground-level ozone (sometimes referred to as smog) is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. Changing weather patterns contribute to yearly differences in ozone concentrations from region to region. Ozone and the pollutants that form ozone also can be transported into an area from pollution sources found hundreds of miles upwind.

IV. What Are the Health Concerns Addressed by the 8-Hour Ozone Standard?

During the hot summer months, ground-level ozone reaches unhealthy levels in several parts of the country. Ozone is a significant health concern, particularly for children and people with asthma and other respiratory diseases. Ozone has also been associated with increased hospitalizations and emergency room visits for respiratory causes, school absences, and reduced activity and productivity because people are suffering from ozone-related respiratory symptoms.

Breathing ozone can trigger a variety of health problems. Ozone can irritate the respiratory system, causing coughing, throat irritation, an uncomfortable sensation in the chest, and/or pain when breathing deeply. Ozone can worsen asthma and possibly other respiratory diseases, such as bronchitis and emphysema. When ozone levels are high, more people with asthma have attacks that require a doctor's attention or the use of additional medication. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. In addition, breathing ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly

susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on the health effects of ozone can be found at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.*

V. What Is the Chronology of Events Leading Up to This Rule?

This section summarizes the relevant activities leading up to today's rule, including promulgation of the 8-hour ozone NAAQS and litigation challenging that standard. The CAA establishes a process for air quality management through the NAAQS. Area designations are required after promulgation of a new or revised NAAQS. In 1979, we promulgated the 0.12 parts per million (ppm) 1-hour ozone standard, (44 Federal Register 8202, February 8, 1979). On July 18, 1997, we promulgated a revised ozone standard of 0.08 ppm, measured over an 8-hour period, *i.e.*, the 8-hour standard (62 FR 38856). The 8-hour standard is more protective of public health and more stringent than the 1-hour standard. The NAAQS rule was challenged by numerous litigants and in May 1999, the U.S. Court of Appeals for the D.C. Circuit issued a decision remanding, but not vacating, the 8-hour ozone standard. Among other things, the Court recognized that EPA is required to designate areas for any new or revised NAAQS in accordance with the CAA and addressed a number of other issues, which are not related to designations. *American Trucking Assoc.* v. *EPA*, 175 F.3d 1027, 1047–48, *on rehearing* 195 F.3d 4 (D.C. Cir., 1999). We sought review of two aspects of that decision in the U.S. Supreme Court. In February 2001, the Supreme Court upheld our authority to set the NAAQS and remanded the case back to the D.C. Circuit for disposition of issues the Court did not address in its initial decision. *Whitman* v. *American Trucking Assoc.*, 121 S. Ct. 903, 911–914, 916–919 (2001) (Whitman). The Supreme Court also remanded the 8-hour implementation strategy to EPA. In March 2002, the D.C. Circuit rejected all remaining challenges to the 8-hour ozone standard. *American Trucking Assoc.* v. *EPA*, 283 F.3d 355 (D.C. Cir. 2002).

The process for designations following promulgation of a NAAQS is contained in section 107(d)(1) of the CAA. For the 8-hour NAAQS, the Transportation Equity Act for the 21st Century (TEA–21) extended by 1 year the time for EPA to designate areas for the 8-hour NAAQS.[1] Thus, EPA was required to designate areas for the 8-hour NAAQS by July 2000. However, HR3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first. As noted earlier, the Supreme Court decision was issued in February 2001. In 2003, several environmental groups filed suit in district court claiming EPA had not met its statutory obligation to designate areas for the 8-hour NAAQS. We entered into a consent decree, which requires EPA to issue the designations by April 15, 2004.

VI. What Are the Statutory Requirements for Designating Areas and What Is EPA's Policy and Guidance for Determining Nonattainment Area Boundaries for the 8-Hour Ozone NAAQS?

This section describes the statutory definition of nonattainment and EPA's guidance for determining air quality attainment and nonattainment areas for the 8-hour ozone NAAQS. In March 2000[2] and July 2000[3] we issued designation guidance on how to determine the boundaries for nonattainment areas. In that guidance, we rely on the CAA definition of a nonattainment area that is defined in section 107(d)(1)(A)(i) as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. If an area meets this definition, EPA is obligated to designate the area as nonattainment.

In making designations and classifications, we use the most recent 3 years of monitoring data.[4] Therefore, today's designations and classifications are generally based on monitoring data collected in 2001–2003 although other relevant years of data may have been used in certain circumstances. Once we determine that a monitor is recording a violation, the next step is to determine if there are any nearby areas that are contributing to the violation and include them in the designated nonattainment area.

For guidance on determining the nonattainment boundary for the 8-hour ozone standard, we look to CAA section 107(d)(4) that established the Consolidated Metropolitan Statistical Area (CMSA) or Metropolitan Statistical Area (MSA) presumptive boundary for more polluted areas when we promulgated our designation actions in 1991 for the 1-hour ozone standard. In our guidance on determining nonattainment area boundaries for the 8-hour ozone standard, we advised States that if a violating monitor is located in a CMSA or MSA (as defined by the Office of Management and Budget (OMB) in 1999), the larger of the 1-hour ozone nonattainment area or the CMSA or MSA should be considered in determining the boundary of a nonattainment area. The actual size of the nonattainment area may be larger or smaller, depending on air quality-related technical factors contained in our designation guidance. We start with counties in the CMSA or MSA because that area, defined by OMB, generally shares economic, transportation, population and other linkages that are similar to air quality related factors that produce ozone pollution. Also, many CMSAs and MSAs generally are associated with higher levels of ozone concentrations and ozone precursor emissions than areas that are not in or near CMSAs or MSAs.

In June 2003, OMB released a new list of statistical areas. This release was so late in the designation process that we determined that it would be disruptive and unfair to the States and Tribes to revise our guidance. However, we believe it is necessary to evaluate all counties in and around an area containing a monitor that is violating the standard, pursuant to our guidance to consider nearby areas that are contributing to a violation in determining the boundaries of the nonattainment area.

Once a CMSA, MSA or single county area is determined to contain a monitor that is violating the standard, the area can be evaluated using all applicable suggested air quality related factors in our guidance. The factors can be used to justify including counties outside the CMSA or MSA or excluding counties in the CMSA or MSA. The factors were compiled based on our experience in designating areas for the ozone standard in March 1978 and November 1991 and by looking to the CAA, section 107(d)(4), which states that the Administrator and the Governor shall consider factors such as population density, traffic congestion, commercial

[1] CAA 107(d)(1); TEA–21 § 6103(a).

[2] Memorandum of March 28, 2002, from John S. Seitz, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards."

[3] Memorandum of July 18, 2000, from John S. Seitz, "Guidance on 8-Hour Ozone Designations for Indian Tribes."

[4] To determine whether an area is attaining the 8-hour ozone NAAQS, EPA considers the most recent 3 consecutive years of data in accordance with 40 Code of Federal Regulations (CFR) part 50, appendix I.

development, industrial development, meteorological conditions, and pollution transport. State and local agencies also had extensive input into compiling the factors.

The factors are:

(1) Emissions and air quality in adjacent areas (including adjacent CMSAs and MSAs),

(2) Population density and degree of urbanization including commercial development (significant difference from surrounding areas),

(3) Monitoring data representing ozone concentrations in local areas and larger areas (urban or regional scale),

(4) Location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area),

(5) Traffic and commuting patterns,

(6) Expected growth (including extent, pattern and rate of growth),

(7) Meteorology (weather/transport patterns),

(8) Geography/topography (mountain ranges or other air basin boundaries),

(9) Jurisdictional boundaries (*e.g.*, counties, air districts, existing 1-hour nonattainment areas, Reservations, etc.),

(10) Level of control of emission sources, and,

(11) Regional emissions reductions (*e.g.*, NO_X State Implementation Plan (SIP) Call or other enforceable regional strategies).

When evaluating the air quality factors for individual areas, we took into account our view that data recorded by an ozone air quality monitor in most cases represents air quality throughout the area in which it is located. In addition, we used the county (or in the case of parts of New England, the township) as the basic jurisdictional unit in determining the extent of the area reflected by the ozone monitor data. As a result, if an ozone monitor was violating the standard based on the 2001–2003 data, we designated the entire county as nonattainment. There were some exceptions to this rule: in cases where a county was extremely large as in the West; where a geographic feature bifurcated a county, leading to different air quality in different parts of the county; and where a mountain top monitor reflected the air quality data only on the mountain top and not in lower elevation areas.

After identifying the counties with violating monitors, we then determined which nearby counties were not monitoring violations but were nonetheless contributing to the nearby violation. We considered each of the 11 factors in making our contribution assessment, including emissions, traffic patterns, population density, and area growth. In some cases, in considering these factors, as well as information and recommendations provided by the State, we determined that only part of a county was contributing to the nearby nonattainment area. In addition, in certain cases, we determined that a county without an ozone monitor should be designated nonattainment because contiguous counties have monitors that are violating the standard. In at least two instances, we determined that a part of a county with no monitor, but with a large emission source that did not have state-of-the-art controls, contributes to a nearby violation. In some instances, if a State had requested that we continue to use the 1-hour ozone nonattainment boundary for an area, we continued to use that boundary in determining the size of the 8-hour nonattainment area.

The EPA cannot rely on planned ozone reduction strategies in making decisions regarding nonattainment designations, even if those strategies predict that an area may attain in the future. We recognize that some areas with a violating monitor may come into attainment in the future without additional local emission controls because of State and/or national programs that will reduce ozone transport. While we cannot consider these analyses in determining designations, we intend to expedite the redesignation of the areas to attainment once they monitor clean air. We also intend to apply our policy which streamlines the planning process for nonattainment areas that are meeting the NAAQS.[5]

We believe that area-to-area variations must be considered in determining whether to include a county as contributing to a particular nonattainment problem. Thus, our guidance does not establish cut-points for how a particular factor is applied, *e.g.*, it does not identify a set amount of VOC or NO_X emissions or a specific level of commuting population that would result in including a county in the designated nonattainment area. For example, a county with a large source or sources of NO_X emissions may be considered as a contributing county if it is upwind, rather than downwind, of a violating monitor. Additionally, a county with VOC emissions of 5,000 tons per year (tpy) might be viewed differently if the total VOC emissions of the area are 15,000 tpy rather than 30,000 tpy. We analyzed the information provided by each State or Tribe in its recommendation letter, or subsequently submitted, along with any other pertinent information available to EPA, to determine whether a county should be designated nonattainment. We evaluated each State or Tribal designation recommendation in light of the 11 factors, bringing to bear our best technical and policy judgement. If the result of the evaluation is that a county, whether inside or outside of the CMSA or MSA, is contributing to the violation, we designated the area as nonattainment.

[5] Memorandum of May 10, 1995, from John S. Seitz, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard."

VII. What Are the CAA Requirements for Air Quality Designations and What Actions Has EPA Taken To Meet the Requirements?

In this part, we summarize the provisions of section 107(d)(1) of the CAA that govern the process States and EPA must undertake to recommend and promulgate designations. Following promulgation of a standard, each State Governor or Tribal leader has an opportunity to recommend air quality designations, including appropriate boundaries, to EPA. No later than 120 days prior to promulgating designations, we must notify States or Tribes if we intend to make modifications to their recommendations and boundaries as we deem necessary. States and Tribes then have an opportunity to provide a demonstration as to why the proposed modification is inappropriate. Whether or not a State or Tribe provides a recommendation, EPA must promulgate the designation it deems appropriate.

In June 2000, we asked each State and Tribal Governor or Tribal leader to submit their designation recommendations and supporting documentation to EPA. Because of the uncertainties due to the ongoing litigation on the ozone standard, we did not notify States and Tribes of any intended modifications and did not designate areas at that time. After the legal challenges to the ozone NAAQS were resolved, we requested that States and Tribes provide updated recommendations and any additional supporting documentation by July 15, 2003. EPA published a Notice of Availability (NOA) announcing the availability of the State and Tribal recommendations in the FR on September 8, 2003 (68 FR 52933). After carefully evaluating each recommendation and the supporting documentation, on December 3, 2003, we wrote a letter to each State and Tribe notifying them if we intended to make a modification to their recommendation and indicating the area with which we agreed with their recommendation. We

provided an opportunity until February 6, 2004, for a demonstration as to why our modification was not appropriate. A NOA announcing the availability of our letters was published in the FR on December 10, 2003 (68 FR 68805). In response to our December 3, 2003 letters, we received letters and demonstrations from many States and Tribes on why our modifications were not appropriate. We evaluated each letter and all of the timely technical information provided to us before arriving at the final decisions reflected in today's rule. Some of the designations reflect our modifications to the State or Tribes' recommendations. Throughout the designation process, we have received letters from other interested parties. We have placed these letters and our responses to the substantive issues raised by them in the docket. Responses to significant comments received on EAC areas are summarized in this document.

Tribal designation activities are covered under the authority of section 301(d) of the CAA. This provision of the Act authorizes us to treat eligible Indian Tribes in the same manner as States. Pursuant to section 301(d)(2), we promulgated regulations known as the Tribal Authority Rule (TAR) on February 12, 1999, that specify those provisions of the CAA for which it is appropriate to treat Tribes as States, (63 FR 7254), codified at 40 CFR part 49 (1999). Under the TAR, Tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which Tribes may request from EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined appropriate by us for treatment of Tribes in the same manner as States. As authorized by the TAR, Tribes may request an opportunity to submit designation recommendations to us. In cases where Tribes do not make their own recommendations, EPA, in consultation with the Tribes, will promulgate the designation we deem appropriate on their behalf. We invited all Tribes to submit recommendations to us. We worked with the Tribes that requested an opportunity to submit designation recommendations. Eligible Tribes could choose to submit their own recommendations and supporting documentation. We reviewed the recommendations made by Tribes and, in consultation with the Tribes, made modifications as deemed necessary. Under the TAR, Tribes generally are not subject to the same submission schedules imposed by the CAA on States. However, we worked with Tribes in scheduling interim activities and final designation actions because of the consent decree obligating us to have a signed rule designating areas by April 15, 2004.

Today's designation action is a final rule establishing designations for all areas of the country. Today's action also sets forth the classifications for subpart 2 ozone nonattainment areas. Section 181(a) provides that areas will be classified at the time of designation. This rulemaking fulfills those requirements. Classifications are discussed below.

A. Where Can I Find Information Forming the Basis for This Rule and Exchanges Between EPA, States, and Tribes Related to This Rule?

Discussions concerning the basis for today's actions and decisions are provided in the technical support document (TSD). The TSD, along with copies of all of the above mentioned correspondence, other correspondence between the States, Tribes, interested parties, and EPA regarding this process and guidance memoranda are available for review in the EPA Docket Center listed above in the addresses section of this document and on our designation Web site at: *http://www.epa.gov/oar/oaqps/glo/designations*. State specific information is available at the EPA Regional Offices.

VIII. What Are the CAA Requirements for Air Quality Classifications?

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which we refer to as "basic" nonattainment contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which we refer to as "classified" nonattaiment) provides more specific requirements for ozone nonattainment areas.[6] Some areas will be subject only to the provisions of subpart 1. Other areas will be subject to the provisions of subpart 2. Section 172(a)(1) provides that EPA has the discretion to classify areas subject only to subpart 1. Under subpart 2, areas will be classified based on each area's design value. Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates.

Under our 8-hour ozone implementation rule, signed on April 15, 2004, an area will be classified under subpart 2 based on its 8-hour design value[7] if it has a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas will be covered under subpart 1. Section 172(a)(1) provides EPA with discretion whether to classify areas under subpart 1 and we are not classifying subpart 1 areas, with one exception. As noted in EPA's final rule on implementing the 8-hour ozone standard (Phase 1 implementation rule), we are creating an overwhelming transport classification that will be available to subpart 1 areas that demonstrate they are affected by overwhelming transport of ozone and its precursors and demonstrate they meet the definition of a rural transport area in section 182(h). No subpart 1 areas are being classified in today's action; however, for informational purposes, 8-hour ozone nonattainment areas covered under subpart 1 are identified as such in the classification column in 40 CFR part 81.

Any area with a 1-hour ozone design value (based on the most recent 3 years of data) that meets or exceeds the statutory level of 0.121 ppm that Congress specified in Table 1 of section 181 is classified under subpart 2 and is subject to the control obligations associated with its classification.[8] Subpart 2 areas are classified as marginal, moderate, serious, or severe based on the area's 8-hour design value calculated using the most recent 3 years of data.[9] As described in the Phase 1 implementation rule, since Table 1 is based on 1-hour design values, we promulgated in that rule a regulation translating the thresholds in Table 1 of section 181 from 1-hour values to 8-hour values. (*See* Table 1, below, "Classification for 8-Hour NAAQS" from 40 CFR 51.903.)

[6] State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990; Proposed Rule." April 16, 1992 (57 FR 13498 at 13501 and 13510).

[7] For the 1-hour ozone NAAQS, design value is defined at 40 CFR 51.900(c). For the 8-hour ozone NAAQS, design value is defined at 40 CFR 51.900(d).

[8] In the Phase 2 implementation rule, we will address the control obligations that apply to areas under both subpart 1 and subpart 2.

[9] At this time, there are no areas with design values in the extreme classification for the 8-hour ozone standard.

TABLE 1.—CLASSIFICATION FOR 8-HOUR OZONE NAAQS

Area class		8-hour design value ppm ozone)	Maximum period for Attainment dates in State plans (years after effective date of nonattainment designation for 8-hour NAAQS)
Marginal	from	0.085	3
	up to*	0.092	
Moderate	from	0.092	6
	up to*	0.107	
Serious	from	0.107	9
	up to*	0.120	
Severe-15	from	0.120	15
	up to*	0.127	
Severe-17	from	0.127	17
	up to*	0.187	
Extreme	equal to or above	0.187	20

*But not including.

Five Percent Bump Down

Under section 181(a)(4), an ozone nonattainment area may be reclassified "if an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based." The section also states that "In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

As noted in the November 6, 1991, FR on designating and classifying areas, the section 181(a)(4) provisions grant the Administrator broad discretion in making or determining not to make, a reclassification (56 FR 56698). As part of the 1991 action, EPA developed criteria (*see* list below) to evaluate whether it is appropriate to reclassify a particular area. In 1991, EPA approved reclassifications when the area met the first requirement (a request by the State to EPA) and at least some of the other criteria and did not violate any of the criteria (emissions, reductions, trends, etc.). We intend to use this method and these criteria once again to evaluate reclassification requests under section 181(a)(4), with the minor changes noted below. Because section 181(b)(3) provides that an area may request a higher classification and EPA must grant it, these criteria primarily focus on how we will assess requests for a lower classification. We further discuss bump ups below.

Request by State: The EPA does not intend to exercise its authority to bump down areas on EPA's own initiative. Rather, EPA intends to rely on the State to submit a request for a bump down. A Tribe may also submit such a request and, in the case of a multi-state nonattainment area, all affected States must submit the reclassification request.

Discontinuity: A five percent reclassification must not result in an illogical or excessive discontinuity relative to surrounding areas. In particular, in light of the area-wide nature of ozone formation, a reclassification should not create a "donut hole" where an area of one classification is surrounded by areas of higher classification.

Attainment: Evidence should be available that the proposed area would be able to attain by the earlier date specified by the lower classification in the case of a bump down.

Emissions reductions: Evidence should be available that the area would be very likely to achieve the appropriate total percent emission reduction necessary in order to attain in the shorter time period for a bump down.

Trends: Near- and long-term trends in emissions and air quality should support a reclassification. Historical air quality data should indicate substantial air quality improvement for a bump down. Growth projections and emission trends should support a bump down. In addition, we will consider whether vehicle miles traveled and other indicators of emissions are increasing at higher than normal rates.

Years of data: For the 8-hour ozone standard, the 2001–2003 period is central to determining classification. This criterion has been updated to reflect the latest air quality data available to make the determinations within the statute's 90 day limitation.

Limitations on Bump Downs

An area may only be reclassified to the next lower classification. An area cannot present data from other years as justification to be reclassified to an even lower classification. In addition, section 181(a)(4) does not permit moving areas from subpart 2 into subpart 1.

The EPA applied these criteria in 1991. For example, our action to bump down one area from severe to serious considered trends in population and emissions data, similarities to a nearby serious area, disparity with a nearby moderate area, the logical gradation of attainment deadlines proceeding outward from large metropolitan areas upwind, and the likelihood that the area would be able to attain the NAAQS in the shorter time frame. In approving a bump down to marginal, we noted that air quality trends showed improvement and recent air quality data indicated a marginal status. In denying a bump down, we analyzed local air quality trends and emission sources and considered long range transport from an area with a much later attainment deadline, which together made it unlikely the candidate area could attain the standard in the shorter time frame associated with the lower classification. Requests to bump down areas were also denied due, in part, to concern that transport of emissions from these areas would make it less likely that downwind nonattainment areas could attain the standards in a timely fashion. For additional information, see section 5, "Areas requesting a 5% downshift per § 181(a)(4) and EPA's response to those requests," of the Technical Support Document, October 1991 for the 1991 rule. [Docket A–90–42A.]

Five Percent Bump Up

An ozone nonattainment area may also be reclassified under section 181(a)(4) to the next higher classification. For the reasons described below ("Other Reasons to Consider Bump Ups"), we believe some areas with design values close to the next higher classification may not be able to attain within the period allowed by their classification. We encourage States to request reclassification upward where the State finds that an area may need more time to attain than their classification would permit. In addition, EPA will consider bumping up areas subject to the five percent provision on our own initiative where there is evidence that an area is unlikely to attain within the period allowed by their classification. In making this determination, EPA would consider criteria similar to that listed above (adjusted to consider bump ups rather than bump downs) regarding discontinuity, attainment, emissions reduction and trends. The following areas have design values based on 2001–2003 data that fall within five percent of the next higher classification:

Marginal areas within five percent of Moderate

Portland, ME; Atlanta, GA; Beaumont-Port Arthur, TX; and Norfolk, VA

Moderate areas within five percent of Serious

New York-New Jersey-Long Island, NY-NJ-CT; Los Angeles-San Bernardino Counties (W. Mojave), CA; Baltimore, MD; Cleveland-Akron-Lorain, OH; and Houston-Galveston-Brazoria, TX

Serious areas within five percent of Severe-15

San Joaquin Valley, CA

Calculation of Five Percent

For an area to be eligible for a bump down (or bump up) under section 181(a)(4), the area's design value must be within five percent of the next lower (or higher) classification. For example, an area with a moderate design value of 0.096 ppm (or less) would be eligible to request a bump down because five percent less than 0.096 ppm is 0.091 ppm, a marginal design value.[10] An area with a moderate design value of 0.102 ppm (or more) would be eligible for a bump up because five percent more than 0.102 ppm is 0.107 ppm, a serious design value. As a result, the following areas may be eligible to request a bump down: moderate areas with a design value of 0.096 ppm or less; serious areas with a design value of 0.112 ppm or less; and severe-17 areas with a design value of 0.133 ppm or less. Similarly, for bump ups, the following areas may be eligible: marginal areas with a design value of 0.088 ppm or more; moderate areas with a design value of 0.102 ppm or more; and serious areas with a design value of 0.115 ppm or more.

Timing of the Five Percent Reclassifications

The notice of availability for this rule permits States to submit five percent reclassification requests within 30 days of the effective date of the designations and classifications. The effective date is June 15 which means that reclassification requests must be submitted by July 15, 2004. This relatively short time frame is necessary because section 181(a)(4) only authorizes the Administrator to make such reclassifications within 90 days after the initial classification. Thus, the Governor or eligible Tribal governing body of any area that wishes to pursue a reclassification should submit all requests and supporting documentation to the EPA Regional office by July 15, 2004. We will make a decision by September 15, 2004.

Other Reasons To Consider Bump Ups

We encourage States to consider a voluntary bump up in cases where the State finds that an area may need more time to attain the 8-hour NAAQS than its classification would permit. In addition to the reclassification provision of section 181(a)(4), a State can request a higher classification under section 181(b)(3) of the CAA. This provision directs EPA to grant a State's request for a higher classification and to publish notice of the request and EPA's approval. In addition, we are interpreting section 181(b)(3) to allow a State with an area covered under subpart 1 to request a reclassification to a subpart 2 classification.

We note that it is difficult to determine when an area will be able to attain the NAAQS in advance of State development of attainment plans. These plans are based on high-resolution local air quality modeling, refined emissions inventories, use of later air quality data, and detailed analyses of the impacts and costs of potential local control measures. As noted earlier, we are classifying nonattainment areas subject to subpart 2 based on the most recent ozone design values at the time of designation, the 2001–2003 period. Because of year-to-year variations in meteorology, this snapshot in time may not be representative of the normal magnitude of problems that some areas may face.

The EPA's analysis in the proposed Interstate Air Quality Rule (IAQR) uses design values taken from the 2000–2002 period, rather than the 2001–2003 data used in the classification process. At the time the IAQR modeling was completed, 2000–2002 was the latest period which was available for determining designation compliance with the NAAQS. Concentrations of ozone in 2010 were estimated by applying the relative change in model predicted ozone from 2001 to 2010 with the 8-hour ozone design values (2000–2002). The IAQR base case analysis (which assumes existing control requirements only) projects ozone values in 2010 for several areas—for example, Baltimore, Houston, New York and Philadelphia—that are high enough to suggest that the areas may be unable to attain by 2010, given our current information on the potential for additional controls. Yet, as a result of their classification, these areas are required to adopt a plan to attain the 8-hour ozone standard earlier than the 2010 ozone season. Atlanta has a projected 2010 ozone value much closer to the standard, but has an attainment date prior to the 2007 ozone season. Thus, the IAQR analysis, based on the 2000–2002 period, suggests that States should evaluate whether certain areas may need more time to attain. States should consider in their local air quality modeling whether an area's projected air quality level would be higher if the projection were based on different three-year base periods. While we recognize that future local analyses for specific nonattainment areas may show different results than the regional IAQR analysis, we encourage States to consider requesting a higher classification for areas that the State believes need more time to attain, especially in cases where existing modeling analysis and information on potential controls suggests more time is needed than their classification would permit.

IX. What Action Is EPA Taking To Defer the Effective Date of Nonattainment Designations for EAC Areas?

This section discusses EPA's final action with respect to deferring the effective date of nonattainment designations for areas of the country that do not meet the 8-hour ozone NAAQS and are participating in the EAC program. By December 31, 2002, we entered into compacts with 33 communities. To receive this deferral, these EAC areas have agreed to reduce ground-level ozone pollution earlier

[10] See EPA's "Guideline on Data Handling Conventions for the 8-Hour Ozone NAAQS" (12–98) and appendix I to 40 CFR part 50.

than the CAA would require. This final rule for compact areas addresses several key aspects of the proposed rule, including deferral of the effective date of nonattainment designation for certain compact areas; progress of compact areas toward completing their milestones; final action for compact areas; EPA's schedule for taking further action to continue to defer the effective date of nonattainment designations, if appropriate; and consequences for compact areas that do not meet a milestone. In this action, we have added regulatory text to clarify specific requirements in part 81 for compact areas and to identify actions that we will take to address any failed milestones. Finally, we have responded to the significant comments on the proposed rule.

A. When Did EPA Propose the First Deferred Effective Date of Nonattainment Designations?

On December 16, 2003 (68 FR 70108), we published a proposed rule to defer the effective date of air quality nonattainment designations for EAC areas that do not meet the 8-hour ozone NAAQS. The proposal also described the compact approach, the requirements for areas participating in the program, and the impacts of the program on these areas. Compact areas have agreed to reduce ground-level ozone pollution earlier than the CAA would require. Please refer to the proposed rule for a detailed discussion and background information on the development of the compact program, what compact areas are required to do, and the impacts of the program.

Table 2 describes the milestones and submissions that compact areas are required to complete to continue eligibility for a deferred effective date of nonattainment designation for the 8-hour ozone standard.

TABLE 2.—EARLY ACTION COMPACT MILESTONES

Submittal date	Compact milestone
December 31, 2002	Submit Compact for EPA signature.
June 16, 2003	Submit preliminary list and description of potential local control measures under consideration.
March 31, 2004	Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted).
December 31, 2004	State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable.
2005 Ozone Season (or no later than December 31, 2005).	Implement SIP control measures.
June 30, 2006	State reports on implementation of measures and assessment of air quality improvement and reductions in NO_X and VOC emissions to date
December 31, 2007	Area attains 8-hour ozone NAAQS.

B. What Progress Are Compact Areas Making Toward Completing Their Milestones?

In this section we describe the status of the compact areas' progress toward meeting their compact milestones. In general, these areas have made satisfactory progress toward timely completion of their milestones. As reported in the December 16, 2003 proposal, all 33 communities met the June 16, 2003 milestone, which required areas to submit a list and description of local control measures each area considered for adoption and implementation. A compiled list, as well as highlights, of these local measures is found on EPA's Web site for compact areas at *http://www.epa.gov/ttn/ naaqs/ozone/eac/index.htm#EACsummary*. By December 31, 2003, compact areas reported the status of these measures by identifying the local measures still under consideration at that time, the estimated emissions reductions expected from these measures, and the schedule for implementation. A summary of the local measures as reported in December 2003 is presented on EPA's EAC Web site at *http://www.epa.gov/ttn/ naaqs/ozone/eac/20031231_eac_measures_full_list.pdf*.

By March 31, 2004, compact areas submitted local plans, which included measures for adoption that are specific, quantified, and permanent, and if approved by EPA, will be federally enforceable as part of the SIP. These plans also included specific implementation dates for the local controls, as well as a technical assessment of whether the area could attain the 8-hour ozone NAAQS by the December 31, 2007 milestone, which is described in Table 2. The local plans for all compact areas are posted on the EAC Web site at: *http://www.epa.gov/ttn/naaqs/ozone/eac/#List*.

The EPA reviewed all of the local plans submitted by March 31, 2004 and determined that most of the plans were acceptable. With respect to control strategies, a number of areas are relying on measures to be adopted by the State, and are committed to implement these measures by 2005. In many cases, particularly in the southeast, the MAC areas demonstrated that they can attain the 8-hour ozone standard by December 2007 without implementation of local controls. In general, the technical demonstrations of attainment were acceptable; however, some of the 33 communities did not project attainment in 2007 (the attainment test) based on modeling, unless they considered additional factors to supplement their analysis (*i.e.*, weight of evidence). In evaluating a State's weight of evidence determination for an area, we consider the results of the modeled, attainment test—for all EAC areas, a demonstration of attainment in 2007—along with additional information, such as predicted air quality improvement, meteorological influences, and additional measures not modeled. Our modeling guidance indicates that the farther an area is from the level of the standard, the more compelling the additional information needs to be in order to demonstrate that the area will attain the standard. Based on our analysis of the technical information provided, we believe that some areas did not present as strong a case as other areas to demonstrate attainment by December 2007. Three areas in Tennessee, Knoxville, Memphis and Chattanooga each developed attainment demonstrations that generally conform to our modeling guidance. However, in reviewing and analyzing the local plans for these areas, we determined that Knoxville, Memphis and Chattanooga did not pass the modeled attainment test and the predicted air quality improvement test. In addition, our review of meteorological influences for the three areas was inconclusive; and these areas did not provide additional measures not already modeled. In

addition to the technical analysis, we reviewed the strength of the control strategies each EAC area proposed in their March 31, 2004 plans. We determined that the control measures submitted by these three areas could have been strengthened, and the Agency expected more local measures. Therefore, EPA determined that the States' technical assessments for each of these areas and their suite of measures were not acceptable. The only other two compact areas that did not pass the modeled attainment test, the Denver, Colorado area and the Triad (Greensboro-Winston-Salem-High Point), North Carolina area, provided more meaningful local control measures than the three Tennessee compact areas.

Based on our review and evaluation of these local plans, we have determined that Knoxville, Memphis and Chattanooga do not meet the March 31, 2004 milestone. In accordance with the Early Action Protocol and agency guidance, all EAC areas must meet all compact milestones, including this most recent one, to be eligible for the deferred effective date of designation. Consequently, today, these three areas are being designated nonattainment, effective June 15, 2004, and are subject to full planning requirements of title I, part D of the CAA. For the other EAC areas not meeting the 8-hour ozone standard, which we determined have complied with the March 2004 milestone, are being designated nonattainment with a deferred effective date of September 30, 2005. By that date, we intend to take notice and comment rulemaking and promulgate approval or disapproval of these plans as SIP revisions. The local plans that are approved at that time will be eligible for an extension of the deferred effective date. If EPA disapproves any local plans at that time, the nonattainment designation will become effective immediately. Our evaluations of all local plans submitted by March 31, 2004, are included in the TSD for this rulemaking.

Table 3 lists the EAC areas and their air quality designation for the 8-hour ozone standard by county. The table in Part 81 lists 8-hour ozone designations for all areas of the country.

TABLE 3.—DESIGNATION OF COUNTIES PARTICIPATING IN EARLY ACTION COMPACTS

State	Compact area (designated area)	County	Designation	Effective date
EPA Region 3				
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC–MD–VA.	Winchester City	Nonattainment-deferred	9/30/2005
		Frederick County	Nonattainment-deferred	9/30/2005
VA	Roanoke Area (Roanoke, VA)	Roanoke County	Nonattainment-deferred	9/30/2005
		Botetourt County	Nonattainment-deferred	9/30/2005
		Roanoke City	Nonattainment-deferred	9/30/2005
		Salem City	Nonattainment-deferred	9/30/2005
MD	Washington County (Washington County (Hagerstown), MD), adjacent to Washington, DC–MD–VA.	Washington County	Nonattainment-deferred	9/30/2005
WV	The Eastern Pan Handle Region (Berkeley & Jefferson Counties, WV), Martinsburg area.	Berkeley County	Nonattainment-deferred	9/30/2005
		Jefferson County	Nonattainment-deferred	9/30/2005
EPA Region 4				
NC	Mountain Area of Western NC (includes Asheville).	Buncombe County	Unclassifiable/Attainment	6/15/2004
		Haywood County (part)	Unclassifiable/Attainment	6/15/2004
		Henderson County (opt out)[1]	Unclassifiable/Attainment	6/15/2004
		Madison County	Unclassifiable/Attainment	6/15/2004
		Transylvania County (opt out)[1]	Unclassifiable/Attainment	6/15/2004
NC	Unifour (Hickory-Morganton-Lenoir, NC)	Catawba County	Nonattainment-deferred	9/30/2005
		Alexander County	Nonattainment-deferred	9/30/2005
		Burke County (part)	Nonattainment-deferred	9/30/2005
		Caldwell County (part)	Nonattainment-deferred	9/30/2005
NC	Triad (Greensboro-Winston-Salem-High Point, NC).	Surry County	Unclassifiable/Attainment	6/15/2004
		Yadkin County	Unclassifiable/Attainment	6/15/2004
		Randolph County	Nonattainment-deferred	9/30/2005
		Forsyth County	Nonattainment-deferred	9/30/2005
		Davie County	Nonattainment-deferred	9/30/2005
		Alamance County	Nonattainment-deferred	9/30/2005
		Caswell County	Nonattainment-deferred	9/30/2005
		Davidson County	Nonattainment-deferred	9/30/2005
		Stokes County	Unclassifiable/Attainment	6/15/2004
		Guilford County	Nonattainment-deferred	9/30/2005
		Rockingham County	Nonattainment-deferred	9/30/2005
NC	Fayetteville (Fayetteville, NC)	Cumberland County	Nonattainment-deferred	9/30/2005
SC	Appalachian—A (Greenville-Spartanburg-Anderson, SC).	Cherokee County	Unclassifiable/Attainment	6/15/2004
		Spartanburg County	Nonattainment-deferred	9/30/2005
		Greenville County	Nonattainment-deferred	9/30/2005
		Pickens County	Unclassifiable/Attainment	6/15/2004
		Anderson County	Nonattainment-deferred	9/30/2005

TABLE 3.—DESIGNATION OF COUNTIES PARTICIPATING IN EARLY ACTION COMPACTS—Continued

State	Compact area (designated area)	County	Designation	Effective date
SC	Catawba—B Part of York County, SC is in the Charlotte-Gastonia-Rock Hill, NC–SC nonattainment area.	Oconee County	Unclassifiable/Attainment	6/15/2004
		York County (part) [2]	Nonattainment	6/15/2004
SC	Pee Dee—C Florence area	Chester County	Unclassifiable/Attainment	6/15/2004
		Lancaster County	Unclassifiable/Attainment	6/15/2004
		Union County	Unclassifiable/Attainment	6/15/2004
		Florence County	Unclassifiable/Attainment	6/15/2004
		Chesterfield County	Unclassifiable/Attainment	6/15/2004
		Darlington County	Unclassifiable/Attainment	6/15/2004
		Dillon County	Unclassifiable/Attainment	6/15/2004
		Marion County	Unclassifiable/Attainment	6/15/2004
		Marlboro County	Unclassifiable/Attainment	6/15/2004
SC	Waccamaw—D Myrtle Beach area	Williamsburg County	Unclassifiable/Attainment	6/15/2004
		Georgetown County	Unclassifiable/Attainment	6/15/2004
		Horry County	Unclassifiable/Attainment	6/15/2004
SC	Santee Lynches—E Sumter area	Clarendon County	Unclassifiable/Attainment	6/15/2004
		Lee County	Unclassifiable/Attainment	6/15/2004
		Sumter County	Unclassifiable/Attainment	6/15/2004
		Kershaw County	Unclassifiable/Attainment	6/15/2004
SC	Berkeley-Charleston-Dorchester—F Charleston-North Charleston area.	Dorchester County	Unclassifiable/Attainment	6/15/2004
		Berkeley County	Unclassifiable/Attainment	6/15/2004
		Charleston County	Unclassifiable/Attainment	6/15/2004
SC	Low Country—G Beaufort area	Beaufort County	Unclassifiable/Attainment	6/15/2004
		Colleton County	Unclassifiable/Attainment	6/15/2004
		Hampton County	Unclassifiable/Attainment	6/15/2004
		Jasper County	Unclassifiable/Attainment	6/15/2004
SC/GA	Lower Savannah-Augusta part of Augusta-Aiken, GA–SC area.	Aiken County, SC	Unclassifiable/Attainment	6/15/2004
		Orangeburg County, SC	Unclassifiable/Attainment	6/15/2004
		Barnwell County, SC	Unclassifiable/Attainment	6/15/2004
		Calhoun County, SC	Unclassifiable/Attainment	6/15/2004
		Allendale County, SC	Unclassifiable/Attainment	6/15/2004
		Bamberg County, SC	Unclassifiable/Attainment	6/15/2004
		Richmond County, GA	Unclassifiable/Attainment	6/15/2004
		Columbia County, GA	Unclassifiable/Attainment	6/15/2004
SC	Central Midlands—I Columbia area	Richland County (part)	Nonattainment-deferred	9/30/2005
		Lexington County (part)	Nonattainment-deferred	9/30/2005
		Newberry County	Unclassifiable/Attainment	6/15/2004
		Fairfield County	Unclassifiable/Attainment	6/15/2004
SC	Upper Savannah Abbeville-Greenwood area	Abbeville County	Unclassifiable/Attainment	6/15/2004
		Edgefield County	Unclassifiable/Attainment	6/15/2004
		Laurens County	Unclassifiable/Attainment	6/15/2004
		Saluda County	Unclassifiable/Attainment	6/15/2004
		Greenwood County	Unclassifiable/Attainment	6/15/2004
TN/GA	Chattanooga (Chattanooga, TN–GA) County, TN.	Hamilton County, TN	Nonattainment	6/15/2004
		Meigs County, TN	Nonattainment	6/15/2004
		Marion County, TN	Unclassifiable/Attainment	6/15/2004
		Walker County, GA	Unclassifiable/Attainment	6/15/2004
		Catoosa County, GA	Nonattainment	6/15/2004
TN	Knoxville (Knoxville, TN)	Knox County	Nonattainment	6/15/2004
		Anderson County	Nonattainment	6/15/2004
		Union County	Unclassifiable/Attainment	6/15/2004
		Loudon County	Nonattainment	6/15/2004
		Blount County	Nonattainment	6/15/2004
		Sevier County	Nonattainment	6/15/2004
		Jefferson County	Nonattainment	6/15/2004
TN	Nashville (Nashville, TN)	Davidson County	Nonattainment-deferred	9/30/2005
		Rutherford County	Nonattainment-deferred	9/30/2005
		Williamson County	Nonattainment-deferred	9/30/2005
		Wilson County	Nonattainment-deferred	9/30/2005
		Sumner County	Nonattainment-deferred	9/30/2005
		Robertson County	Attainment	6/15/2004
		Cheatham County	Attainment	6/15/2004
		Dickson County	Attainment	6/15/2004
TN/AR/MS	Memphis, (Memphis, TN–AR–MS)	Shelby County, TN	Nonattainment	6/15/2004
		Tipton County, TN	Unclassifiable/Attainment	6/15/2004
		Fayette County, TN	Unclassifiable/Attainment	6/15/2004

TABLE 3.—DESIGNATION OF COUNTIES PARTICIPATING IN EARLY ACTION COMPACTS—Continued

State	Compact area (designated area)	County	Designation	Effective date
		DeSoto County, MS	Unclassifiable/Attainment	6/15/2004
		Crittenden County, AR	Nonattainment	6/15/2004
TN	Haywood County adjacent to Memphis & Jackson areas.	Haywood County	Unclassifiable/Attainment	6/15/2004
TN	Putnam County central TN, between Nashville and Knoxville.	Putnam County	Unclassifiable/Attainment	6/15/2004
TN	Johnson City-Kingsport-Bristol Area (TN portion only).	Sullivan Co, TN	Nonattainment-deferred	9/30/2005
		Hawkins County, TN	Nonattainment-deferred	9/30/2005
		Washington Co, TN	Unclassifiable/Attainment	6/15/2004
		Unicoi County, TN	Unclassifiable/Attainment	6/15/2004
		Carter County, TN	Unclassifiable/Attainment	6/15/2004
		Johnson County, TN	Unclassifiable/Attainment	6/15/2004
		EPA Region 6		
TX	Austin/San Marcos	Travis County	Unclassifiable/Attainment	6/15/2004
		Williamson County	Unclassifiable/Attainment	6/15/2004
		Hays County	Unclassifiable/Attainment	6/15/2004
		Bastrop County	Unclassifiable/Attainment	6/15/2004
		Caldwell County	Unclassifiable/Attainment	6/15/2004
TX	Northeast Texas Longview-Marshall-Tyler area	Gregg County	Unclassifiable/Attainment	6/15/2004
		Harrison County	Unclassifiable/Attainment	6/15/2004
		Rusk County	Unclassifiable/Attainment	6/15/2004
		Smith County	Unclassifiable/Attainment	6/15/2004
		Upshur County	Unclassifiable/Attainment	6/15/2004
TX	San Antonio	Bexar County	Nonattainment-deferred	9/30/2005
		Wilson County	Unclassifiable/Attainment	6/15/2004
		Comal County	Nonattainment-deferred	9/30/2005
		Guadalupe County	Nonattainment-deferred	9/30/2005
OK	Oklahoma City	Canadian County	Unclassifiable/Attainment	6/15/2004
		Cleveland County	Unclassifiable/Attainment	6/15/2004
		Logan County	Unclassifiable/Attainment	6/15/2004
		McClain County	Unclassifiable/Attainment	6/15/2004
		Oklahoma County	Unclassifiable/Attainment	6/15/2004
		Pottawatomie Co	Unclassifiable/Attainment	6/15/2004
OK	Tulsa	Tulsa County	Unclassifiable/Attainment	6/15/2004
		Creek County	Unclassifiable/Attainment	6/15/2004
		Osage County	Unclassifiable/Attainment	6/15/2004
		Rogers County	Unclassifiable/Attainment	6/15/2004
		Wagoner County	Unclassifiable/Attainment	6/15/2004
LA	Shreveport-Bossier City	Bossier Parish	Unclassifiable/Attainment	6/15/2004
		Caddo Parish	Unclassifiable/Attainment	6/15/2004
		Webster Parish	Unclassifiable/Attainment	6/15/2004
NM	San Juan County Farmington area	San Juan County	Unclassifiable/Attainment	6/15/2004
		EPA Region 8		
CO	(Denver-Boulder-Greeley-Ft. Collins-Love, CO)	Denver County	Nonattainment-deferred	9/30/2005
		Boulder County (includes part of Rocky Mtn National Park).	Nonattainment-deferred	9/30/2005
		Jefferson County	Nonattainment-deferred	9/30/2005
		Douglas County	Nonattainment-referred	9/30/2005
		Broomfield	Nonattainment-deferred	9/30/2005
		Adams County	Nonattainment-deferred	9/30/2005
		Arapahoe County	Nonattainment-deferred	9/30/2005
		Larimer County (part)	Nonattainment-deferred	9/30/2005
		Weld County (part)	Nonattainment-deferred	9/30/2005

[1] Henderson and Transylvania Counties opted out of the Mountain Area of Western NC compact and are no longer participating.
[2] The part of York County, SC that includes the portion within the Metropolitan Planning Organization (MPO) is designated nonattainment and is part of the Charlotte-Gastonia-Rock Hill, NC–SC nonattainment area, effective June 15, 2004. The remaining part of York County, SC is designated unclassifiable/attainment.

Note: Ozone designations for EAC counties are either "Unclassifiable/Attainment" (effective June 15, 2004); "Nonattainment" (effective June 15, 2004, if EAC area fails to meet the March 31, 2004 milestone); or "Nonattainment" (effective date deferred until September 30, 2005). Name of designated 8-hour ozone nonattainment area is in parentheses.

C. What Is Today's Final Action for Compact Areas?

Today, we are issuing the first of three deferrals of the effective date of the nonattainment designation for any

compact area that does not meet the 8-hour ozone NAAQS and would otherwise be designated nonattainment, but has met all compact milestones through the March 31, 2004 submission.[11] We are deferring until September 30, 2005, the effective date of the 8-hour ozone nonattainment designation for these compact area counties which are listed in 40 CFR part 81 (included at the end of this document).

As described earlier in this notice, we analyzed information provided by the States to determine whether a county should be included as part of a designated nonattainment area. This information included such factors as population density, traffic congestion, meteorological conditions, and pollution transport. We analyzed the factors for each county participating in an EAC to determine whether a county should be included in the nonattainment area. Therefore, some portions of compact areas are designated unclassifiable/attainment and some are designated nonattainment.

The EAC areas that EPA is designating in today's rule as attainment for the 8-hour ozone NAAQS have agreed to continue participating in their compacts and meet their obligations on a voluntary basis. However, two of the five counties in the compact for the Mountain Area of Western North Carolina have decided to withdraw because the area is monitoring attainment. The remaining three counties are continuing to participate in the agreement.

D. What Is EPA's Schedule for Taking Further Action To Continue To Defer the Effective Date of Nonattainment Designation for Compact Areas?

As discussed in the proposed rule, prior to the time the first deferral expires, we intend to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for those areas that continue to fulfill all compact obligations. Prior to the time the second deferral expires, we would propose and, as appropriate, promulgate a third deferral for those areas that continue to meet all compact milestones. Before the third deferral expires shortly after December 31, 2007, we intend to determine whether the compact areas have attained the 8-hour ozone NAAQS and have met all compact milestones. By April 2008, we will issue our determination. If the area has not attained the standard, the nonattainment designation will take effect. If it has attained the standard, EPA will issue an attainment designation for the area. Any compact area that has not attained the NAAQS and has an effective nonattainment designation will be subject to full planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of the designation.

E. What Action Will EPA Take if a Compact Area Does Not Meet a Milestone?

As described in the December 16, 2003 proposed rule (68 FR 70111), the compact program was based on a number of principles as described in the EAC protocol.[12] One of these principles is to provide safeguards to return areas to traditional SIP requirements for nonattainment areas should an area fail to comply with the terms of the compact. For example, if a compact area with a deferred effective date fails to meet one of the milestones, we would take steps immediately to remove the deferred effective date of its nonattainment designation.

Today, we are promulgating regulatory text, which specifies the milestones that EAC areas are required to complete to be eligible for the deferred effective date, as well as certain actions that the Administrator will take when EAC areas either comply, or do not comply, with the terms of the compact.

F. What Comments Did EPA Receive on the December 16, 2003 Proposal and on the June 2, 2003 Proposed Implementation Rule Specific to Compacts?

We received a number of comments on the proposed rule for compact areas. We have responded to the significant comments in this section. Our responses address various aspects of the compact program: (1) Legal concerns; (2) the designations process for EAC areas, including the anticipated schedule for removal of the deferred effective date of the nonattainment designation for any compact area that fails to meet a milestone; (3) concerns about the compact process; (4) transportation/fuels-related comments; and (5) need for regulatory language. Other compact-related comments not addressed in this document are included in the RTC document, which is located in the docket for this rulemaking (OAR–2003–0090) and on EPA's technical Web site for early action compacts at: *http://www.epa.gov/ttn/naaqs/ozone/eac/#RMNotices.*

In addition, we received a number of EAC-related comments on the June 2, 2003 proposal for implementing the 8-hour ozone standard. We have addressed these comments in the same EAC RTC document, which may be found at the location noted above.

1. Support for and Opposition to Early Action Compacts

Comment: Many commenters expressed support for the compact process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designation. However, a number of commenters opposed the EAC program. Several of these commenters expressed concern about the legality of the program and primarily about the deferral of the effective date of the nonattainment designation for these areas. Although all of these commenters were supportive of the goal of addressing proactively the public health concerns associated with ozone pollution, the commenters state that the EAC program is not authorized by the CAA. All of these commenters indicated that EPA lacks authority under the CAA to defer the effective date of a nonattainment designation. In addition, these commenters state that EPA lacks authority to enter into EACs areas and lacks authority to allow areas to be relieved of obligations under title I, part D of the CAA while these areas are violating the 8-hour ozone standard or are designated nonattainment for that standard.

Response: We continue to believe that the compact program, as designed, gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the participating communities are serious in their commitment to control emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizens' groups, a number of communities are discussing for the first time the need for regional cooperation in solving air quality problems that affect the health and

[11] In a few instances, some of the counties participating in EACs were determined not to be part of the nonattainment area and were designated attainment. In such cases, the effective date of the attainment designation is not deferred.

[12] "Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard", Texas Commission on Environmental Quality (TCEQ), March 2002 (Protocol). The EPA endorsed the Protocol in a letter dated June 19, 2002, from Gregg Cooke, Administrator, EPA Region VI, to Robert Huston, TCEQ. The Prtocol was revised December 11, 2002 based on comments from EPA.

welfare of its citizens. People living in these areas that realize reductions in pollution levels sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur. In today's rule we are codifying the specific requirements in part 81 of the CFR to clarify what is required of compact areas to be eligible for deferral of the effective date of their nonattainment designation and what actions EPA intends to take in response to areas that meet the milestones and areas that do not meet the milestones.

As discussed earlier in this notice, EPA and nine environmental organizations entered into a Consent Decree on March 13, 2003, which requires EPA to issue the designations by April 15, 2004. Related to that agreement, we have been discussing with these parties the actions that compact areas have committed to take to implement measures on an accelerated schedule to attain the 8-hour ozone standard by December 31, 2007. On April 5, 2004, these environmental organizations and EPA entered into a joint stipulation to modify the deadline in the consent decree. The parties agreed to extend the deadline for the effective date of designations with respect to each area which EPA determines meets the requirements of the Protocol and EPA guidance.

Comment: One commenter expressed concern about the health impact and the effect on air quality of delaying the effectiveness of nonattainment.

Response: The compact areas that are violating the standard are designated nonattainment (with deferred effective date), which means EPA is acknowledging the air quality problem of the area and the health impact on the community. However, these areas are committed to early reductions and early implementation of control measures that make sense for the local area. The Agency believes this proactive approach involving multiple, diverse stakeholders is beneficial to the citizens of the area by raising awareness of the need to adopt and implement measures that will reduce emissions and improve air quality.

2. Designations Process for Compact Areas

Comment: Several commenters expressed concern about EPA's process for designating areas that are participating in a compact. In addition, a number of commenters also were confused about the following statement in the June 2, 2003 proposed 8-hour implementation rule: "States are advised that if EPA determines that any portion of a compact area should become part of an 8-hour ozone nonattainment area, that portion would no longer be eligible for participation in the Early Action Compact, and the effective date of the nonattainment designation would not be deferred" (68 FR 32860, June 2, 2003). Some of these commenters noted that the language, as written, could be interpreted to mean if any EAC area becomes designated as nonattainment for the 8-hour ozone standard, the EAC is no longer valid. A number of commenters submitted recommendations to EPA for either including or excluding certain participating EAC counties from the designated area.

Response: In determining the boundary for the designated area, we applied the same procedure as we did for areas that are not participating in an EAC, as described elsewhere in this document. The commenters are referring to language in section VIII.A.3 of the June 2, 2003 proposed rule for implementing the 8-hour ozone standard at 68 FR 32860. At the time we entered into compact agreements with the local communities by December 2002, and at the time we proposed the 8-hour implementation rule, we had not made a decision as to which participating counties would be included in a nonattainment area. Therefore, at that time we were not able to determine the appropriate boundary for the area that would be eligible for a deferral of the effective date of nonattainment designation. We agree with the commenters that the preamble language in the proposed 8-hour implementation rule is not clear. The language was intended to be applied to a portion of a compact area that is adjacent to or part of an area that is violating the 1-hour ozone standard (or otherwise did not qualify for participation in a compact), and subsequently is designated nonattainment for the 8-hour ozone standard.

An example is the Catawba EAC, which includes York County, SC, as well as Chester, Lancaster and Union Counties, SC. York County, which has one monitor that is attaining the 8-hour standard, is in the Charlotte-Gastonia-Rock Hill MSA. We have examined all applicable air quality-related factors in our guidance and concluded that part of the county is contributing to a violation in the MSA. Based on our analysis, therefore, we are designating this county as a partial county nonattainment area, in the 8-hour ozone nonattainment area for Charlotte-Gastonia-Rock Hill. As we noted earlier, nonattainment is defined in the CAA as an area that is violating the NAAQS or is contributing to a nearby area that is violating the NAAQS. York County ranks high in population growth (25 percent) and the predicted growth from 2000 to 2010 is 12 percent, approximately 20,000 additional population. York County ranks second and third for VOC and NO_X emissions in the CMSA, and 94 percent of its population of workers drives to work within the CMSA. York County may continue in the Catawba compact along with the other three counties as a voluntary participant; however, the nonattainment portion of York County is not eligible for a deferred effective date. Moreover, because the other counties in the Charlotte-Gastonia-Rock Hill nonattainment area are not participating in the EAC process, the Charlotte area, which includes York County, is not eligible for a deferred effective date. In no way does EPA intend for the Catawba compact to be revoked. For EPA's responses to comments regarding designation and boundary issues for specific EAC areas, see the RTC document and the TSD for this rulemaking.

Comment: A number of commenters recommended that EPA clarify exactly when a compact area would be designated nonattainment if it fails to meet a milestone.

Response: Today, we have determined that a number of compact areas have met the March 31, 2004 milestone (plan of local measures); therefore, the effective date of nonattainment designation for these areas is deferred until September 30, 2005. In Table 3 we have listed the air quality designations and the effective dates for all counties participating in EACs. In addition, today, we have determined that some compact areas have not met the March 31, 2004 milestone. A discussion of our assessment of these local plans is provided elsewhere in this document. We are designating these areas as nonattainment, which is effective June 15, 2004.

In another section of this document, we are promulgating regulatory text that clarifies the actions we would take in the event a compact area does not meet subsequent milestones. We have summarized those actions below.

If an EAC area fails to meet a milestone, in accordance with our guidance, we intend to take action as soon as practicable to remove the deferral, which would trigger the effective date of the nonattainment designation. If a State fails to submit a SIP revision for a compact area, consisting of the adopted local plan and the demonstration of attainment by December 31, 2004, we intend to take

action as soon as practicable (*e.g.*, January 2005) to remove the deferral for that area, which would trigger the effective date of the nonattainment designation and, thus, also the classification, rather than letting the designation take effect automatically on September 30, 2005. The State would be required to submit a revised attainment demonstration within 1 year of the effective date of the nonattainment designation.

Assuming EPA takes rulemaking action to continue to defer the effective date of the nonattainment designation for compact areas, if a compact area fails the December 31, 2005 milestone (complete implementation of local measures), we would take action as soon as practicable (*e.g.*, by March 31, 2006) to remove the deferral which would trigger the effective date of their nonattainment designation and, thus, also their classification, rather than letting the designation take effect automatically at the next deferred date. The State would be required to submit a revised attainment demonstration within 1 year of the effective date of the nonattainment designation.

Similarly, for any area that does not meet the June 30, 2006 milestone (assessment of air quality improvement and emissions reductions from implementation of measures), we would take action as soon as practicable (*e.g.*, by September 30, 2006) to remove the deferral which would trigger the effective date of their nonattainment designation and, thus, also their classification. If the area, based on the most recent 3 years of quality-assured monitoring data, is not attaining the 8-hour ozone standard by December 31, 2007, we would take action by April 15, 2008, to remove the deferral which would trigger the effective date of their nonattainment designation and, where applicable, classification.

Comment: Some commenters strongly recommended that if the compact measures fail to be implemented or fail to achieve targeted emissions reductions, the compact area should immediately be designated as nonattainment with a subpart 2 classification and be required to comply with all applicable obligations within the original timeframe.

Response: In another section of this document, we are promulgating regulatory text that clarifies the actions we intend to take in the event a compact area does not meet subsequent milestones. Compact areas are designated as nonattainment and the effective date of that designation is deferred. The deferral for any areas that do not meet or fail any milestone will be removed as soon as practicable which would trigger the effective date of their nonattainment designation and, thus, also the classification consistent with the final 8-hour implementation rule. If called for by the area's classification, these areas will be required to submit a revised attainment demonstration within 1 year of the effective date of designation and will be subject to all applicable requirements of title I, part D of the CAA, to be implemented within a time frame consistent with the area's classification.

Comment: One commenter believes the second rolling deferred effective date is not necessary and should be eliminated. According to the commenter, there should be only two separate deferral dates promulgated for nonattainment designations for areas where controls would be implemented by September 30, 2005, and no other milestones (the June 2006 progress assessment) would be needed between implementation of controls and attainment.

Response: The June 2006 milestone, which is one of the compact requirements that would be subject to the second deferred effective date (December 31, 2006), provides that States report progress of EAC areas in implementing adopted measures and assess improvements in air quality and reductions in NO_X and VOC emissions. The second deferral is a checkpoint that is needed to ensure that areas are making progress toward attainment. This milestone can be one of the progress reports, but it is considered a milestone because EPA believes it is important to have a checkpoint between implementation of measures by December 2005 and attainment in December 2007.

Comment: A number of commenters were concerned about EPA's statement in the proposal that the Agency would commit to not redesignate areas that subsequently violate the 8-hour ozone NAAQS to nonattainment, provided the area continues to meet all compact milestones and requirements.

Response: In the proposed rule at FR 68 70113, EPA did state its intention to commit to not redesignate EAC areas to nonattainment that are designated attainment in April 2004. We realize that our shorthand phrasing did not properly convey our intent. To clarify, in deciding whether to redesignate an EAC area to nonattainment, EPA will consider the factors in section 107(d)(3)(a) of the CAA. If an EAC area continues to meet its compact milestones, EPA believes those factors should weigh in favor of not redesignating the area to nonattainment immediately, but rather waiting to see if the programs the area puts in place will bring it back into attainment.

3. Transportation/Fuels-Related Comments

Comment: The EPA received a number of comments expressing concern that lack of transportation conformity in EAC areas will negatively impact air quality in these areas. In addition, several commented that since EAC areas are not eligible to receive Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, projects to reduce congestion and, thereby, reduce mobile source emissions, would not occur. Another commenter suggested that EPA work with the U.S. Department of Transportation (DOT) to revise the TEA–21 so that EAC areas are eligible to receive CMAQ funding.

Response: The commenters are correct that EAC areas violating the 8-hour ozone standard, which would otherwise have a nonattainment date effective June 1, 2004, will not be subject to transportation or general conformity requirements for the 8-hour standard in 2005. The EAC protocol does not require EAC areas to meet CAA transportation conformity requirements, since, as noted, these requirements apply one year after the 8-hour nonattainment designation becomes effective.

However, continuing to defer 8-hour conformity requirements is contingent upon the area's ability to demonstrate adherence to the compact. Consistent with 40 CFR 93.102(d) and CAA section 176(c)(6), conformity for the 8-hour ozone standard will not apply, provided the area meets all of the terms and milestones of its compact between 2004 and 2007. At any point, if a milestone is missed, the nonattainment designation becomes effective and conformity for the 8-hour standard will be required one year after the effective date of EPA's nonattainment designation.

The EAC areas that are maintenance areas for the 1-hour standard will be subject to conformity until 1 year after the effective date of designation of the 8-hour standard. At that time the 1-hour standard will be revoked. Thus, for an EAC area that meets all of its milestones and whose deferral is lifted in April 2008, the 8-hour attainment designation would become effective in April 2008, and the 1-hour standard would be revoked 1 year later or, April 2009. For an EAC area that is also a 1-hour maintenance area under § 175A, the area would be subject to both its 1-hour maintenance plan and 1-hour

transportation conformity until April 2009.

Finally, EPA would like to clarify that transportation conformity is not a control measure similar to voluntary control programs funded through CMAQ dollars. Rather, it establishes a process for state and local governments to consider the broader emissions impacts of planned highway and transit activities to ensure that Federal funding and approval goes to those transportation activities that are consistent with air quality goals.

Comment: One commenter stated that they were reluctant to enter into a compact agreement knowing that they would not receive CMAQ funds. Several commenters also suggested that EPA provide EAC areas with tangible financial incentives to proactively improve their air quality, as well as work with the DOT to revise the Transportation Efficiency Act (TEA) so that it allows EAC areas to receive CMAQ funding.

Response: The commenters are correct that EAC areas are not eligible to receive CMAQ funding under current law. The CMAQ apportionment formula in TEA–21 contains no provisions to allow inclusion of EAC areas into the formula and thus into the authorized CMAQ levels for each state. Thus, until and unless the 8-hour ozone nonattainment designation is effective, areas cannot be eligible for CMAQ funding, absent a change in the law.

The primary incentive for many areas entering into an EAC is deferral of a nonattainment designation and major requirements, such as transportation conformity and NSR. It is true that compact areas are subject to SIP requirements, but not to other such major requirements. The EPA's interpretation is that Congress intended to link the obligations that come with a nonattainment designation to CMAQ funding. The purpose of the CMAQ program is to help those areas burdened with the significant obligations of the CAA attain the NAAQS as expeditiously as possible. Under the current CMAQ program, an EAC area would not be able to receive CMAQ funds because it would not be designated as a nonattainment or maintenance area.

Since TEA–21 has not been reauthorized as of this writing, EPA cannot postulate on whether it will contain a new provision allowing compact areas to receive CMAQ funding. The reauthorization bills passed by the Senate and House contain no such provision.

Comment: A number of EAC areas are considering the addition of cetane additives to fuel for increased fuel efficiency. Several commenters expressed concern about the focus on diesel cetane. They have expressed these concerns in detail in earlier correspondence with both the Agency and the Ozone Transport Commission.

Response: Clean fuel programs have been an integral part of the nation's strategy to reduce smog-forming emissions and other harmful pollutants, including air toxics from our nation's air. For example, the Federal reformulated gasoline program (RFG) and lower volatility fuels have been cost effective and have provided significant and immediate reductions in air pollution levels throughout the nation.

The CAA also allows States, under specified circumstances, to design and implement their own clean fuel programs. Several EAC areas are considering such programs including cetane improvement programs. Cetane improvement programs have the potential to contribute emission reductions needed for progress toward attainment and maintenance of the NAAQS. (*See* EPA Technical Report entitled, "The Effect of Cetane Number Increase Due to Additives on NO_x Emissions from Heavy-Duty Highway Engines", EPA–420–R–03–002, February 2003. This document can be downloaded from: *http://www.epa.gov/otaq/models/analysis.htm*. The EPA is now in the process of developing guidance to help States properly quantify the benefits of cetane improvement programs for their areas.

In selecting possible clean fuel programs and other potential ozone control measures, states will engage in a careful and extensive process. It is during this process that States should properly consider and evaluate their air quality needs, the air quality benefits of specific measures, costs, ease of implementation, enforceability and other issues and factors like those the commenter raises with respect to cetane programs. In addition, the States must involve the public in the selection of control measures, through hearings and opportunities to comment.

4. Regulatory Text

Comment: Several commenters strongly recommended that EPA include regulatory text in the final rule. One commenter, in particular, suggested that EPA do the following:

1. Codify the rolling deferred effective date so that it is enforceable and that areas are held accountable if they miss a milestone;

2. include in the final rule all deadlines and milestones specified in our EAC guidance;

3. codify the September 30, 2005 deadline for EPA action to approve/disapprove SIP submittals;

4. codify the December 31, 2008 deadline for States to submit a revised attainment demonstration SIP for EAC areas that fail to attain by December 31, 2007.

Response: Based on the recommendations of several commenters, we have added regulatory text to the final rule. This language codifies the EAC program into part 81 of the CFR. In addition, the regulatory text clarifies what is required of compact areas and the consequences to these areas if they do not meet a milestone.

X. How Do Designations Affect Indian Country?

All counties, partial counties or Air Quality Control Regions listed in the table at the end of this document are designated as indicated, and include Indian country geographically located within such areas, except as otherwise indicated.

As mentioned earlier in this document, EPA's guidance for determining nonattainment area boundaries presumes that the larger of the 1-hour nonattainment area, CMSA or MSA with a violating monitor forms the bounds of the nonattainment area but that the size of the area can be larger or smaller depending on contribution to the violation from nearby areas and other air quality-related technical factors. In general, and consistent with relevant air quality information, EPA intends to include Indian country encompassed within these areas as within the boundaries of the area for designation purposes to best protect public health and welfare. The EPA anticipates that in most cases relevant air quality information will indicate that areas of Indian country located within CMSAs or MSAs should have the same designation as the surrounding area. However, based on the factors outlined in our guidance, there may be instances where a different designation is appropriate.

A state recommendation for a designation of an area that surrounds Indian country does not dictate the designation for Indian county. However, the conditions that support a State's designation recommendation, such as air quality data and the location of sources, may indicate the likelihood that similar conditions exist for the Indian county located in that area. States generally have neither the responsibility nor the authority for planning and regulatory activities under the CAA in Indian country.

XI. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining that NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, we assign designations to areas as required. We also indicate the classifications that apply as a matter of law for areas designated nonattainment. This rule also provides flexibility for areas that have entered into a compact and take early action to achieve emissions reductions necessary to attain the 8-hour ozone standard. This action defers the effective date of the nonattainment designation for these areas and establishes regulations governing future actions with respect to these areas.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this final rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of Title 1. The present final rule does not establish any new information collection burden apart from that required by law. 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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (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.

The portion of this rule designating areas for the 8-hour ozone NAAQS indicating the classification for each subpart 2 area designated nonattainment, is not subject to the RFA because it was not subject to notice and comment rulemaking requirements. *See* CAA section 107(d)(2)(B). This rule also defers the effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS. The deferral of the effective date will not impose any requirements on small entities. States and local areas that have entered into compacts with EPA have the flexibility to decide which sources to regulate in their communities.

After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 8-hour National Ambient Air Quality Standards (NAAQS) for Ozone (62 FR 38894; July 18, 1997), therefore, no UMRA analysis is needed. This rule establishes the application of the 8-hour ozone standard and the designation for each area of the country for the 8-hour NAAQS for Ozone. The CAA requires States to develop plans, including control measures, based on their designations and classifications. In this rule, EPA is also deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us and is promulgating regulations governing future actions with respect to these areas.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and Metropolitan Planning Organizations (MPOs) making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States, Tribal governments, and local air pollution control agencies.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA discussed the designation process and compact program with representatives of State and local air pollution control agencies, and Tribal governments, as well as the Clean Air Act Advisory Committee, which is also composed of State and local representatives. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule for deferring the effective date of nonattainment designations from State and local officials. The portion of this rule that assigns designations is not subject to notice and comment under section 107(d)(2)(B) of the CAA and, therefore, no proposed rulemaking was prepared which specifically solicited comment on the designations. However, section 107(d)(1)(A) establishes a process whereby States first recommends the designations for areas in their States. In addition, the Agency has consulted extensively with representatives of State, Tribal and local governments, including elected officials regarding the designations. The EPA also notified national organizations of State and local officials and made EPA staff available to discuss the action with the organization staff and their members.

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 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule concerns the classification and designation of areas as attainment or nonattainment of areas for the 8-hour ozone standard and deferral of the effective date of the nonattainment designation for areas participating in the early action compact process and that have met all milestones. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The TAR gives Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Early Action Compact areas that would be affected by this final rule would be required to develop and submit local plans for adoption and implementation of the 8-hour ozone standard earlier than the CAA requires. These plans would be submitted to EPA as SIP revisions in December 2004. No early action compact areas include Tribal land.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA did outreach to Tribal representatives regarding the designations and to inform them about the compact program and its impact on designations. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the NAAQS, including the 8-hour ozone standard. These discussions informed EPA about key Tribal concerns regarding designations as the rule was under development.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained the National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions 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.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, *Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard*, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs 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, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 15, 2004.

K. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule designating areas for the 8-hour ozone standard is "nationally applicable" within the meaning of section 307(b)(1). This rule establishes designations for all areas of the United States for the 8-hour ozone NAAQS. At the core of this rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the Clean Air Act. In determining which areas should be designated nonattainment (or conversely, should be designated unclassifiable/attainment), EPA used a set of 11 factors that it applied consistently across the United States.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, *reprinted in* 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extend to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

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

Dated: April 15, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 81, subpart C is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.300 is amended by adding paragraph (e) to read as follows:

§ 81.300 Scope.

* * * * *

(e) Provisions for Early Action Compact Areas with Deferred Effective Date of Nonattainment Designation.

(1) *Definitions.* The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100 and § 81.1

(i) *Early Action Compact.* The term "early action compact" ("compact") means an agreement entered into on or before December 31, 2002, by—

(A) The Administrator;

(B) A State;

(C) An official of a county, parish, or town that—

(*1*) Is designated attainment for the 1-hour national ambient air quality standard for ozone;

(*2*) Has monitored data representing the most recent 3 years of quality-assured data that meets the 1-hour national ambient air quality standard for ozone; and

(*3*) May or may not be meeting the 8-hour national ambient air quality standard for ozone.

(ii) *State.* The term "State" has the meaning given the term in section 302 of the Clean Air Act (42 U.S.C. 7602).

(iii) *Area.* The term "area" means one or more counties, parishes, or towns that are participating in an early action compact.

(iv) *State Implementation Plan.* The term "State implementation plan" ("SIP") means a plan required to be submitted to the Administrator by a State under section 110 of the Clean Air Act (42 U.S.C. 7410).

(v) *8-hour National Ambient Air Quality Standard* means the air quality standards under the Clean Air Act (42 U.S.C. 7401 *et seq.*) codified at 40 CFR 50.10.

(2) *What Are Early Action Compact Areas Required To Do?*

(i) Not later than June 16, 2003, the local area shall—

(A) Submit to the Administrator a list identifying and describing the local control measures that are being considered for adoption during the local planning process; and

(B) Provide to the public clear information on the measures under consideration;

(ii) Not later than March 31, 2004, the local plan shall be completed and submitted to the State (with a copy of the local plan provided to the Administrator), which shall include—

(A) One or more locally adopted measures that are specific, quantified, and permanent and that, if approved by the Administrator, will be enforceable as part of the State implementation plan;

(B) Specific implementation dates for the adopted control measures;

(C) Sufficient documentation to ensure that the Administrator will be able to make a preliminary technical assessment based on control measures demonstrating attainment of the 8-hour ozone national ambient air quality standard under the Clean Air Act not later than December 31, 2007;

(iii) Not later than December 31, 2004, the State shall submit to the Administrator a revision to the SIP consisting of the local plan, including all adopted control measures, and a demonstration that the applicable area will attain the 8-hour ozone national ambient air quality standard not later than December 31, 2007;

(iv) The area subject to the early action compact shall implement expeditiously, but not later than December 31, 2005, the local control measures that are incorporated in the SIP;

(v) Not later than June 30, 2006, the State shall submit to the Administrator a report describing the progress of the local area since December 31, 2005, that includes—

(A) A description of whether the area continues to implement its control measures, the emissions reductions being achieved by the control measures, and the improvements in air quality that are being made; and

(B) Sufficient information to ensure that the Administrator will be able to make a comprehensive assessment of air quality progress in the area; and

(vi) Not later than December 31, 2007, the area subject to a compact shall attain the 8-hour ozone national ambient air quality standard.

(3) *What Action Shall the Administrator Take To Promulgate Designations for an Early Action Compact Area That Does Not Meet (or That Contributes to Ambient Air Quality in a Nearby Area That Does Not Meet) the 8-Hour Ozone National Ambient Air Quality Standard?*

(i) *General.* Notwithstanding clauses (i) through (iv) of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until September 30, 2005, the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) and (ii) of this section.

(ii) *Requirements not met.*

(A) If the Administrator determines that an area subject to a compact has not met the requirements in paragraphs (e)(2)(i) and (ii) of this section, the nonattainment designation will become effective June 15, 2004.

(B) Prior to expiration of the deferred effective date on September 30, 2005, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(ii) and (iii) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iii)–(vi) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(D) Not later than 1 year after the effective date of the nonattainment designation, the State shall submit to the Administrator a revised attainment demonstration SIP.

(iii) All Requirements Met. If the Administrator determines that an area subject to a compact has met all of the requirements under subparagraph (e)(2) of this section—

(A) The Administrator shall designate the area as attainment under section 107(d)(1)(B) of the Clean Air Act; and

(B) The designation shall become effective no later than April 15, 2008.

(4) *What Action Shall the Administrator Take To Approve or Disapprove a Revision to the SIP Submitted by a Compact Area on or Before December 31, 2004?*

(i) Not later than September 30, 2005, the Administrator shall take final action to approve or disapprove a revision to the SIP, in accordance with paragraph (e)(2)(iii) of this section, that is submitted by a compact area on or before December 31, 2004.

(ii) If the Administrator approves the SIP revision, the area will continue to be eligible for a deferral of the effective date of nonattainment designation.

(iii) If the Administrator disapproves the SIP revision, the nonattainment designation shall become effective on September 30, 2005.

(iv) If the area's nonattainment designation applies, the State shall comply with paragraph (e)(3)(ii)(D) of this section.

PART 81—[AMENDED]

■ 2a. In § 81.301, the table entitled "Alabama—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Birmingham, AL:				
Jefferson County		Nonattainment		Subpart 1.
Shelby County		Nonattainment		Subpart 1.
Rest of State		Unclassifiable/Attainment.		
Autauga County				
Baldwin County				
Barbour County				
Bibb County				
Blount County				
Bullock County				
Butler County				
Calhoun County				
Chambers County				
Cherokee County				
Chilton County				
Choctaw County				
Clarke County				
Clay County				
Cleburne County				
Coffee County				
Colbert County				
Conecuh County				
Coosa County				
Covington County				
Crenshaw County				
Cullman County				
Dale County				
Dallas County				
DeKalb County				
Elmore County				
Escambia County				
Etowah County				
Fayette County				
Franklin County				
Geneva County				
Greene County				
Hale County				
Henry County				
Houston County				
Jackson County				
Lamar County				
Lauderdale County				
Lawrence County				
Lee County				
Limestone County				
Lowndes County				
Macon County				
Madison County				
Marengo County				
Marion County				
Marshall County				
Mobile County				
Monroe County				
Montgomery County				
Morgan County				
Perry County				
Pickens County				
Pike County				
Randolph County				
Russell County				
St. Clair County				
Sumter County				
Talladega County				
Tallapoosa County				
Tuscaloosa County				
Walker County				
Washington County				
Wilcox County				
Winston County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

■ 3. In § 81.302, the table entitled "Alaska—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 08 Cook Inlet Intrastate		Unclassifiable/Attainment.		
Anchorage Borough				
Kenai Peninsula Borough				
Matanuska-Susitna Borough				
AQCR 09 Northern Alaska Intrastate		Unclassifiable/Attainment.		
Denali Borough				
Fairbanks North Star Borough				
Nome Census Area				
North Slope Borough				
Northwest Arctic Borough				
Southeast Fairbanks Census Area				
Yukon-Koyukuk Census Area				
AQCR 10 South Central Alaska Intrastate		Unclassifiable/Attainment.		
Aleutians East Borough				
Aleutians West Census Area				
Bethel Census Area				
Bristol Bay Borough				
Dillingham Census Area				
Kodiak Island Borough				
Lake and Peninsula Borough				
Valdez-Cordova Census Area				
Wade Hampton Census Area				
AQCR 11 Southeastern Alaska Intrastate		Unclassifiable/Attainment.		
Haines Borough				
Juneau Borough				
Ketchikan Gateway Borough				
Prince of Wales-Outer Ketchikan Census Area				
Sitka Borough				
Skagway-Hoonah-Angoon Census Area				
Wrangell-Petersburg Census Area				
Yakutat Borough				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 4. In § 81.303, the table entitled "Arizona—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Phoenix-Mesa, AZ:				
Maricopa County (part)		Nonattainment		Subpart 1
T1N, R1E (except that portion in Indian Country); T1N, R2E; T1N, R3E; T1N, R4E; T1N, R5E; T1N, R6E; T1N, R7E; T1N, R1W; T1N, R2W; T1N, R3W; T1N, R4W; T1N, R5W; T1N, R6W; T2N, R1E; T2N, R2E; T2N, R3E; T2N, R4E; T2N, R5E; T2N, R6E; T2N, R7E; T2N, R8E; T2N, R9E; T2N, R10E; T2N, R11E; T2N, R12E (except that portion in Gila County); T2N, R13E (except that portion in Gila County); T2N, R1W; T2N, R2W; T2N, R3W; T2N, R4W; T2N, R5W; T2N, R6W; T2N, R7W; T3N, R1E; T3N, R2E; T3N, R3E; T3N, R4E; T3N, R5E; T3N, R6E; T3N, R7E; T3N, R8E; T3N, R9E; T3N, R10E (except that portion in Gila County);.				

ARIZONA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
T3N, R11E (except that portion in Gila County); T3N, R12E (except that portion in Gila County); T3N, R1W; T3N, R2W; T3N, R3W; T3N, R4W; T3N, R5W; T3N, R6W; T4N, R1E; T4N, R2E; T4N, R3E; T4N, R4E; T4N, R5E; T4N, R6E; T4N, R7E; T4N, R8E; T4N, R9E; T4N, R10E (except that portion in Gila County); T4N, R11E (except that portion in Gila County); T4N, R12E (except that portion in Gila County); T4N, R1W; T4N, R2W; T4N, R3W; T4N, R4W; T4N, R5W; T4N, R6W; T5N, R1E; T5N, R2E; T5N, R3E; T5N, R4E; T5N, R5E; T5N, R6E; T5N, R7E; T5N, R8E; T5N, R9E (except that portion in Gila County); T5N, R10E (except that portion in Gila County); T5N, R1W; T5N, R2W; T5N, R3W; T5N, R4W; T5N, R5W; T6N, R1E (except that portion in Yavapai County); T6N, R2E; T6N, R3E;				
T6N, R4E; T6N, R5E; T6N, R6E; T6N, R7E; T6N, R8E; T6N, R9E (except that portion in Gila County); T6N, R10E (except that portion in Gila County); T6N, R1W (except that portion in Yavapai County); T6N, R2W; T6N, R3W; T6N, R4W T6N, R5W T7N, R1E (except that portion in Yavapai County); T7N, R2E; (except that portion in Yavapai County); T7N, R3E; T7N, R4E; T7N, R5E; T7N, R6E; T7N, R7E; T7N, R8E; T7N, R9E (except that portion in Gila County); T7N, R1W (except that portion in Yavapai County); T7N, R2W (except that portion in Yavapai County); T8N, .				
R2E (except that portion in Yavapai County); T8N, R3E (except that portion in Yavapai County); T8N, R4E (except that portion in Yavapai County); T8N, R5E (except that portion in Yavapai County); T8N, R6E (except that portion in Yavapai County); T8N, R7E (except that portion in Yavapai County); T8N, R8E (except that portion in Yavapai and Gila Counties); T8N, R9E (except that portion in Yavapai and Gila Counties); T1S, R1E (except that portion in Indian Country); T1S, R2E (except that portion in Pinal County and in Indian Country); T1S, R3E; T1S, R4E; T1S, R5E; T1S, R6E; T1S, R7E; T1S, R1W; T1S, R2W; T1S, R3W; T1S, R4W; T1S, R5W; T1S, R6W; T2S, R1E (except that portion in Indian Country); T2S, R5E; T2S, R6E; T2S, R7E; T2S, R1W; T2S, R2W; T2S, R3W; T2S, R4W; T2S, R5W; T3S, R1E; T3S, R1W; T3S, R2W; T3S, R3W; T3S, R4W; T3S, R5W; T4S, R1E; T4S, R1W; T4S, R2W; T4S, R3W; T4S, R4W; T4S, R5W.				
Pinal County (part)		Nonattainment		Subpart 1
Apache Junction: T1N, R8E; T1S, R8E (Sections 1 through 12)				
Rest of State		Unclassifiable/Attainment		

ARIZONA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Apache County				
Cochise County				
Coconino County				
Gila County				
Graham County				
Greenlee County				
La Paz County				
Maricopa County (part) remainder				
Mohave County				
Navajo County				
Pima County				
Pinal County (part) remainder				
Santa Cruz County				
Yavapai County				
Yuma County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 5. In § 81.304, the table entitled "Arkansas-Ozone (8-Hour Standard)" is added to read as follows:

§ 81.304 Arkansas.

* * * * *

ARKANSAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Memphis, TN–AR:				
(AQCR 018 Metropolitan Memphis Interstate)				
Crittenden County	.....	Nonattainment	.....	Subpart 2/Moderate.
AQCR 016 Central Arkansas Intrastate (part)	.....	Unclassifiable/Attainment.		
Pulaski County				
AQCR 016 Central Arkansas Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Chicot County				
Clark County				
Cleveland County				
Conway County				
Dallas County				
Desha County				
Drew County				
Faulkner County				
Garland County				
Grant County				
Hot Spring County				
Jefferson County				
Lincoln County				
Lonoke County				
Perry County				
Pope County				
Saline County				
Yell County				
AQCR 017 Metropolitan Fort Smith Interstate	.....	Unclassifiable/Attainment.		
Benton County				
Crawford County				
Sebastian County				
Washington County				
AQCR 019 Monroe-El Dorado Interstate	.....	Unclassifiable/Attainment.		
Ashley County				
Bradley County				
Calhoun County				
Nevada County				
Ouachita County				
Union County				
AQCR 020 Northeast Arkansas Intrastate	.....	Unclassifiable/Attainment.		
Arkansas County				
Clay County				
Craighead County				
Cross County				

ARKANSAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Greene County				
Independence County				
Jackson County				
Lawrence County				
Lee County				
Mississippi County				
Monroe County				
Phillips County				
Poinsett County				
Prairie County				
Randolph County				
St. Francis County				
Sharp County				
White County				
Woodruff County				
AQCR 021 Northwest Arkansas Intrastate	.....	Unclassifiable/Attainment.		
Baxter County				
Boone County				
Carroll County				
Cleburne County				
Franklin County				
Fulton County				
Izard County				
Johnson County				
Logan County				
Madison County				
Marion County				
Montgomery County				
Newton County				
Pike County				
Polk County				
Scott County				
Searcy County				
Stone County				
Van Buren County				
AQCR 022 Shreveport-Texarkana-Tyler Interstate	.....	Unclassifiable/Attainment.		
Columbia County				
Hempstead County				
Howard County				
Lafayette County				
Little River County				
Miller County				
Sevier County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 6. In § 81.305, the table entitled "California—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Amador and Calaveras Cos., CA:				
(Central Mountain Cos.)				
Amador County	.....	Nonattainment	.....	Subpart 1.
Calaveras County	.....	Nonattainment	.....	Subpart 1.
Chico, CA:				
Butte County	.....	Nonattainment	.....	Subpart 1.
Kern County (Eastern Kern), CA	.....	Nonattainment	.....	Subpart 1.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Kern County (part)				
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
Imperial Co., CA:				
Imperial County		Nonattainment		Subpart 2/Marginal.
Los Angeles—South Coast Air Basin, CA:		Nonattainment		Subpart 2/Severe 17.
Los Angeles County (part)		Nonattainment		Subpart 2/Severe 17.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Orange County	.....	Nonattainment	.....	Subpart 2/Severe 17.
Riverside County (part)	.....	Nonattainment	.....	Subpart 2/Severe 17.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line.				
San Bernardino County (part)	.....	Nonattainment	.....	Subpart 2/Severe 17.
That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.				
Los Angeles-San Bernardino Cos.(W Mojave Desert), CA:	.....	Nonattainment	.....	Subpart 2/Moderate.
Los Angeles County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Los Angeles County which lies north and east of a line described as follows: Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles—Kern County boundary.				
San Bernardino County (part)		Nonattainment		Subpart 2/Moderate.
That portion of San Bernardino County which lies north and east of a line described as follows: Beginning at the San Bernardino—Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino— Los Angeles County boundary; And that portion of San Bernardino County which lies south and west of a line described as follows: latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.				
Mariposa and Tuolumne Cos., CA: (Southern Mountain Counties)				
Mariposa County		Nonattainment		Subpart 1.
Tuolumne County		Nonattainment		Subpart 1.
Riverside Co. (Coachella Valley), CA;		Nonattainment		Subpart 2/Serious.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Riverside County (part) That portion of Riverside County which lies to the east of a line described as follows: Beginning at the Riverside—San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line. And that portion of Riverside County which lies to the west of a line described as follows: That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: Beginning at the Riverside—Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504′; then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; then north along the range line common to Range 14 East and Range 13 East; then west and northwest along the ridge line to Monument Mountain, elevation 4834′; then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elev. 5814′; then northwest along the ridge line to the Riverside—San Bernardino County line.				
Sacramento Metro, CA	.....	Nonattainment	.....	Subpart 2/Serious.
El Dorado County (part) All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part)	.....	Nonattainment	.....	Subpart 2/Serious.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: Commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian, and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.				
Sacramento County		Nonattainment		Subpart 2/Serious.
Solano County (part)		Nonattainment		Subpart 2/Serious.
That portion of Solano County which lies north and east of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said ¼ section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West, thence east along a line common to Township 5 North and Township 6 North to the northeast corner of Section 3, Township 5 North, Range 1 East, thence south along section lines to the southeast corner of Section 10, Township 3 North, Range 1 East, thence east along section lines to the south ¼ corner of Section 8, Township 3 North, Range 2 East, thence east to the boundary between Solano and Sacramento Counties.				
Sutter County (part)		Nonattainment		Subbpart 2/Serious.
Portion south of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.				
Yolo County		Nonattainment		Subpart 2/Serious.
San Diego, CA		Nonattainment		Subpart 1.
San Diego County (part)				
That portion of San Diego County that excludes the areas listed below: La Posta Areas #1 and #2 [b], Cuyapaipe Area [b], Manzanita Area [b], Campo Areas #1 and #2 [b]				
San Francisco Bay Area, CA		Nonattainment		Subpart 2/Marginal.
Alameda County		Nonattainment		Subpart 2/Marginal.
Contra Costa County		Nonattainment		Subpart 2/Marginal.
Marin County		Nonattainment		Subpart 2/Marginal.
Napa County		Nonattainment		Subpart 2/Marginal.
San Francisco County		Nonattainment		Subpart 2/Marginal.
San Mateo County		Nonattainment		Subpart 2/Marginal.
Santa Clara County		Nonattainment		Subpart 2/Marginal.
Solano County (part)		Nonattainment		Subpart 2/Marginal.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Portion of Solano County which lies south and west of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34, T6N, R2W, M.D.B. & M., thence east along said ¼ section line to the east boundary of Section 36, T6N, R2W, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T5N, R1W, thence east along a line common to T5N and T6N to the northeast corner of Section 3, T5N, R1E, thence south along section lines to the southeast corner of Section 10, T3N, R1E, thence east along section lines to the south ¼ corner of Section 8, T3N, R2E, thence east to the boundary between Solano and Sacramento Counties.				
Sonoma County (part)		Nonattainment		Subpart 2/Marginal.
That portion of Sonoma County which lies south and east of a line described as follows: Beginning at the southeasterly corner of the Rancho Estero Americano, being on the boundary line between Marin and Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive; thence running along said boundary of Rancho Canada de Jonive westerly, northerly and easterly to its intersection with the easterly line of Graton Road; thence running along the easterly and southerly line of Graton Road, northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road; thence running northerly along said easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road; thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Rancho Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the Township line common to Townships 8 and 9 North, M.D.M.; thence running easterly along said township line to its intersection with the boundary line between Sonoma and Napa Counties.				
San Joaquin Valley, CA:				
Fresno County		Nonattainment		Subpart 2/Serious.
Kern County (part)		Nonattainment		Subpart 2/Serious.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.;then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.				
Kings County		Nonattainment		Subpart 2/Serious.
Madera County		Nonattainment		Subpart 2/Serious.
Merced County		Nonattainment		Subpart 2/Serious.
San Joaquin County		Nonattainment		Subpart 2/Serious.
Stanislaus County		Nonattainment		Subpart 2/Serious.
Tulare County		Nonattainment		Subpart 2/Serious.
Sutter County (part), CA:				
Sutter County (part)		Nonattainment		Subpart 1.
(Sutter Buttes) That portion of the Sutter Buttes mountain range at or above 2,000 feet in elevation.				
Remainder of County		Unclassifiable/Attainment.		
Ventura County, CA:				
Ventura County (part)		Nonattainment		Subpart 2/Moderate.
That part of Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands.				
Remainder of County		Unclassifiable/Attainment.		
Nevada County (Western part), CA		Nonattainment		Subpart 1.
Nevada County (part)				
That portion of Nevada County, which lies west of a line, described as follows: beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.				
Santa Barbara-Santa Maria-Lompoc, CA:				
Santa Barbara County		Unclassifiable/Attainment.		
Mohave Desert Air Basin:				
Riverside County (part) remainder		Unclassifiable/Attainment.		
San Bernardino County (part) remainder		Unclassifiable/Attainment.		
Great Basin Valleys Air Basin		Unclassifiable/Attainment.		

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Alpine County				
Inyo County				
Mono County				
Lake County Air Basin		Unclassifiable/Attainment.		
Lake County				
Lake Tahoe Air Basin		Unclassifiable/Attainment.		
El Dorado County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Placer County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Monterey Bay Area		Unclassifiable/Attainment.		
Monterey County				
San Benito County				
Santa Cruz County				
Mountain Counties Air Basin (remainder of):				
Nevada County (part) remainder		Unclassifiable/Attainment.		
Plumas County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		
North Coast Air Basin		Unclassifiable/Attainment.		
Del Norte County				
Humboldt County				
Mendocino County				
Sonoma County (part) remainder				
Trinity County				
Northeast Plateau Air Basin		Unclassifiable/Attainment.		
Lassen County				
Modoc County				
Siskiyou County				
Sacramento Valley Air Basin (remainder of):				
Colusa County		Unclassifiable/Attainment.		
Glenn County		Unclassifiable/Attainment.		
Shasta County		Unclassifiable/Attainment.		
Tehama County		Unclassifiable/Attainment.		
Yuba County		Unclassifiable/Attainment.		
South Central Coast Air Basin: (remainder of)				
Channel Islands		Unclassifiable/Attainment.		
San Luis Obispo County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[b] The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled "Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS," dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion in this table is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes in this table does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.

[1] This date is June 15, 2004, unless otherwise noted.

■ 7. In § 81.306, the table entitled "Colorado-Ozone (8-Hour Standard)" is added to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Denver-Boulder-Greeley-Ft.Collins-Love., CO:				
Adams County	(2)	Nonattainment	(2)	Subpart 1.
Arapahoe County	(2)	Nonattainment	(2)	Subpart 1.
Boulder County (includes part of Rocky Mtn. Nat. Park).	(2)	Nonattainment	(2)	Subpart 1.
Broomfield County	(2)	Nonattainment	(2)	Subpart 1.
Denver County	(2)	Nonattainment	(2)	Subpart 1.
Douglas County	(2)	Nonattainment	(2)	Subpart 1.
Jefferson County	(2)	Nonattainment	(2)	Subpart 1.

COLORADO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Larimer County (part) (includes part of Rocky Mtn. Nat. Park).	(2)	Nonattainment	(2)	Subpart 1.
That portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary.				
Weld County (part)	(2)	Nonattainment	(2)	Subpart 1.
That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.				
State AQCR 01		Unclassifiable/Attainment		
Logan County				
Phillips County				
Sedgwick County				
Washington County				
Yuma County				
State AQCR 03 (remainder of)		Unclassifiable/Attainment		
Clear Creek County				
Gilpin County				
State AQCR 11		Unclassifiable/Attainment		
Garfield County				
Mesa County				
Moffat County				
Rio Blanco County				
Rest of State		Unclassifiable/Attainment		
Alamosa County				
Archuleta County				
Baca County				
Bent County				
Chaffee County				
Cheyenne County				
Conejos County				
Costilla County				
Crowley County				
Custer County				
Delta County				
Dolores County				
Eagle County				
El Paso County				
Elbert County				
Fremont County				
Grand County (includes portion of W. Rocky Mtn. Nat. Park)				
Gunnison County				
Hinsdale County				
Huerfano County				
Jackson County				
Kiowa County				
Kit Carson County				
La Plata County				
Lake County				

COLORADO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Larimer County (part) remainder				
Las Animas County				
Lincoln County				
Mineral County				
Montezuma County				
Montrose County				
Morgan County				
Otero County				
Ouray County				
Park County				
Pitkin County				
Prowers County				
Pueblo County				
Rio Grande County				
Routt County				
Saguache County				
San Juan County				
San Miguel County				
Summit County				
Teller County				
Weld County (part) remainder				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 8. In § 81.307, the table entitled "Connecticut—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Greater Connecticut, CT:				
Hartford County		Nonattainment		Subpart 2/Moderate.
Litchfield County		Nonattainment		Subpart 2/Moderate.
New London County		Nonattainment		Subpart 2/Moderate.
Tolland County		Nonattainment		Subpart 2/Moderate.
Windham County		Nonattainment		Subpart 2/Moderate.
New York–N. New Jersey–Long Island, NY–NJ–CT:				
Fairfield County		Nonattainment		Subpart 2/Moderate.
Middlesex County		Nonattainment		Subpart 2/Moderate.
New Haven County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 9. In § 81.308, the table entitled "Delaware—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.308 Delaware.

* * * * *

DELAWARE—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Philadelphia–Wilmington–Atlantic Ci, PA–NJ–MD–DE:				
Kent County		Nonattainment		Subpart 2/Moderate.
New Castle County		Nonattainment		Subpart 2/Moderate.
Sussex County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 10. In § 81.309, the table entitled "District of Columbia—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.309 District of Columbia.

* * * * *

DISTRICT OF COLUMBIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Washington, DC–MD–VA:				
District of Columbia		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 11. In § 81.310, the table entitled "Florida—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Alachua County				
Baker County				
Bay County				
Bradford County				
Brevard County				
Broward County				
Calhoun County				
Charlotte County				
Citrus County				
Clay County				
Collier County				
Columbia County				
DeSoto County				
Dixie County				
Duval County				
Escambia County				
Flagler County				
Franklin County				
Gadsden County				
Gilchrist County				
Glades County				
Gulf County				
Hamilton County				
Hardee County				
Hendry County				
Hernando County				
Highlands County				
Hillsborough County				
Holmes County				
Indian River County				
Jackson County				
Jefferson County				
Lafayette County				
Lake County				
Lee County				
Leon County				
Levy County				
Liberty County				
Madison County				
Manatee County				
Marion County				
Martin County				
Miami-Dade County				
Monroe County				
Nassau County				
Okaloosa County				
Okeechobee County				
Orange County				

FLORIDA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Osceola County				
Palm Beach County				
Pasco County				
Pinellas County				
Polk County				
Putnam County				
St. Johns County				
St. Lucie County				
Santa Rosa County				
Sarasota County				
Seminole County				
Sumter County				
Suwannee County				
Taylor County				
Union County				
Volusia County				
Wakulla County				
Walton County				
Washington County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 12. In § 81.311, the table entitled "Georgia—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Atlanta, GA:				
Barrow County		Nonattainment		Subpart 2/Marginal.
Bartow County		Nonattainment		Subpart 2/Marginal.
Carroll County		Nonattainment		Subpart 2/Marginal.
Cherokee County		Nonattainment		Subpart 2/Marginal.
Clayton County		Nonattainment		Subpart 2/Marginal.
Cobb County		Nonattainment		Subpart 2/Marginal.
Coweta County		Nonattainment		Subpart 2/Marginal.
DeKalb County		Nonattainment		Subpart 2/Marginal.
Douglas County		Nonattainment		Subpart 2/Marginal.
Fayette County		Nonattainment		Subpart 2/Marginal.
Forsyth County		Nonattainment		Subpart 2/Marginal.
Fulton County		Nonattainment		Subpart 2/Marginal.
Gwinnett County		Nonattainment		Subpart 2/Marginal.
Hall County		Nonattainment		Subpart 2/Marginal.
Henry County		Nonattainment		Subpart 2/Marginal.
Newton County		Nonattainment		Subpart 2/Marginal.
Paulding County		Nonattainment		Subpart 2/Marginal.
Rockdale County		Nonattainment		Subpart 2/Marginal.
Spalding County		Nonattainment		Subpart 2/Marginal.
Walton County		Nonattainment		Subpart 2/Marginal.
Macon, GA:				
Bibb County		Nonattainment		Subpart 1.
Monroe County (part)		Nonattainment		Subpart 1.
From the point where Bibb and Monroe Counties meet at the Ocmulgee River, follow the Ocmulgee River boundary north to 33 degrees, 05 minutes, due west to 83 degrees, 50 minutes, due south to the intersection with Georgia Hwy 18, east along Georgia Hwy 18 to US Hwy 23/ Georgia Hwy 87, south on US Hwy 23/ Georgia Hwy 87 to the Monro/Bibb County line, and east to the intersection with the Ocmulgee River				
Chattanooga, TN–GA:				
Catoosa County		Nonattainment		Subpart 1.

GEORGIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Murray Co (Chattahoochee Nat Forest), GA:				
Murray County (part)		Nonattainment		Subpart 1.
Rest of State		Unclassifiable/Attainment		
Appling County.				
Atkinson County				
Bacon County				
Baker County				
Baldwin County				
Banks County				
Ben Hill County				
Berrien County				
Bleckley County				
Brantley County				
Brooks County				
Bryan County				
Bulloch County				
Burke County				
Butts County				
Calhoun County				
Camden County				
Candler County				
Charlton County				
Chatham County				
Chattahoochee County				
Chattooga County				
Clarke County				
Clay County				
Clinch County				
Coffee County				
Colquitt County				
Columbia County				
Cook County				
Crawford County				
Crisp County				
Dade County				
Dawson County				
Decatur County				
Dodge County				
Dooly County				
Dougherty County				
Early County				
Echols County				
Effingham County				
Elbert County				
Emanuel County				
Evans County				
Fannin County				
Floyd County				
Franklin County				
Gilmer County				
Glascock County				
Glynn County				
Gordon County				
Grady County				
Greene County				
Habersham County				
Hancock County				
Haralson County				
Harris County				
Hart County				
Heard County				
Houston County				
Irwin County				
Jackson County				
Jasper County				
Jeff Davis County				
Jefferson County				
Jenkins County				
Johnson County				
Jones County				

GEORGIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Lamar County				
Lanier County				
Laurens County				
Lee County				
Liberty County				
Lincoln County				
Long County				
Lowndes County				
Lumpkin County				
Macon County				
Madison County				
Marion County				
McDuffie County				
McIntosh County				
Meriwether County				
Miller County				
Mitchell County				
Monroe County (part) remainder				
Montgomery County				
Morgan County				
Murray County (part) remainder				
Muscogee County				
Oconee County				
Oglethorpe County				
Peach County				
Pickens County				
Pierce County				
Pike County				
Polk County				
Pulaski County				
Putnam County				
Quitman County				
Rabun County				
Randolph County				
Richmond County				
Schley County				
Screven County				
Seminole County				
Stephens County				
Stewart County				
Sumter County				
Talbot County				
Taliaferro County				
Tattnall County				
Taylor County				
Telfair County				
Terrell County				
Thomas County				
Tift County				
Toombs County				
Towns County				
Treutlen County				
Troup County				
Turner County				
Twiggs County				
Union County				
Upson County				
Walker County				
Ware County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
White County				
Whitfield County				
Wilcox County				
Wilkes County				
Wilkinson County				

GEORGIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Worth County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 13. In § 81.312, the table entitled "Hawaii—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.312 Hawaii.

* * * * *

HAWAII—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable Attainment		
Hawaii County				
Honolulu County				
Kalawao County				
Kauai County				
Maui County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 14. In § 81.313, the table entitled "Idaho—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 61 Eastern Idaho Intrastate		Unclassifiable/Attainment		
Bannock County				
Bear Lake County				
Bingham County				
Bonneville County				
Butte County				
Caribou County				
Clark County				
Franklin County				
Fremont County				
Jefferson County				
Madison County				
Oneida County				
Power County				
Teton County				
AQCR 62 E Washington-N Idaho Interstate		Unclassifiable/Attainment		
Benewah County				
Kootenai County				
Latah County				
Nez Perce County				
Shoshone County				
AQCR 63 Idaho Intrastate		Unclassifiable/Attainment		
Adams County				
Blaine County				
Boise County				
Bonner County				
Boundary County				
Camas County				
Cassia County				
Clearwater County				
Custer County				
Elmore County				
Gem County				
Gooding County				

IDAHO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Idaho County				
Jerome County				
Lemhi County				
Lewis County				
Lincoln County				
Minidoka County				
Owyhee County				
Payette County				
Twin Falls County				
Valley County				
Washington County				
AQCR 64 Metropolitan Boise Interstate		Unclassifiable/Attainment		
Ada County				
Canyon County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 15. In § 81.314, the table entitled "Illinois—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County, IL-IN:				
Cook County		Nonattainment		Subpart 2/Moderate.
DuPage County		Nonattainment		Subpart 2/Moderate.
Grundy County (part)		Nonattainment		Subpart 2/Moderate.
Aux Sable Township Goose Lake Township				
Kane County		Nonattainment		Subpart 2/Moderate.
Kendall County (part)		Nonattainment		Subpart 2/Moderate.
Oswego Township				
Lake County		Nonattainment		Subpart 2/Moderate.
McHenry County		Nonattainment		Subpart 2/Moderate.
Will County		Nonattainment		Subpart 2/Moderate.
St. Louis, MO-IL:				
Jersey County		Nonattainment		Subpart 2/Moderate.
Madison County		Nonattainment		Subpart 2/Moderate.
Monroe County		Nonattainment		Subpart 2/Moderate.
St. Clair County		Nonattainment		Subpart 2/Moderate.
Rest of State				
Adams County		Unclassifiable/Attainment.		
Alexander County		Unclassifiable/Attainment.		
Bond County		Unclassifiable/Attainment.		
Boone County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Bureau County		Unclassifiable/Attainment.		
Calhoun County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Cass County		Unclassifiable/Attainment.		
Champaign County		Unclassifiable/Attainment.		
Christian County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Coles County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Cumberland County		Unclassifiable/Attainment.		
De Witt County		Unclassifiable/Attainment.		
DeKalb County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Edgar County		Unclassifiable/Attainment.		
Edwards County		Unclassifiable/Attainment.		
Effingham County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Ford County		Unclassifiable/Attainment.		

ILLINOIS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Greene County		Unclassifiable/Attainment.		
Grundy County (part)		Unclassifiable/Attainment.		
All townships except Aux Sable and Goose Lake.				
Hamilton County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Henderson County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Iroquois County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jasper County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jo Daviess County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Kankakee County		Unclassifiable/Attainment.		
Kendall County (part)		Unclassifiable/Attainment.		
All townships except Oswego				
Knox County		Unclassifiable/Attainment.		
La Salle County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lee County		Unclassifiable/Attainment.		
Livingston County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Macon County		Unclassifiable/Attainment.		
Macoupin County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Mason County		Unclassifiable/Attainment.		
Massac County		Unclassifiable/Attainment.		
McDonough County		Unclassifiable/Attainment.		
McLean County		Unclassifiable/Attainment.		
Menard County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Moultrie County		Unclassifiable/Attainment.		
Ogle County		Unclassifiable/Attainment.		
Peoria County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Piatt County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Pope County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Randolph County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Rock Island County		Unclassifiable/Attainment.		
Saline County		Unclassifiable/Attainment.		
Sangamon County		Unclassifiable/Attainment.		
Schuyler County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Stark County		Unclassifiable/Attainment.		
Stephenson County		Unclassifiable/Attainment.		
Tazewell County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Vermilion County		Unclassifiable/Attainment.		
Wabash County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
White County		Unclassifiable/Attainment.		
Whiteside County		Unclassifiable/Attainment.		
Williamson County		Unclassifiable/Attainment.		
Winnebago County		Unclassifiable/Attainment.		
Woodford County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

■ 16. In § 81.315, the table entitled "Indiana—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.315 Indiana.

INDIANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County, IL–IN:				
Lake County		Nonattainment		Subpart 2/Moderate.
Porter County		Nonattainment		Subpart 2/Moderate.
Cincinnati-Hamilton, OH–KY–IN:				
Dearborn County (part) Lawrenceburg Township		Nonattainment		Subpart 1.
Evansville, IN:				
Vanderburgh County		Nonattainment		Subpart 1.
Warrick County		Nonattainment		Subpart 1.
Fort Wayne, IN:				
Allen County		Nonattainment		Subpart 1.
Greene Co., IN:				
Greene County		Nonattainment		Subpart 1.
Indianapolis, IN:				
Boone County		Nonattainment		Subpart 1.
Hamilton County		Nonattainment		Subpart 1.
Hancock County		Nonattainment		Subpart 1.
Hendricks County		Nonattainment		Subpart 1.
Johnson County		Nonattainment		Subpart 1.
Madison County		Nonattainment		Subpart 1.
Marion County		Nonattainment		Subpart 1.
Morgan County		Nonattainment		Subpart 1.
Shelby County		Nonattainment		Subpart 1.
Jackson Co., IN:				
Jackson County		Nonattainment		Subpart 1.
La Porte Co., IN:				
La Porte County		Nonattainment		Subpart 2/Moderate.
Louisville, KY–IN:				
Clark County		Nonattainment		Subpart 1.
Floyd County		Nonattainment		Subpart 1.
Muncie, IN:				
Delaware County		Nonattainment		Subpart 1.
South Bend-Elkhart, IN:				
Elkhart County		Nonattainment		Subpart 1.
St. Joseph County		Nonattainment		Subpart 1.
Terre Haute, IN:				
Vigo County		Nonattainment		Subpart 1.
Rest of State				
Adams County		Unclassifiable/Attainment.		
Bartholomew County		Unclassifiable/Attainment.		
Benton County		Unclassifiable/Attainment.		
Blackford County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Cass County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Daviess County		Unclassifiable/Attainment.		
De Kalb County		Unclassifiable/Attainment.		
Dearborn County (part) remainder		Unclassifiable/Attainment.		
Decatur County		Unclassifiable/Attainment.		
Dubois County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Fountain County		Unclassifiable/Attainment.		
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gibson County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Howard County		Unclassifiable/Attainment.		
Huntington County		Unclassifiable/Attainment.		

INDIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Jasper County		Unclassifiable/Attainment.		
Jay County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jennings County		Unclassifiable/Attainment.		
Knox County		Unclassifiable/Attainment.		
Kosciusko County		Unclassifiable/Attainment.		
LaGrange County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Martin County		Unclassifiable/Attainment.		
Miami County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Newton County		Unclassifiable/Attainment.		
Noble County		Unclassifiable/Attainment.		
Ohio County		Unclassifiable/Attainment.		
Orange County		Unclassifiable/Attainment.		
Owen County		Unclassifiable/Attainment.		
Parke County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Posey County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Randolph County		Unclassifiable/Attainment.		
Ripley County		Unclassifiable/Attainment.		
Rush County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Spencer County		Unclassifiable/Attainment.		
Starke County		Unclassifiable/Attainment.		
Steuben County		Unclassifiable/Attainment.		
Sullivan County		Unclassifiable/Attainment.		
Switzerland County		Unclassifiable/Attainment.		
Tippecanoe County		Unclassifiable/Attainment.		
Tipton County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Vermillion County		Unclassifiable/Attainment.		
Wabash County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Warrick County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
Wells County		Unclassifiable/Attainment.		
White County		Unclassifiable/Attainment.		
Whitley County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 17. In § 81.316, the table entitled "Iowa—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.316 Iowa.

* * * * *

IOWA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Adair County				
Adams County				
Allamakee County				
Appanoose County				
Audubon County				
Benton County				
Black Hawk County				
Boone County				
Bremer County				

IOWA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Buchanan County				
Buena Vista County				
Butler County				
Calhoun County				
Carroll County				
Cass County				
Cedar County				
Cerro Gordo County				
Cherokee County				
Chickasaw County				
Clarke County				
Clay County				
Clayton County				
Clinton County				
Crawford County				
Dallas County				
Davis County				
Decatur County				
Delaware County				
Des Moines County				
Dickinson County				
Dubuque County				
Emmet County				
Fayette County				
Floyd County				
Franklin County				
Fremont County				
Greene County				
Grundy County				
Guthrie County				
Hamilton County				
Hancock County				
Hardin County				
Harrison County				
Henry County				
Howard County				
Humboldt County				
Ida County				
Iowa County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Jones County				
Keokuk County				
Kossuth County				
Lee County				
Linn County				
Louisa County				
Lucas County				
Lyon County				
Madison County				
Mahaska County				
Marion County				
Marshall County				
Mills County				
Mitchell County				
Monona County				
Monroe County				
Montgomery County				
Muscatine County				
O'Brien County				
Osceola County				
Page County				
Palo Alto County				
Plymouth County				
Pocahontas County				
Polk County				
Pottawattamie County				
Poweshiek County				

IOWA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Ringgold County				
Sac County				
Scott County				
Shelby County				
Sioux County				
Story County				
Tama County				
Taylor County				
Union County				
Van Buren County				
Wapello County				
Warren County				
Washington County				
Wayne County				
Webster County				
Winnebago County				
Winneshiek County				
Woodbury County				
Worth County				
Wright County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 18. In § 81.317, the table entitled "Kansas—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.317 Kansas.

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KANSAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Kansas City, KS–MO:				
Johnson County		Unclassifiable [b].		
Linn County		Unclassifiable [b].		
Miami County		Unclassifiable [b].		
Wyandotte County		Unclassifiable [b].		
Rest of State:				
Allen County		Unclassifiable/Attainment.		
Anderson County		Unclassifiable/Attainment.		
Atchison County		Unclassifiable/Attainment.		
Barber County		Unclassifiable/Attainment.		
Barton County		Unclassifiable/Attainment.		
Bourbon County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Butler County		Unclassifiable/Attainment.		
Chase County		Unclassifiable/Attainment.		
Chautauqua County		Unclassifiable/Attainment.		
Cherokee County		Unclassifiable/Attainment.		
Cheyenne County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Cloud County		Unclassifiable/Attainment.		
Coffey County		Unclassifiable/Attainment.		
Comanche County		Unclassifiable/Attainment.		
Cowley County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Decatur County		Unclassifiable/Attainment.		
Dickinson County		Unclassifiable/Attainment.		
Doniphan County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Edwards County		Unclassifiable/Attainment.		
Elk County		Unclassifiable/Attainment.		
Ellis County		Unclassifiable/Attainment.		
Ellsworth County		Unclassifiable/Attainment.		
Finney County		Unclassifiable/Attainment.		
Ford County		Unclassifiable/Attainment.		

KANSAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Franklin County		Unclassifiable/Attainment.		
Geary County		Unclassifiable/Attainment.		
Gove County		Unclassifiable/Attainment.		
Graham County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Gray County		Unclassifiable/Attainment.		
Greeley County		Unclassifiable/Attainment.		
Greenwood County		Unclassifiable/Attainment.		
Hamilton County		Unclassifiable/Attainment.		
Harper County		Unclassifiable/Attainment.		
Harvey County		Unclassifiable/Attainment.		
Haskell County		Unclassifiable/Attainment.		
Hodgeman County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jewell County		Unclassifiable/Attainment.		
Kearny County		Unclassifiable/Attainment.		
Kingman County		Unclassifiable/Attainment.		
Kiowa County		Unclassifiable/Attainment.		
Labette County		Unclassifiable/Attainment.		
Lane County		Unclassifiable/Attainment.		
Leavenworth County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Lyon County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
McPherson County		Unclassifiable/Attainment.		
Meade County		Unclassifiable/Attainment.		
Mitchell County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morris County		Unclassifiable/Attainment.		
Morton County		Unclassifiable/Attainment.		
Nemaha County		Unclassifiable/Attainment.		
Neosho County		Unclassifiable/Attainment.		
Ness County		Unclassifiable/Attainment.		
Norton County		Unclassifiable/Attainment.		
Osage County		Unclassifiable/Attainment.		
Osborne County		Unclassifiable/Attainment.		
Ottawa County		Unclassifiable/Attainment.		
Pawnee County		Unclassifiable/Attainment.		
Phillips County		Unclassifiable/Attainment.		
Pottawatomie County		Unclassifiable/Attainment.		
Pratt County		Unclassifiable/Attainment.		
Rawlins County		Unclassifiable/Attainment.		
Reno County		Unclassifiable/Attainment.		
Republic County		Unclassifiable/Attainment.		
Rice County		Unclassifiable/Attainment.		
Riley County		Unclassifiable/Attainment.		
Rooks County		Unclassifiable/Attainment.		
Rush County		Unclassifiable/Attainment.		
Russell County		Unclassifiable/Attainment.		
Saline County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Sedgwick County		Unclassifiable/Attainment.		
Seward County		Unclassifiable/Attainment.		
Shawnee County		Unclassifiable/Attainment.		
Sheridan County		Unclassifiable/Attainment.		
Sherman County		Unclassifiable/Attainment.		
Smith County		Unclassifiable/Attainment.		
Stafford County		Unclassifiable/Attainment.		
Stanton County		Unclassifiable/Attainment.		
Stevens County		Unclassifiable/Attainment.		
Sumner County		Unclassifiable/Attainment.		
Thomas County		Unclassifiable/Attainment.		
Trego County		Unclassifiable/Attainment.		
Wabaunsee County		Unclassifiable/Attainment.		
Wallace County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wichita County		Unclassifiable/Attainment.		

KANSAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Wilson County		Unclassifiable/Attainment.		
Woodson County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This area is given an "Unclassifiable" designation. EPA will review all available information and make an attainment or nonattainment decision after reviewing the 2004 data.
[1] This date is June 15, 2004, unless otherwise noted.

■ 19. In § 81.318, the table entitled "Kentucky—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.318 Kentucky.

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KENTUCKY—OZONE (8-HOUR STANDARD)

Designation	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton, OH–KY–IN:				
Boone County		Nonattainment		Subpart 1.
Campbell County		Nonattainment		Subpart 1.
Kenton County		Nonattainment		Subpart 1.
Clarkesville-Hopkinsville, TN–KY:				
Christian County		Nonattainment		Subpart 1.
Louisville, KY–IN:				
Bullitt County		Nonattainment		Subpart 1.
Jefferson County		Nonattainment		Subpart 1.
Oldham County		Nonattainment		Subpart 1.
Huntington-Ashland, WV–KY:				
Boyd County		Nonattainment		Subpart 1.
Rest of State				
Adair County		Unclassifiable/Attainment.		
Allen County		Unclassifiable/Attainment.		
Anderson County		Unclassifiable/Attainment.		
Ballard County		Unclassifiable/Attainment.		
Barren County		Unclassifiable/Attainment.		
Bath County		Unclassifiable/Attainment.		
Bell County		Unclassifiable/Attainment.		
Bourbon County		Unclassifiable/Attainment.		
Boyle County		Unclassifiable/Attainment.		
Bracken County		Unclassifiable/Attainment.		
Breathitt County		Unclassifiable/Attainment.		
Breckinridge County		Unclassifiable/Attainment.		
Butler County		Unclassifiable/Attainment.		
Caldwell County		Unclassifiable/Attainment.		
Calloway County		Unclassifiable/Attainment.		
Carlisle County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Carter County		Unclassifiable/Attainment.		
Casey County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Crittenden County		Unclassifiable/Attainment.		
Cumberland County		Unclassifiable/Attainment.		
Daviess County		Unclassifiable/Attainment.		
Edmonson County		Unclassifiable/Attainment.		
Elliott County		Unclassifiable/Attainment.		
Estill County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Fleming County		Unclassifiable/Attainment.		
Floyd County		Unclassifiable/Attainment.		
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Garrard County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Graves County		Unclassifiable/Attainment.		
Grayson County		Unclassifiable/Attainment.		
Green County		Unclassifiable/Attainment.		

KENTUCKY—OZONE (8-HOUR STANDARD)—Continued

Designation	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Greenup County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Harlan County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Hart County		Unclassifiable/Attainment.		
Henderson County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Hickman County		Unclassifiable/Attainment.		
Hopkins County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jessamine County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Knott County		Unclassifiable/Attainment.		
Knox County		Unclassifiable/Attainment.		
Larue County		Unclassifiable/Attainment.		
Laurel County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lee County.		Unclassifiable/Attainment.		
Leslie County		Unclassifiable/Attainment.		
Letcher County		Unclassifiable/Attainment.		
Lewis County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Livingston County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Lyon County		Unclassifiable/Attainment.		
Madison County		Unclassifiable/Attainment.		
Magoffin County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Martin County		Unclassifiable/Attainment.		
Mason County		Unclassifiable/Attainment.		
McCracken County		Unclassifiable/Attainment.		
McCreary County		Unclassifiable/Attainment.		
McLean County		Unclassifiable/Attainment.		
Meade County		Unclassifiable/Attainment.		
Menifee County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Metcalfe County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Muhlenberg County		Unclassifiable/Attainment.		
Nelson County		Unclassifiable/Attainment.		
Nicholas County		Unclassifiable/Attainment.		
Ohio County		Unclassifiable/Attainment.		
Owen County		Unclassifiable/Attainment.		
Owsley County		Unclassifiable/Attainment.		
Pendleton County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Powell County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Robertson County		Unclassifiable/Attainment.		
Rockcastle County		Unclassifiable/Attainment.		
Rowan County		Unclassifiable/Attainment.		
Russell County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Simpson County		Unclassifiable/Attainment.		
Spencer County		Unclassifiable/Attainment.		
Taylor County		Unclassifiable/Attainment.		
Todd County		Unclassifiable/Attainment.		
Trigg County		Unclassifiable/Attainment.		
Trimble County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
Webster County		Unclassifiable/Attainment.		

KENTUCKY—OZONE (8-HOUR STANDARD)—Continued

Designation	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Whitley County		Unclassifiable/Attainment.		
Wolfe County		Unclassifiable/Attainment.		
Woodford County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 20. In § 81.319, the table entitled "Louisiana—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge, LA:				
Ascension Parish		Nonattainment		Subpart 2/Marginal.
East Baton Rouge Parish		Nonattainment		Subpart 2/Marginal.
Iberville Parish		Nonattainment		Subpart 2/Marginal.
Livingston Parish		Nonattainment		Subpart 2/Marginal.
West Baton Rouge Parish		Nonattainment		Subpart 2/Marginal.
Beauregard Parish Area, LA:				
Beauregard Parish		Unclassifiable/Attainment.		
Grant Parish Area:				
Grant Parish		Unclassifiable/Attainment.		
Lafayette Area:				
Lafayette Parish		Unclassifiable/Attainment.		
Lafourche Parish Area:				
Lafourche Parish		Unclassifiable/Attainment.		
Lake Charles Area:				
Calcasieu Parish		Unclassifiable/Attainment.		
New Orleans Area:				
Jefferson Parish		Unclassifiable/Attainment.		
Orleans Parish		Unclassifiable/Attainment.		
St. Bernard Parish		Unclassifiable/Attainment.		
St. Charles Parish		Unclassifiable/Attainment.		
Pointe Coupee Area:				
Pointe Coupee Parish		Unclassifiable/Attainment.		
St. James Parish Area:				
St. James Parish		Unclassifiable/Attainment.		
St. Mary Parish Area:				
St. Mary Parish		Unclassifiable/Attainment.		
AQCR 019 Monroe-El Dorado Interstate		Unclassifiable/Attainment.		
Caldwell Parish				
Catahoula Parish				
Concordia Parish				
East Carroll Parish				
Franklin Parish				
La Salle Parish				
Madison Parish				
Morehouse Parish				
Ouachita Parish				
Richland Parish				
Tensas Parish				
Union Parish				
West Carroll Parish				
AQCR 022 Shreveport-Texarkana-Tyler Interstate		Unclassifiable/Attainment.		
Bienville Parish				
Bossier Parish				
Caddo Parish				
Claiborne Parish				
De Soto Parish				
Jackson Parish				
Lincoln Parish				
Natchitoches Parish				
Red River Parish				
Sabine Parish				
Webster Parish				

LOUISIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Winn Parish				
AQCR 106 S. Louisiana-S.E. Texas Interstate:				
St. John the Baptist Parish	.....	Unclassifiable/Attainment.		
AQCR 106 S. Louisiana-S.E. Texas Interstate	.....	Unclassifiable/Attainment.		
Acadia Parish				
Allen Parish				
Assumption Parish				
Avoyelles Parish				
Cameron Parish				
East Feliciana Parish				
Evangeline Parish				
Iberia Parish				
Jefferson Davis Parish				
Plaquemines Parish				
Rapides Parish				
St. Helena Parish				
St. Landry Parish				
St. Martin Parish				
St. Tammany Parish				
Tangipahoa Parish				
Terrebonne Parish				
Vermilion Parish				
Vernon Parish				
Washington Parish				
West Feliciana Parish				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 21. In § 81.320, the table entitled "Maine—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.320 Maine.

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MAINE—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Hancock, Knox, Lincoln and Waldo Cos., ME:				
Hancock County (part)	.....	Nonattainment	.....	Subpart 1.
(includes only the following cities and towns): Bar Harbor, Blue Hill, Brooklin, Brooksville, Cranberry Isle, Deer Isle, Frenchboro, Gouldsboro, Hancock, Lamoine, Mount Desert, Sedgwick, Sorrento, Southwest Harbor, Stonington, Sullivan, Surry, Swans Island, Tremont, Trenton, and Winter Harbor				
Knox County (part)	.....	Nonattainment	.....	Subpart 1.
(includes only the following cities and towns): Camden, Criehaven, Cushing, Friendship, Isle au Haut, Matinicus Isle, Muscle Ridge Shoals, North Haven, Owls Head, Rockland, Rockport, St. George, South Thomaston, Thomaston, Vinalhaven, and Warren				
Lincoln County (part)	.....	Nonattainment	.....	Subpart 1.
(includes only the following cities and towns): Alna, Boothbay, Boothbay Harbor, Breman, Bristol, Damariscotta, Dresden, Edgecomb, Monhegan, Newcastle, Nobleboro, South Bristol, Southport, Waldoboro, Westport, and Wiscasset				
Waldo County (part)	.....	Nonattainment	.....	Subpart 1.
(includes only the following town): Islesboro				
Portland, ME:				
Androscoggin County (part)	.....	Nonattainment	.....	Subpart 2/Marginal.
(includes only the following town): Durham				
Cumberland County (part)	.....	Nonattainment	.....	Subpart 2/Marginal.

MAINE—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
(includes only the following cities and towns): Brunswick, Cape Elizabeth, Casco, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Harpswell, Long Island, New Gloucester, North Yarmouth, Portland, Pownal, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, and Yarmouth				
Sagadahoc County (includes all cities & towns)		Nonattainment		Subpart 2/Marginal.
York County (part)		Nonattainment		Subpart 2/Marginal.
(includes only the following cities and towns): Alfred, Arundel, Berwick, Biddeford, Buxton, Dayton, Elliot, Hollis, Kennebunk, Kennebunkport, Kittery, Limington, Lyman, North Berwick, Ogunquit, Old Orchard Beach, Saco, Sanford, South Berwick, Wells, and York				
Rest of State		Unclassifiable Attainment.		
Androscoggin County (part) remainder				
Aroostook County				
Cumberland County (part) remainder				
Franklin County				
Hancock County (part) remainder				
Kennebec County				
Knox County (part) remainder				
Lincoln County (part) remainder				
Oxford County				
Penobscot County				
Piscataquis County				
Somerset County				
Waldo County (part) remainder				
Washington County				
York County (part) remainder				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 22. In § 81.321, the table entitled "Maryland—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.321 Maryland.

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MARYLAND—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baltimore, MD:				
Anne Arundel County		Nonattainment		Subpart 2/Moderate.
City of Baltimore		Nonattainment		Subpart 2/Moderate.
Baltimore County		Nonattainment		Subpart 2/Moderate.
Carroll County		Nonattainment		Subpart 2/Moderate.
Harford County		Nonattainment		Subpart 2/Moderate.
Howard County		Nonattainment		Subpart 2/Moderate.
Kent and Queen Anne's Cos., MD:				
Kent County		Nonattainment		Subpart 2/Moderate.
Queen Anne's County		Nonattainment		Subpart 2/Moderate.
Washington Co. (Hagerstown), MD:				
Washington County	(2)	Nonattainment	(2)	Subpart 1.
Philadelphia-Wilmin-Atlantic Ci, PA–NJ–MD–DE:				
Cecil County		Nonattainment		Subpart 2/Moderate.
Washington, DC–MD–VA:				
Calvert County		Nonattainment		Subpart 2/Moderate.
Charles County		Nonattainment		Subpart 2/Moderate.
Frederick County		Nonattainment		Subpart 2/Moderate.
Montgomery County		Nonattainment		Subpart 2/Moderate.
Prince George's County		Nonattainment		Subpart 2/Moderate.
AQCR 113 Cumberland-Keyser Interstate		Unclassifiable/Attainment.		
Allegany County.				
Garrett County.				

MARYLAND—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 114 Eastern Shore Interstate (remainder of)		Unclassifiable/Attainment.		
Caroline County.				
Dorchester County.				
Somerset County.				
Talbot County.				
Wicomico County.				
Worcester County.				
AQCR 116 Southern Maryland Intrastate (remainder of)		Unclassifiable/Attainment.		
St. Mary's County.				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 23. In § 81.322, the table entitled "Massachusetts—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.322 Massachusetts.

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MASSACHUSETTS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Boston-Lawrence-Worcester (E. Mass), MA:				
Barnstable County		Nonattainment		Subpart 2/Moderate.
Bristol County		Nonattainment		Subpart 2/Moderate.
Dukes County		Nonattainment		Subpart 2/Moderate.
Essex County		Nonattainment		Subpart 2/Moderate.
Middlesex County		Nonattainment		Subpart 2/Moderate.
Nantucket County		Nonattainment		Subpart 2/Moderate.
Norfolk County		Nonattainment		Subpart 2/Moderate.
Plymouth County		Nonattainment		Subpart 2/Moderate.
Suffolk County		Nonattainment		Subpart 2/Moderate.
Worcester County		Nonattainment		Subpart 2/Moderate.
Springfield (W. Mass), MA:				
Berkshire County		Nonattainment		Subpart 2/Moderate.
Franklin County		Nonattainment		Subpart 2/Moderate.
Hampden County		Nonattainment		Subpart 2/Moderate.
Hampshire County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 24. In § 81.323, the table entitled "Michigan—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.323 Michigan.

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MICHIGAN—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Allegan Co., MI:				
Allegan County		Nonattainment		Subpart 1.
Barry County Area:				
Barry County		Unclassifiable/Attainment.		
Benton Harbor, MI:				
Berrien County		Nonattainment		Subpart 1.
Benzie Co., MI:				
Benzie County		Nonattainment		Subpart 1.
Branch County Area:				
Branch County		Unclassifiable/Attainment.		
Cass County, MI:				
Cass County		Nonattainment		Subpart 2/Moderate.
Detroit-Ann Arbor, MI:				
Lenawee County		Nonattainment		Subpart 2/Moderate.

MICHIGAN—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Livingston County		Nonattainment		Subpart 2/Moderate.
Macomb County		Nonattainment		Subpart 2/Moderate.
Monroe County		Nonattainment		Subpart 2/Moderate.
Oakland County		Nonattainment		Subpart 2/Moderate.
St Clair County		Nonattainment		Subpart 2/Moderate.
Washtenaw County		Nonattainment		Subpart 2/Moderate.
Wayne County		Nonattainment		Subpart 2/Moderate.
Flint, MI:				
Genesee County		Nonattainment		Subpart 1.
Lapeer County		Nonattainment		Subpart 1.
Grand Rapids, MI:				
Kent County		Nonattainment		Subpart 1.
Ottawa County		Nonattainment		Subpart 1.
Gratiot County Area:				
Gratiot County		Unclassifiable/Attainment.		
Hillsdale County Area:				
Hillsdale County		Unclassifiable/Attainment.		
Huron Co, MI:				
Huron County		Nonattainment		Subpart 1.
Ionia County Area:				
Ionia County		Unclassifiable/Attainment.		
Jackson Area:				
Jackson County		Unclassifiable/Attainment.		
Kalamazoo-Battle Creek, MI:				
Calhoun County		Nonattainment		Subpart 1.
Kalamazoo County		Nonattainment		Subpart 1.
Van Buren County		Nonattainment		Subpart 1.
Lansing-East Lansing, MI:				
Clinton County		Nonattainment		Subpart 1.
Eaton County		Nonattainment		Subpart 1.
Ingham County		Nonattainment		Subpart 1.
Mason Co, MI:				
Mason County		Nonattainment		Subpart 1.
Montcalm Area:				
Montcalm County		Unclassifiable/Attainment.		
Muskegon, MI:				
Muskegon County		Nonattainment		Subpart 2/Moderate.
Saginaw-Bay City-Midland Area:				
Bay County		Unclassifiable/Attainment.		
Midland County		Unclassifiable/Attainment.		
Saginaw County		Unclassifiable/Attainment.		
Sanilac County Area:				
Sanilac County		Unclassifiable/Attainment.		
Shiawassee County Area:				
Shiawassee County		Unclassifiable/Attainment.		
St Joseph County Area:				
St Joseph County		Unclassifiable/Attainment.		
Tuscola County Area:				
Tuscola County		Unclassifiable/Attainment.		
AQCR 122 Central Michigan Intrastate (remainder of)		Unclassifiable/Attainment.		
Arenac County				
Clare County				
Gladwin County				
Iosco County				
Isabella County				
Lake County				
Mecosta County				
Newaygo County				
Oceana County				
Ogemaw County				
Osceola County				
Roscommon County				
AQCR 126 Upper Michigan Intrastate (part)		Unclassifiable/Attainment.		
Marquette County				
AQCR 126 Upper Michigan Intrastate (remainder of)		Unclassifiable/Attainment.		
Alcona County				
Alger County				
Alpena County				
Antrim County				
Baraga County				

MICHIGAN—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Charlevoix County				
Cheboygan County				
Chippewa County				
Crawford County				
Delta County				
Dickinson County				
Emmet County				
Gogebic County				
Grand Traverse County				
Houghton County				
Iron County				
Kalkaska County				
Keweenaw County				
Leelanau County				
Luce County				
Mackinac County				
Manistee County				
Menominee County				
Missaukee County				
Montmorency County				
Ontonagon County				
Oscoda County				
Otsego County				
Presque Isle County				
Schoolcraft County				
Wexford County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 25. In § 81.324, the table entitled "Minnesota—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Minneapolis-Saint Paul Area:				
Anoka County		Unclassifiable/Attainment.		
Carver County		Unclassifiable/Attainment.		
Dakota County		Unclassifiable/Attainment.		
Hennepin County		Unclassifiable/Attainment.		
Ramsey County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Rest of State		Unclassifiable/Attainment.		
Aitkin County		Unclassifiable/Attainment.		
Becker County		Unclassifiable/Attainment.		
Beltrami County		Unclassifiable/Attainment.		
Benton County		Unclassifiable/Attainment.		
Big Stone County		Unclassifiable/Attainment.		
Blue Earth County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Carlton County		Unclassifiable/Attainment.		
Cass County		Unclassifiable/Attainment.		
Chippewa County		Unclassifiable/Attainment.		
Chisago County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clearwater County		Unclassifiable/Attainment.		
Cook County		Unclassifiable/Attainment.		
Cottonwood County		Unclassifiable/Attainment.		
Crow Wing County		Unclassifiable/Attainment.		
Dodge County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Faribault County		Unclassifiable/Attainment.		
Fillmore County		Unclassifiable/Attainment.		

MINNESOTA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Freeborn County		Unclassifiable/Attainment.		
Goodhue County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Houston County		Unclassifiable/Attainment.		
Hubbard County		Unclassifiable/Attainment.		
Isanti County		Unclassifiable/Attainment.		
Itasca County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Kanabec County		Unclassifiable/Attainment.		
Kandiyohi County		Unclassifiable/Attainment.		
Kittson County		Unclassifiable/Attainment.		
Koochiching County		Unclassifiable/Attainment.		
Lac qui Parle County		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
Lake of the Woods County		Unclassifiable/Attainment.		
Le Sueur County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Lyon County		Unclassifiable/Attainment.		
Mahnomen County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Martin County		Unclassifiable/Attainment.		
McLeod County		Unclassifiable/Attainment.		
Meeker County		Unclassifiable/Attainment.		
Mille Lacs County		Unclassifiable/Attainment.		
Morrison County		Unclassifiable/Attainment.		
Mower County		Unclassifiable/Attainment.		
Murray County		Unclassifiable/Attainment.		
Nicollet County		Unclassifiable/Attainment.		
Nobles County		Unclassifiable/Attainment.		
Norman County		Unclassifiable/Attainment.		
Olmsted County		Unclassifiable/Attainment.		
Otter Tail County		Unclassifiable/Attainment.		
Pennington County		Unclassifiable/Attainment.		
Pine County		Unclassifiable/Attainment.		
Pipestone County		Unclassifiable/Attainment.		
Polk County		Unclassifiable/Attainment.		
Pope County		Unclassifiable/Attainment.		
Red Lake County		Unclassifiable/Attainment.		
Redwood County		Unclassifiable/Attainment.		
Renville County		Unclassifiable/Attainment.		
Rice County		Unclassifiable/Attainment.		
Rock County		Unclassifiable/Attainment.		
Roseau County		Unclassifiable/Attainment.		
St. Louis County		Unclassifiable/Attainment.		
Sherburne County		Unclassifiable/Attainment.		
Sibley County		Unclassifiable/Attainment.		
Stearns County		Unclassifiable/Attainment.		
Steele County		Unclassifiable/Attainment.		
Stevens County		Unclassifiable/Attainment.		
Swift County		Unclassifiable/Attainment.		
Todd County		Unclassifiable/Attainment.		
Traverse County		Unclassifiable/Attainment.		
Wabasha County		Unclassifiable/Attainment.		
Wadena County		Unclassifiable/Attainment.		
Waseca County		Unclassifiable/Attainment.		
Watonwan County		Unclassifiable/Attainment.		
Wilkin County		Unclassifiable/Attainment.		
Winona County		Unclassifiable/Attainment.		
Wright County		Unclassifiable/Attainment.		
Yellow Medicine County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 26. In § 81.325, the table entitled "Mississippi—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.325	Mississippi.			
*	*	*	*	*

MISSISSIPPI—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Adams County				
Alcorn County				
Amite County				
Attala County				
Benton County				
Bolivar County				
Calhoun County				
Carroll County				
Chickasaw County				
Choctaw County				
Claiborne County				
Clarke County				
Clay County				
Coahoma County				
Copiah County				
Covington County				
DeSoto County				
Forrest County				
Franklin County				
George County				
Greene County				
Grenada County				
Hancock County				
Harrison County				
Hinds County				
Holmes County				
Humphreys County				
Issaquena County				
Itawamba County				
Jackson County				
Jasper County				
Jefferson County				
Jefferson Davis County				
Jones County				
Kemper County				
Lafayette County				
Lamar County				
Lauderdale County				
Lawrence County				
Leake County				
Lee County				
Leflore County				
Lincoln County				
Lowndes County				
Madison County				
Marion County				
Marshall County				
Monroe County				
Montgomery County				
Neshoba County				
Newton County				
Noxubee County				
Oktibbeha County				
Panola County				
Pearl River County				
Perry County				
Pike County				
Pontotoc County				
Prentiss County				
Quitman County				
Rankin County				
Scott County				
Sharkey County				
Simpson County				
Smith County				
Stone County				
Sunflower County				
Tallahatchie County				
Tate County				

MISSISSIPPI—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Tippah County				
Tishomingo County				
Tunica County				
Union County				
Walthall County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wilkinson County				
Winston County				
Yalobusha County				
Yazoo County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 27. In § 81.326, the table entitled "Missouri—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Kansas City, MO–KS:				
Cass County		Unclassifiable [b].		
Clay County		Unclassifiable [b].		
Jackson County		Unclassifiable [b].		
Platte County		Unclassifiable [b].		
St. Louis, MO–IL:				
Franklin County		Nonattainment		Subpart 2/Moderate.
Jefferson County		Nonattainment		Subpart 2/Moderate.
St. Charles County		Nonattainment		Subpart 2/Moderate.
St. Louis City		Nonattainment		Subpart 2/Moderate.
St. Louis County.		Nonattainment		Subpart 2/Moderate.
AQCR 094 Metro Kansas City Interstate		Unclassifiable/Attainment.		
Buchanan County				
Ray County				
AQCR 137 N. Missouri Intrastate (part)				
Pike County		Unclassifiable/Attainment.		
Ralls County		Unclassifiable/Attainment.		
AQCR 137 N. Missouri Intrastate (remainder of)		Unclassifiable/Attainment.		
Adair County				
Andrew County				
Atchison County				
Audrain County				
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Chariton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
DeKalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				
Howard County				
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				

MISSOURI—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State:		Unclassifiable/Attainment		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cedar County				
Christian County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jasper County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Polk County				
Pulaski County				
Reynolds County				
Ripley County				
St. Clair County				
St. Francois County				
Ste. Genevieve County				
Scott County				
Shannon County				
Stoddard County				

MISSOURI—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Stone County				
Taney County				
Texas County				
Vernon County				
Washington County				
Wayne County				
Webster County				
Wright County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This area is given an "Unclassifiable" designation. EPA will review all available information and make an attainment or nonattainment decision after reviewing the 2004 data.
[1] This date is June 15, 2004, unless otherwise noted.

■ 28. In § 81.327, the table entitled "Montana—Ozone(8-Hour Standard)" is added to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:				
Beaverhead County		Unclassifiable/Attainment.		
Big Horn County		Unclassifiable/Attainment.		
Blaine County		Unclassifiable/Attainment.		
Broadwater County		Unclassifiable/Attainment.		
Carbon County		Unclassifiable/Attainment.		
Carter County		Unclassifiable/Attainment.		
Cascade County		Unclassifiable/Attainment.		
Chouteau County		Unclassifiable/Attainment.		
Custer County		Unclassifiable/Attainment.		
Daniels County		Unclassifiable/Attainment.		
Dawson County		Unclassifiable/Attainment.		
Deer Lodge County		Unclassifiable/Attainment.		
Fallon County		Unclassifiable/Attainment.		
Fergus County		Unclassifiable/Attainment.		
Flathead County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Garfield County		Unclassifiable/Attainment.		
Glacier County		Unclassifiable/Attainment.		
Golden Valley County		Unclassifiable/Attainment.		
Granite County.		Unclassifiable/Attainment.		
Hill County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Judith Basin County		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
Lewis and Clark County		Unclassifiable/Attainment.		
Liberty County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Madison County		Unclassifiable/Attainment.		
McCone County		Unclassifiable/Attainment.		
Meagher County		Unclassifiable/Attainment.		
Mineral County		Unclassifiable/Attainment.		
Missoula County		Unclassifiable/Attainment.		
Musselshell County		Unclassifiable/Attainment.		
Park County		Unclassifiable/Attainment.		
Petroleum County		Unclassifiable/Attainment.		
Phillips County		Unclassifiable/Attainment.		
Pondera County		Unclassifiable/Attainment.		
Powder River County		Unclassifiable/Attainment.		
Powell County		Unclassifiable/Attainment.		
Prairie County		Unclassifiable/Attainment.		
Ravalli County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Roosevelt County		Unclassifiable/Attainment.		
Rosebud County		Unclassifiable/Attainment.		
Sanders County		Unclassifiable/Attainment.		

MONTANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Sheridan County		Unclassifiable/Attainment.		
Silver Bow County		Unclassifiable/Attainment.		
Stillwater County		Unclassifiable/Attainment.		
Sweet Grass County		Unclassifiable/Attainment.		
Teton County		Unclassifiable/Attainment.		
Toole County		Unclassifiable/Attainment.		
Treasure County		Unclassifiable/Attainment.		
Valley County		Unclassifiable/Attainment.		
Wheatland County		Unclassifiable/Attainment.		
Wibaux County		Unclassifiable/Attainment.		
Yellowstone County		Unclassifiable/Attainment.		
Yellowstone Natl Park		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 29. In § 81.328, the table entitled "Nebraska—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.328 Nebraska.

* * * * *

NEBRASKA—OZONE (8-HOUR STANDARD)

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Statewide:		Unclassifiable/Attainment.		
Adams County				
Antelope County				
Arthur County				
Banner County				
Blaine County				
Boone County				
Box Butte County				
Boyd County				
Brown County				
Buffalo County				
Burt County				
Butler County				
Cass County				
Cedar County				
Chase County				
Cherry County				
Cheyenne County				
Clay County				
Colfax County				
Cuming County				
Custer County				
Dakota County				
Dawes County				
Dawson County				
Deuel County				
Dixon County				
Dodge County				
Douglas County				
Dundy County				
Fillmore County				
Franklin County				
Frontier County				
Furnas County				
Gage County				
Garden County				
Garfield County				
Gosper County				
Grant County				
Greeley County				
Hall County				
Hamilton County				
Harlan County				
Hayes County				

NEBRASKA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Hitchcock County				
Holt County				
Hooker County				
Howard County				
Jefferson County				
Johnson County				
Kearney County				
Keith County				
Keya Paha County				
Kimball County				
Knox County				
Lancaster County				
Lincoln County				
Logan County				
Loup County				
Madison County				
McPherson County				
Merrick County				
Morrill County				
Nance County				
Nemaha County				
Nuckolls County				
Otoe County				
Pawnee County				
Perkins County				
Phelps County				
Pierce County				
Platte County				
Polk County				
Red Willow County				
Richardson County				
Rock County				
Saline County				
Sarpy County				
Saunders County				
Scotts Bluff County				
Seward County				
Sheridan County				
Sherman County				
Sioux County				
Stanton County				
Thayer County				
Thomas County				
Thurston County				
Valley County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
York County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 30. In § 81.329, the table entitled "Nevada—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Las Vegas, NV:				
Clark County		Nonattainment		Subpart 1
Rest of State:		Unclassifiable/Attainment.		
Carson City				
Churchill County				

NEVADA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Douglas County				
Elko County				
Esmeralda County				
Eureka County				
Humboldt County				
Lander County				
Lincoln County				
Lyon County				
Mineral County				
Nye County				
Pershing County				
Storey County				
Washoe County (Reno Area)				
White Pine County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 31. In § 81.330, the table entitled "New Hampshire—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.330 New Hampshire.

* * * * *

NEW HAMPSHIRE—OZONE (8-HOUR STANDARD)

Designated area	Designated [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Boston-Manchester-Portsmouth (SE), NH:				
Hillsborough County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
Amherst Town, Bedford Town, Brookline Town, Goffstown Town, Hollis Town, Hudson Town, Litchfield Town, Manchester City, Merrimack Town, Milford Town, Nashua City, Pelham Town				
Merrimack County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
Hooksett Town				
Rockingham County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
Atkinson Town, Auburn Town, Brentwood Town, Candia Town, Chester Town, Danville Town, Derry Town, E. Kingston Town, Epping Town, Exeter Town, Fremont Town, Greenland Town, Hampstead Town, Hampton Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, Newton Town, North Hampton Town, Plaistow Town, Portsmouth City, Raymond Town, Rye Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, Stratham Town, Windham Town				
Strafford County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
Dover City, Durham Town, Rochester City, Rollinsford Town, and Somersworth City				
Rest of State:	.....	Unclassifiable/Attainment.		
Belknap County				
Carroll County				
Cheshire County				
Coos County				
Grafton County				
Hillsborough County (part) remainder				
Merrimack County (part) remainder				
Rockingham County (part) remainder				
Strafford County (part) remainder				
Sullivan County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 32. In § 81.331, the table entitled "New Jersey—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Bergen County		Nonattainment		Subpart 2/Moderate.
Essex County		Nonattainment		Subpart 2/Moderate.
Hudson County		Nonattainment		Subpart 2/Moderate.
Hunterdon County		Nonattainment		Subpart 2/Moderate.
Middlesex County		Nonattainment		Subpart 2/Moderate.
Monmouth County		Nonattainment		Subpart 2/Moderate.
Morris County		Nonattainment		Subpart 2/Moderate.
Passaic County		Nonattainment		Subpart 2/Moderate.
Somerset County		Nonattainment		Subpart 2/Moderate.
Sussex County		Nonattainment		Subpart 2/Moderate.
Union County		Nonattainment		Subpart 2/Moderate.
Warren County		Nonattainment		Subpart 2/Moderate.
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE:				
Atlantic County		Nonattainment		Subpart 2/Moderate.
Burlington County		Nonattainment		Subpart 2/Moderate.
Camden County		Nonattainment		Subpart 2/Moderate.
Cape May County		Nonattainment		Subpart 2/Moderate.
Cumberland County		Nonattainment		Subpart 2/Moderate.
Gloucester County		Nonattainment		Subpart 2/Moderate.
Mercer County		Nonattainment		Subpart 2/Moderate.
Ocean County		Nonattainment		Subpart 2/Moderate.
Salem County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 33. In § 81.332, the table entitled "New Mexico—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.332 New Mexico.

NEW MEXICO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 012 New Mexico-Southern Border Intrastate		Unclassifiable/Attainment.		
Grant County				
Hidalgo County				
Luna County				
AQCR 014 Four Corners Interstate (*see* 40 CFR 81.121)		Unclassifiable/Attainment.		
McKinley County (part)				
Río Arriba County (part)				
San Juan County				
Sandoval County (part)				
Valencia County (part)				
AQCR 152 Albuquerque-Mid Rio Grande Intrastate		Unclassifiable/Attainment.		
Bernalillo County (part)				
AQCR 152 Albuquerque-Mid Rio Grande		Unclassifiable/Attainment.		
Sandoval County (part) *see* 40 CFR 81.83				
Valencia County (part) *see* 40 CFR 81.83				
AQCR 153 El Paso-Las Cruces-Alamogordo		Unclassifiable/Attainment.		
Doña Ana County (part) (Sunland Park Area) The Area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.				
Doña Ana County (part) remainder		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Otero County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		
AQCR 154 Northeastern Plains Intrastate		Unclassifiable/Attainment.		
Colfax County				
Guadalupe County				

NEW MEXICO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Harding County				
Mora County				
San Miguel County				
Torrance County				
Union County				
AQCR 155 Pecos-Permian Basin Intrastate		Unclassifiable/Attainment.		
Chaves County				
Curry County				
De Baca County				
Eddy County				
Lea County				
Quay County				
Roosevelt County				
AQCR 156 SW Mountains-Augustine Plains		Unclassifiable/Attainment.		
Catron County				
Cibola County				
McKinley County (part) *see* 40 CFR 81.241				
Socorro County				
Valencia County (part) *see* 40 CFR 81.241				
AQCR 157 Upper Rio Grande Valley Intrastate		Unclassifiable/Attainment.		
Los Alamos County				
Río Arriba County (part) *see* 40 CFR 81.239				
Santa Fe County				
Taos County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 34. In § 81.333, the table entitled "New York—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Albany-Schenectady-Troy, NY:				
Albany County		Nonattainment		Subpart 1.
Greene County		Nonattainment		Subpart 1.
Montgomery County		Nonattainment		Subpart 1.
Rensselaer County		Nonattainment		Subpart 1.
Saratoga County		Nonattainment		Subpart 1.
Schenectady County		Nonattainment		Subpart 1.
Schoharie County		Nonattainment		Subpart 1.
Buffalo-Niagara Falls, NY:				
Erie County		Nonattainment		Subpart 1.
Niagara County		Nonattainment		Subpart 1.
Essex County (Whiteface Mtn.), NY:				
Essex County (part) The portion of Whiteface Mountain above 1,900 feet in elevation in Essex County.		Nonattainment		Subpart 1.
Essex County (remainder)		Unclassifiable/Attainment.		
Jamestown, NY:				
Chautauqua County		Nonattainment		Subpart 1.
Jefferson County, NY:				
Jefferson County		Nonattainment		Subpart 2/Moderate.
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Bronx County		Nonattainment		Subpart 2/Moderate.
Kings County		Nonattainment		Subpart 2/Moderate.
Nassau County		Nonattainment		Subpart 2/Moderate.
New York County		Nonattainment		Subpart 2/Moderate.
Queens County		Nonattainment		Subpart 2/Moderate.
Richmond County		Nonattainment		Subpart 2/Moderate.
Rockland County		Nonattainment		Subpart 2/Moderate.
Suffolk County		Nonattainment		Subpart 2/Moderate.
Westchester County		Nonattainment		Subpart 2/Moderate.
Poughkeepsie, NY:				
Dutchess County		Nonattainment		Subpart 2/Moderate.

NEW YORK—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Orange County		Nonattainment		Subpart 2/Moderate.
Putnam County		Nonattainment		Subpart 2/Moderate.
Syracuse, NY:				
Cayuga County		Unclassifiable [b].		
Madison County		Unclassifiable [b].		
Onondaga County		Unclassifiable [b].		
Oswego County		Unclassifiable [b].		
Rochester, NY:				
Genesee County		Nonattainment		Subpart 1.
Livingston County		Nonattainment		Subpart 1.
Monroe County		Nonattainment		Subpart 1.
Ontario County		Nonattainment		Subpart 1.
Orleans County		Nonattainment		Subpart 1.
Wayne County		Nonattainment		Subpart 1.
AQCR 158 Central New York Intrastate (remainder of)		Unclassifiable/Attainment.		
Cortland County				
Herkimer County				
Lewis County				
Oneida County				
AQCR 159 Champlain Valley Interstate (remainder of)		Unclassifiable/Attainment.		
Clinton County				
Franklin County				
Hamilton County				
St. Lawrence County				
Warren County				
Washington County				
AQCR 160 Finger Lake Intrastate		Unclassifiable/Attainment.		
Seneca County				
Wyoming County				
Yates County				
AQCR 161 Hudson Valley Intrastate (remainder of)		Unclassifiable/Attainment.		
Columbia County.				
Fulton County				
Ulster County				
AQCR 163 Southern Tier East Intrastate		Unclassifiable/Attainment.		
Broome County				
Chenango County				
Delaware County				
Otsego County				
Sullivan County				
Tioga County				
AQCR 164 Southern Tier West Intrastate		Unclassifiable/Attainment.		
Allegany County				
Cattaraugus County				
Chemung County				
Schuyler County				
Steuben County				
Tompkins County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This area is given an "Unclassifiable" designation. EPA will review all available information and make an attainment or nonattainment decision after reviewing the 2004 data.
[1] This date is June 15, 2004, unless otherwise noted.

■ 35. In § 81.334, the table entitled "North Carolina—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Charlotte-Gastonia-Rock Hill, NC-SC		Nonattainment		Subpart 2/Moderate.
Cabarrus County		Nonattainment		Subpart 2/Moderate.
Gaston County		Nonattainment		Subpart 2/Moderate.
Iredell County (part).				

NORTH CAROLINA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Davidson Township, Coddle Creek Township	.....	Nonattainment	.....	Subpart 2/Moderate.
Lincoln County	.....	Nonattainment	.....	Subpart 2/Moderate.
Mecklenburg County	.....	Nonattainment	.....	Subpart 2/Moderate.
Rowan County	.....	Nonattainment	.....	Subpart 2/Moderate.
Union County	.....	Nonattainment	.....	Subpart 2/Moderate.
Fayetteville, NC: Cumberland County	(2)	Nonattainment	(2)	Subpart 1.
Greensboro-Winston-Salem-High Point, NC:				
Alamance County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Caswell County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Davidson County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Davie County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Forsyth County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Guilford County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Randolph County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Rockingham County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Haywood and Swain Cos. (Great Smoky NP), NC:				
Haywood County (part)	.....	Nonattainment	.....	Subpart 1.
Swain County (part)	.....	Nonattainment	.....	Subpart 1.
Hickory-Morganton-Lenoir, NC:				
Alexander County	(2)	Nonattainment	(2)	Subpart 1.
Burke County (part)	(2)	Nonattainment	(2)	Subpart 1.
Unifour Metropolitan Planning Organization Boundary				
Caldwell County (part)	(2)	Nonattainment	(2)	Subpart 1.
Unifour Metropolitan Planning Organization Boundary				
Catawba County	(2)	Nonattainment	(2)	Subpart 1.
Raleigh-Durham-Chapel Hill, NC:				
Chatham County (part)	.....	Nonattainment	.....	Subpart 1.
Baldwin Township, Center Township, New Hope Township, Williams Township				
Durham County	.....	Nonattainment	.....	Subpart 1.
Franklin County	.....	Nonattainment	.....	Subpart 1.
Granville County	.....	Nonattainment	.....	Subpart 1.
Johnston County	.....	Nonattainment	.....	Subpart 1.
Orange County	.....	Nonattainment	.....	Subpart 1.
Person County	.....	Nonattainment	.....	Subpart 1.
Wake County	.....	Nonattainment	.....	Subpart 1.
Rocky Mount, NC:				
Edgecombe County	.....	Nonattainment	.....	Subpart 1.
Nash County	.....	Nonattainment	.....	Subpart 1.
Rest of State:	.....	Unclassifiable/Attainment.		
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County (part) remainder				
Caldwell County (part) remainder				
Camden County				
Carteret County				
Chatham County (part) remainder				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				
Currituck County				
Dare County				
Duplin County				
Gates County				
Graham County				
Greene County				
Halifax County				
Harnett County				

NORTH CAROLINA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Haywood County (part) remainder				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County (part) remainder				
Jackson County				
Jones County				
Lee County				
Lenoir County				
Macon County				
Madison County				
Martin County				
McDowell County				
Mitchell County				
Montgomery County				
Moore County				
New Hanover County				
Northampton County				
Onslow County				
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Pitt County				
Polk County				
Richmond County				
Robeson County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				
Swain County (part) remainder				
Transylvania County				
Tyrrell County				
Vance County				
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				
Yancey County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 36. In § 81.335, the table entitled "North Dakota—Ozone(8-Hour Standard)" is added to read as follows:

§ 81.335 North Dakota.

* * * * *

NORTH DAKOTA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 130 Metropolitan Fargo-Moorhead Interstate:				
Cass County		Unclassifiable/Attainment.		
Rest of State, AQCR 172		Unclassifiable/Attainment.		
Adams County				
Barnes County				
Benson County				
Billings County				
Bottineau County				

NORTH DAKOTA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Bowman County				
Burke County				
Burleigh County				
Cavalier County				
Dickey County				
Divide County				
Dunn County				
Eddy County				
Emmons County				
Foster County				
Golden Valley County				
Grand Forks County				
Grant County				
Griggs County				
Hettinger County				
Kidder County				
LaMoure County				
Logan County				
McHenry County				
McIntosh County				
McKenzie County				
McLean County				
Mercer County				
Morton County				
Mountrail County				
Nelson County				
Oliver County				
Pembina County				
Pierce County				
Ramsey County				
Ransom County				
Renville County				
Richland County				
Rolette County				
Sargent County				
Sheridan County				
Sioux County				
Slope County				
Stark County				
Steele County				
Stutsman County				
Towner County				
Traill County				
Walsh County				
Ward County				
Wells County				
Williams County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 37. In § 81.336, the table entitled "Ohio—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Canton-Massillion, OH: Stark County		Nonattainment		Subpart 1.
Cincinnati-Hamilton, OH–KY–IN:				
Butler County		Nonattainment		Subpart 1.
Clermont County		Nonattainment		Subpart 1.
Clinton County		Nonattainment		Subpart 1.
Hamilton County		Nonattainment		Subpart 1.
Warren County		Nonattainment		Subpart 1.
Cleveland-Akron-Lorain, OH		Nonattainment		Subpart 2/Moderate.

OHIO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
Columbus, OH:				
Delaware County		Nonattainment		Subpart 1.
Fairfield County		Nonattainment		Subpart 1.
Franklin County		Nonattainment		Subpart 1.
Knox County		Nonattainment		Subpart 1.
Licking County		Nonattainment		Subpart 1.
Madison County		Nonattainment	Subpart 1.	
Dayton-Springfield, OH:				
Clark County		Nonattainment		Subpart 1.
Greene County		Nonattainment		Subpart 1.
Miami County		Nonattainment		Subpart 1.
Montgomery County		Nonattainment		Subpart 1.
Lima, OH: Allen County		Nonattainment		Subpart 1.
Parkersburg-Marietta, WV–OH: Washington County.		Nonattainment		Subpart 1.
Steubenville-Weirton, OH–WV: Jefferson County.		Nonattainment		Subpart 1.
Toledo, OH:				
Lucas County		Nonattainment		Subpart 1.
Wood County		Nonattainment		Subpart 1.
Wheeling, WV–OH: Belmont County		Nonattainment		Subpart 1.
Youngstown-Warren-Sharon, PA–OH:				
Columbiana County		Nonattainment		Subpart 1.
Mahoning County		Nonattainment		Subpart 1.
Trumbull County		Nonattainment		Subpart 1.
Rest of State:				
Adams County		Unclassifiable/Attainment.		
Ashland County		Unclassifiable/Attainment.		
Athens County.				
Auglaize County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Champaign County		Unclassifiable/Attainment.		
Coshocton County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Darke County		Unclassifiable/Attainment.		
Defiance County		Unclassifiable/Attainment.		
Erie County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallia County		Unclassifiable/Attainment.		
Guernsey County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Highland County		Unclassifiable/Attainment.		
Hocking County		Unclassifiable/Attainment.		
Holmes County		Unclassifiable/Attainment.		
Huron County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Meigs County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Morrow County		Unclassifiable/Attainment.		
Muskingum County		Unclassifiable/Attainment.		
Noble County		Unclassifiable/Attainment.		
Ottawa County		Unclassifiable/Attainment.		

OHIO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Paulding County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Pickaway County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Preble County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Ross County		Unclassifiable/Attainment.		
Sandusky County		Unclassifiable/Attainment.		
Scioto County		Unclassifiable/Attainment.		
Seneca County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Tuscarawas County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Van Wert County		Unclassifiable/Attainment.		
Vinton County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
Williams County		Unclassifiable/Attainment.		
Wyandot County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 38. In § 81.337, the table entitled "Oklahoma—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.337 Oklahoma.

* * * * *

OKLAHOMA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 017 Metropolitan Fort Smith Interstate		Unclassifiable/Attainment.		
Adair County				
Cherokee County				
Le Flore County				
Sequoyah County				
AQCR 022 Shreveport-Texarkana-Tyler Intrastate: McCurtain County.		Unclassifiable/Attainment		
AQCR 184 Central Oklahoma Intrastate (part):				
Cleveland County		Unclassifiable/Attainment.		
Oklahoma County		Unclassifiable/Attainment.		
AQCR 184 Central Oklahoma Intrastate (remainder of)		Unclassifiable/Attainment.		
Canadian County				
Grady County				
Kingfisher County				
Lincoln County				
Logan County				
McClain County				
Pottawatomie County				
AQCR 185 North Central Oklahoma Intrastate		Unclassifiable/Attainment.		
Garfield County				
Grant County				
Kay County				
Noble County				
Payne County				
AQCR 186 Northeastern Oklahoma Intrastate		Unclassifiable/Attainment.		
Craig County				
Creek County				
Delaware County				
Mayes County				
Muskogee County				
Nowata County				
Okmulgee County				
Osage County				
Ottawa County				
Pawnee County				
Rogers County				

OKLAHOMA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Tulsa County				
Wagoner County				
Washington County				
AQCR 187 Northwestern Oklahoma Intrastate	.....	Unclassifiable/Attainment.		
Alfalfa County				
Beaver County				
Blaine County				
Cimarron County				
Custer County				
Dewey County				
Ellis County				
Harper County				
Major County				
Roger Mills County				
Texas County				
Woods County				
Woodward County				
AQCR 188 Southeastern Oklahoma Intrastate	.....	Unclassifiable/Attainment.		
Atoka County				
Bryan County				
Carter County				
Choctaw County				
Coal County				
Garvin County				
Haskell County				
Hughes County				
Johnston County				
Latimer County				
Love County				
Marshall County				
McIntosh County				
Murray County				
Okfuskee County				
Pittsburg County				
Pontotoc County				
Pushmataha County				
Seminole County				
AQCR 189 Southwestern Oklahoma Intrastate	.....	Unclassifiable/Attainment.		
Beckham County				
Caddo County				
Comanche County				
Cotton County				
Greer County				
Harmon County				
Jackson County				
Jefferson County				
Kiowa County				
Stephens County				
Tillman County				
Washita County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 39. In § 81.338, the table entitled "Oregon—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.338 Oregon.

OREGON—OZONE (8-HOUR STANDARD)

Designated area	Designation area [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA: (Air Quality Maintenance Area)		Unclassifiable/Attainment..		

OREGON—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation area[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Clackamas County (part)				
Multnomah County (part)				
Washington County (part)				
Salem Area: (Salem Area Transportation Study)				
Marion County (part)		Unclassifiable/Attainment..		
Polk County		Unclassifiable/Attainment..		
AQCR 190 Central Oregon Intrastate (remainder of)		Unclassifiable/Attainment..		
Crook County				
Deschutes County				
Hood River County				
Jefferson County				
Klamath County				
Lake County				
Sherman County				
Wasco County				
AQCR 191 Eastern Oregon Intrastate		Unclassifiable/Attainment..		
Baker County				
Gilliam County				
Grant County				
Harney County				
Malheur County				
Morrow County				
Umatilla County				
Union County				
Wallowa County				
Wheeler County				
AQCR 192 Northwest Oregon Intrastate		Unclassifiable/Attainment..		
Clatsop County				
Lincoln County				
Tillamook County				
AQCR 193 Portland Interstate (part)		Unclassifiable/Attainment..		
Lane County (part) Eugene Springfield Air Quality Maintenance Area				
AQCR 193 Portland Interstate (remainder of)		Unclassifiable/Attainment..		
Benton County				
Clackamas County (part) remainder				
Columbia County				
Lane County (part) remainder				
Linn County				
Marion County (part) The area outside the Salem Area Transportation Study				
Multnomah County (part) remainder				
Polk County (part) The area outside the Salem Area Transportation Study				
Washington County (part) remainder				
Yamhill County				
AQCR 194 Southwest Oregon Intrastate (part)				
Jackson County (part) Medford-Ashland Air Quality Maintenance Area.		Unclassifiable/Attainment..		
AQCR 194 Southwest Oregon Intrastate (remainder of)		Unclassifiable/Attainment..		
Coos County				
Curry County				
Douglas County				
Jackson County (part) remainder				
Josephine County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 40. In § 81.339, the table entitled "Pennsylvania—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem-Easton, PA:				
Carbon County		Nonattainment		Subpart 1.
Lehigh County		Nonattainment		Subpart 1.
Northampton County		Nonattainment		Subpart 1.
Altoona, PA: Blair County		Nonattainment		Subpart 1.
Clearfield & Indiana Cos., PA:				
Clearfield County		Nonattainment		Subpart 1.
Indiana County		Nonattainment		Subpart 1.
Erie, PA: Erie County		Nonattainment		Subpart 1.
Franklin Co., PA: Franklin County		Nonattainment		Subpart 1.
Greene Co., PA: Greene County		Nonattainment		Subpart 1.
Harrisburg-Lebanon-Carlisle, PA:				
Cumberland County		Nonattainment		Subpart 1.
Dauphin County		Nonattainment		Subpart 1.
Lebanon County		Nonattainment		Subpart 1.
Perry County		Nonattainment		Subpart 1.
Johnstown, PA: Cambria County		Nonattainment		Subpart 1.
Lancaster, PA: Lancaster County		Nonattainment		Subpart 2/Moderate.
Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE:				
Bucks County		Nonattainment		Subpart 2/Moderate.
Chester County		Nonattainment		Subpart 2/Moderate.
Delaware County		Nonattainment		Subpart 2/Moderate.
Montgomery County		Nonattainment		Subpart 2/Moderate.
Philadelphia County		Nonattainment		Subpart 2/Moderate.
Pittsburgh-Beaver Valley, PA:				
Allegheny County		Nonattainment		Subpart 1.
Armstrong County		Nonattainment		Subpart 1.
Beaver County		Nonattainment		Subpart 1.
Butler County		Nonattainment		Subpart 1.
Fayette County		Nonattainment		Subpart 1.
Washington County		Nonattainment		Subpart 1.
Westmoreland County		Nonattainment		Subpart 1.
Reading, PA: Berks County		Nonattainment		Subpart 1.
Scranton-Wilkes-Barre, PA:				
Lackawanna County		Nonattainment		Subpart 1.
Luzerne County		Nonattainment		Subpart 1.
Monroe County		Nonattainment		Subpart 1.
Wyoming County		Nonattainment		Subpart 1.
State College, PA: Centre County		Nonattainment		Subpart 1.
Tioga Co., PA: Tioga County		Nonattainment		Subpart 1.
Williamsport, PA: Lycoming County		Unclassifiable/Attainment.		
York, PA:				
Adams County		Nonattainment		Subpart 1.
York County		Nonattainment		Subpart 1.
Youngstown-Warren-Sharon, PA–OH: Mercer County		Nonattainment		Subpart 1.
AQCR 151 NE Pennsylvania Intrastate (remainder of):				
Bradford County		Unclassifiable/Attainment.		
Sullivan County		Unclassifiable/Attainment.		
AQCR 178 NW Pennsylvania Interstate (remainder of):				
Cameron County		Unclassifiable/Attainment.		
Clarion County		Unclassifiable/Attainment.		
Elk County		Unclassifiable/Attainment.		
Forest County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
McKean County		Unclassifiable/Attainment.		
Potter County		Unclassifiable/Attainment.		
Venango County		Unclassifiable/Attainment.		
AQCR 195 Central Pennsylvania Intrastate (remainder of):				
Bedford County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Huntingdon County		Unclassifiable/Attainment.		
Mifflin County		Unclassifiable/Attainment.		
Montour County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		

PENNSYLVANIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Rest of State		Unclassifiable/Attainment.		
Columbia County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Juniata County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Northumberland County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Schuylkill County		Unclassifiable/Attainment.		
Snyder County		Unclassifiable/Attainment.		
Somerset County		Unclassifiable/Attainment.		
Susquehanna County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 41. In § 81.340, the table entitled "Rhode Island—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.340 Rhode Island.

* * * * *

RHODE ISLAND—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Providence (all of RI), RI:				
Bristol County		Nonattainment		Subpart 2/Moderate.
Kent County		Nonattainment		Subpart 2/Moderate.
Newport County		Nonattainment		Subpart 2/Moderate.
Providence County		Nonattainment		Subpart 2/Moderate.
Washington County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 42. In § 81.341, the table entitled "South Carolina—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.341 South Carolina.

SOUTH CAROLINA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Columbia, SC:				
Lexington County (part)	(2)	Nonattainment	(2)	Subpart 1.
Portion along MPO lines				
Richland County (part)	(2)	Nonattainment	(2)	Subpart 1.
Portion along MPO lines				
Greenville-Spartanburg-Anderson, SC:				
Anderson County	(2)	Nonattainment	(2)	Subpart 1.
Greenville County	(2)	Nonattainment	(2)	Subpart 1.
Spartanburg County	(2)	Nonattainment	(2)	Subpart 1.
Charlotte-Gastonia-Rock Hill, NC-SC:				
York County (part)		Nonattainment		Subpart 2/Moderate.
Portion along MPO lines				
Rest of State:		Unclassifiable/Attainment.		
Abbeville County				
Aiken County				
Allendale County				
Bamberg County				
Barnwell County				
Beaufort County				
Berkeley County				
Calhoun County				
Charleston County				

SOUTH CAROLINA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Cherokee County				
Chester County				
Chesterfield County				
Clarendon County				
Colleton County				
Darlington County				
Dillon County				
Dorchester County				
Edgefield County				
Fairfield County				
Florence County				
Georgetown County				
Greenwood County				
Hampton County				
Horry County				
Jasper County				
Kershaw County				
Lancaster County				
Laurens County				
Lee County				
Lexington County (part) remainder				
Marion County				
Marlboro County				
McCormick County				
Newberry County				
Oconee County				
Orangeburg County				
Pickens County				
Richland County (part) remainder				
Saluda County				
Sumter County				
Union County				
Williamsburg County				
York County (part) remainder				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 43. In § 81.342, the table entitled "South Dakota—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.342 South Dakota.

SOUTH DAKOTA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Aurora County		Unclassifiable/Attainment.		
Beadle County		Unclassifiable/Attainment.		
Bennett County		Unclassifiable/Attainment.		
Bon Homme County		Unclassifiable/Attainment.		
Brookings County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Brule County		Unclassifiable/Attainment.		
Buffalo County		Unclassifiable/Attainment.		
Butte County		Unclassifiable/Attainment.		
Campbell County		Unclassifiable/Attainment.		
Charles Mix County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Codington County		Unclassifiable/Attainment.		
Corson County		Unclassifiable/Attainment.		
Custer County		Unclassifiable/Attainment.		
Davison County		Unclassifiable/Attainment.		
Day County		Unclassifiable/Attainment.		
Deuel County		Unclassifiable/Attainment.		

SOUTH DAKOTA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Dewey County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Edmunds County		Unclassifiable/Attainment.		
Fall River County		Unclassifiable/Attainment.		
Faulk County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Gregory County		Unclassifiable/Attainment.		
Haakon County		Unclassifiable/Attainment.		
Hamlin County		Unclassifiable/Attainment.		
Hand County		Unclassifiable/Attainment.		
Hanson County		Unclassifiable/Attainment.		
Harding County		Unclassifiable/Attainment.		
Hughes County		Unclassifiable/Attainment.		
Hutchinson County		Unclassifiable/Attainment.		
Hyde County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jerauld County		Unclassifiable/Attainment.		
Jones County		Unclassifiable/Attainment.		
Kingsbury County		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Lyman County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
McCook County		Unclassifiable/Attainment.		
McPherson County		Unclassifiable/Attainment.		
Meade County		Unclassifiable/Attainment.		
Mellette County		Unclassifiable/Attainment.		
Miner County		Unclassifiable/Attainment.		
Minnehaha County		Unclassifiable/Attainment.		
Moody County		Unclassifiable/Attainment.		
Pennington County		Unclassifiable/Attainment.		
Perkins County		Unclassifiable/Attainment.		
Potter County		Unclassifiable/Attainment.		
Roberts County		Unclassifiable/Attainment.		
Sanborn County		Unclassifiable/Attainment.		
Shannon County		Unclassifiable/Attainment.		
Spink County		Unclassifiable/Attainment.		
Stanley County		Unclassifiable/Attainment.		
Sully County		Unclassifiable/Attainment.		
Todd County		Unclassifiable/Attainment.		
Tripp County		Unclassifiable/Attainment.		
Turner County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Walworth County		Unclassifiable/Attainment.		
Yankton County		Unclassifiable/Attainment.		
Ziebach County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 44. In § 81.343, the table entitled "Tennessee—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Chattanooga, TN-GA:				
Hamilton County		Nonattainment		Subpart 1.
Meigs County		Nonattainment		Subpart 1.
Clarkesville-Hopkinsville, TN-KY:				
Montgomery County		Nonattainment		Subpart 1.
Johnson City-Kingsport-Bristol, TN:				
Hawkins County	(2)	Nonattainment	(2)	Subpart 1.
Sullivan County	(2)	Nonattainment	(2)	Subpart 1.

TENNESSEE—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Knoxville, TN:				
Anderson County		Nonattainment		Subpart 1.
Blount County		Nonattainment		Subpart 1.
Cocke County (part)		Nonattainment		Subpart 1.
(Great Smoky Mtn Park)				
Jefferson County		Nonattainment		Subpart 1.
Knox County		Nonattainment		Subpart 1.
Loudon County		Nonattainment		Subpart 1.
Sevier County		Nonattainment		Subpart 1.
Memphis, TN-AR:				
Shelby County		Nonattainment		Subpart 2/Moderate.
Nashville, TN:				
Davidson County	(2)	Nonattainment	(2)	Subpart 1.
Rutherford County	(2)	Nonattainment	(2)	Subpart 1.
Sumner County	(2)	Nonattainment	(2)	Subpart 1
Williamson County	(2)	Nonattainment	(2)	Subpart 1.
Wilson County	(2)	Nonattainment	(2)	Subpart 1.
Rest of State		Unclassifiable/Attainment.		
Bedford County				
Benton County				
Bledsoe County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				
Cocke County (part) remainder				
Coffee County				
Crockett County				
Cumberland County				
Decatur County				
DeKalb County				
Dickson County				
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hancock County				
Hardeman County				
Hardin County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Johnson County				
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				

TENNESSEE—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Monroe County				
Moore County				
Morgan County				
Obion County				
Overton County				
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Scott County				
Sequatchie County				
Smith County				
Stewart County				
Tipton County				
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

45. In § 81.344, the table entitled "Texas—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Beaumont/Port Arthur, TX:				
Hardin County	.....	Nonattainment	.....	Subpart 2/Marginal.
Jefferson County	.....	Nonattainment	.....	Subpart 2/Marginal.
Orange County	.....	Nonattainment	.....	Subpart 2/Marginal.
Dallas-Fort Worth, TX:				
Collin County	.....	Nonattainment	.....	Subpart 2/Moderate.
Dallas County	.....	Nonattainment	.....	Subpart 2/Moderate.
Denton County	.....	Nonattainment	.....	Subpart 2/Moderate.
Ellis County	.....	Nonattainment	.....	Subpart 2/Moderate.
Johnson County	.....	Nonattainment	.....	Subpart 2/Moderate.
Kaufman County	.....	Nonattainment	.....	Subpart 2/Moderate.
Parker County	.....	Nonattainment	.....	Subpart 2/Moderate.
Rockwall County	.....	Nonattainment	.....	Subpart 2/Moderate.
Tarrant County	.....	Nonattainment	.....	Subpart 2/Moderate.
Houston-Galveston-Brazoria, TX:				
Brazoria County	.....	Nonattainment	.....	Subpart 2/Moderate.
Chambers County	.....	Nonattainment	.....	Subpart 2/Moderate.
Fort Bend County	.....	Nonattainment	.....	Subpart 2/Moderate.
Galveston County	.....	Nonattainment	.....	Subpart 2/Moderate.
Harris County	.....	Nonattainment	.....	Subpart 2/Moderate.
Liberty County	.....	Nonattainment	.....	Subpart 2/Moderate.
Montgomery County	.....	Nonattainment	.....	Subpart 2/Moderate.
Waller County	.....	Nonattainment	.....	Subpart 2/Moderate.
San Antonio, TX:				
Bexar County	(2)	Nonattainment	(2)	Subpart 1.
Comal County	(2)	Nonattainment	(2)	Subpart 1.
Guadalupe County	(2)	Nonattainment	(2)	Subpart 1.
Victoria Area:				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Victoria County	.....	Unclassifiable/Attainment.		
AQCR 022 Shreveport-Texarkana-Tyler Interstate	.....	Unclassifiable/Attainment.		
Anderson County				
Bowie County				
Camp County				
Cass County				
Cherokee County				
Delta County				
Franklin County				
Gregg County				
Harrison County				
Hopkins County				
Lamar County				
Marion County				
Morris County				
Panola County				
Rains County				
Red River County				
Rusk County				
Smith County				
Titus County				
Upshur County				
Van Zandt County				
Wood County				
AQCR 106 S Louisiana-SE Texas Interstate (remainder of).	.....	Unclassifiable/Attainment.		
Angelina County				
Houston County				
Jasper County				
Nacogdoches County				
Newton County				
Polk County				
Sabine County				
San Augustine County				
San Jacinto County				
Shelby County				
Trinity County				
Tyler County				
AQCR 153 El Paso-Las Cruces-Alamogordo Interstate	.....	Unclassifiable/Attainment.		
Brewster County				
Culberson County				
El Paso County				
Hudspeth County				
Jeff Davis County				
Presidio County				
AQCR 210 Abilene-Wichita Falls Intrastate	.....	Unclassifiable/Attainment.		
Archer County				
Baylor County				
Brown County				
Callahan County				
Clay County				
Coleman County				
Comanche County				
Cottle County				
Eastland County				
Fisher County				
Foard County				
Hardeman County				
Haskell County				
Jack County				
Jones County				
Kent County				
Knox County				
Mitchell County				
Montague County				
Nolan County				
Runnels County				
Scurry County				
Shackelford County				
Stephens County				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Stonewall County				
Taylor County				
Throckmorton County				
Wichita County				
Wilbarger County				
Young County				
AQCR 211 Amarillo-Lubbock Intrastate	.....	Unclassifiable/Attainment.		
Armstrong County				
Bailey County				
Briscoe County				
Carson County				
Castro County				
Childress County				
Cochran County				
Collingsworth County				
Crosby County				
Dallam County				
Deaf Smith County				
Dickens County				
Donley County				
Floyd County				
Garza County				
Gray County				
Hale County				
Hall County				
Hansford County				
Hartley County				
Hemphill County				
Hockley County				
Hutchinson County				
King County				
Lamb County				
Lipscomb County				
Lubbock County				
Lynn County				
Moore County				
Motley County				
Ochiltree County				
Oldham County				
Parmer County				
Potter County				
Randall County				
Roberts County				
Sherman County				
Swisher County				
Terry County				
Wheeler County				
Yoakum County				
AQCR 212 Austin-Waco Intrastate	.....	Unclassifiable/Attainment.		
Bastrop County				
Bell County				
Blanco County				
Bosque County				
Brazos County				
Burleson County				
Burnet County				
Caldwell County				
Coryell County				
Falls County				
Fayette County				
Freestone County				
Grimes County				
Hamilton County				
Hays County				
Hill County				
Lampasas County				
Lee County				
Leon County				
Limestone County				
Llano County				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Madison County				
McLennan County				
Milam County				
Mills County				
Robertson County				
San Saba County				
Travis County				
Washington County				
Williamson County				
AQCR 213 Brownsville-Laredo Intrastate		Unclassifiable/Attainment.		
Cameron County				
Hidalgo County				
Jim Hogg County				
Starr County				
Webb County				
Willacy County				
Zapata County				
AQCR 214 Corpus Christi-Victoria Intrastate (remainder of).		Unclassifiable/Attainment.		
Aransas County				
Bee County				
Brooks County				
Calhoun County				
DeWitt County				
Duval County				
Goliad County				
Gonzales County				
Jackson County				
Jim Wells County				
Kenedy County				
Kleberg County				
Lavaca County				
Live Oak County				
McMullen County				
Refugio County				
San Patricio County				
AQCR 214 Corpus Christi-Victoria Intrastate (part)		Unclassifiable/Attainment.		
Nueces County				
AQCR 215 Metro Dallas-Fort Worth Intrastate (remainder of).		Unclassifiable/Attainment.		
Cooke County				
Erath County				
Fannin County				
Grayson County				
Henderson County				
Hood County				
Hunt County				
Navarro County				
Palo Pinto County				
Somervell County				
Wise County				
AQCR 216 Metro Houston-Galveston Intrastate (remainder of).		Unclassifiable/Attainment.		
Austin County				
Colorado County				
Matagorda County				
Walker County				
Wharton County				
AQCR 217 Metro San Antonio Intrastate (remainder of)		Unclassifiable/Attainment.		
Atascosa County				
Bandera County				
Dimmit County				
Edwards County				
Frio County				
Gillespie County				
Karnes County				
Kendall County				
Kerr County				
Kinney County				
La Salle County				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Maverick County				
Medina County				
Real County				
Uvalde County				
Val Verde County				
Wilson County				
Zavala County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (part)	.....	Unclassifiable/Attainment.		
Ector County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (remainder of).	.....	Unclassifiable/Attainment.		
Andrews County				
Borden County				
Coke County				
Concho County				
Crane County				
Crockett County				
Dawson County				
Gaines County				
Glasscock County				
Howard County				
Irion County				
Kimble County				
Loving County				
Martin County				
Mason County				
McCulloch County				
Menard County				
Midland County				
Pecos County				
Reagan County				
Reeves County				
Schleicher County				
Sterling County				
Sutton County				
Terrell County				
Tom Green County				
Upton County				
Ward County				
Winkler County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 46. In § 81.345, the table entitled "Utah—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Salt Lake City Area:				
Davis County	.....	Unclassifiable/Attainment.		
Salt Lake County	.....	Unclassifiable/Attainment.		
Rest of State:	.....	Unclassifiable/Attainment.		
Beaver County				
Box Elder County				
Cache County				
Carbon County				
Daggett County				
Duchesne County				
Emery County				
Garfield County				
Grand County				
Iron County				

UTAH—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Juab County				
Kane County				
Millard County				
Morgan County				
Piute County				
Rich County				
San Juan County				
Sanpete County				
Sevier County				
Summit County				
Tooele County				
Uintah County				
Utah County				
Wasatch County				
Washington County				
Wayne County				
Weber County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 47. In § 81.346, the table entitled "Vermont—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.346 Vermont.

* * * * *

VERMONT—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 159 Champlain Valley Interstate (part)				
Addison County		Unclassifiable/Attainment.		
Chittenden County		Unclassifiable/Attainment.		
AQCR 159 Champlain Calley Interstate (remainder of)		Unclassifiable/Attainment.		
Franklin County				
Grand Isle County				
Rutland County				
AQCR 221 Vermont Intrastate (part)		Unclassifiable/Attainment.		
Windsor County				
AQCR 221 Vermont Intrastate (remainder of)		Unclassifiable/Attainment.		
Bennington County				
Caledonia County				
Essex County				
Lamoille County				
Orange County				
Orleans County				
Washington County				
Windham County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 48. In § 81.347, the table entitled "Virginia—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Frederick Co., VA:				
Frederick County	(2)	Nonattainment	(2)	Subpart 1.
Winchester City	(2)	Nonattainment	(2)	Subpart 1.
Fredericksburg, VA:				
City of Fredericksburg		Nonattainment		Subpart 2/Moderate.

VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Spotsylvania County		Nonattainment		Subpart 2/Moderate.
Stafford County		Nonattainment		Subpart 2/Moderate.
Madison & Page Cos. (Shenandoah NP), VA:				
Madison County (part)		Nonattainment		Subpart 1.
Page County (part)		Nonattainment		Subpart 1.
Norfolk-Virginia Beach-Newport News (Hampton Roads), VA:				
Chesapeake City		Nonattainment		Subpart 2/Marginal.
Gloucester County		Nonattainment		Subpart 2/Marginal.
Hampton City		Nonattainment		Subpart 2/Marginal.
Isle of Wight County		Nonattainment		Subpart 2/Marginal.
James City County		Nonattainment		Subpart 2/Marginal.
Newport News City		Nonattainment		Subpart 2/Marginal.
Norfolk City		Nonattainment		Subpart 2/Marginal.
Poquoson City		Nonattainment		Subpart 2/Marginal.
Portsmouth City		Nonattainment		Subpart 2/Marginal.
Suffolk City		Nonattainment		Subpart 2/Marginal.
Virginia Beach City		Nonattainment		Subpart 2/Marginal.
Williamsburg City		Nonattainment		Subpart 2/Marginal.
York County		Nonattainment		Subpart 2/Marginal.
Richmond-Petersburg, VA:				
Charles City County		Nonattainment		Subpart 2/Moderate.
Chesterfield County		Nonattainment		Subpart 2/Moderate.
Colonial Heights City		Nonattainment		Subpart 2/Moderate.
Hanover County		Nonattainment		Subpart 2/Moderate.
Henrico County		Nonattainment		Subpart 2/Moderate.
Hopewell City		Nonattainment		Subpart 2/Moderate.
Petersburg City		Nonattainment		Subpart 2/Moderate.
Prince George County		Nonattainment		Subpart 2/Moderate.
Richmond City		Nonattainment		Subpart 2/Moderate.
Roanoke, VA:				
Botetourt County	(2)	Nonattainment	(2)	Subpart 1.
Roanoke City	(2)	Nonattainment	(2)	Subpart 1.
Roanoke County	(2)	Nonattainment	(2)	Subpart 1.
Salem City	(2)	Nonattainment	(2)	Subpart 1.
Washington, DC-MD-VA:				
Alexandria City		Nonattainment		Subpart 2/Moderate.
Arlington County		Nonattainment		Subpart 2/Moderate.
Fairfax City		Nonattainment		Subpart 2/Moderate.
Fairfax County		Nonattainment		Subpart 2/Moderate.
Falls Church City		Nonattainment		Subpart 2/Moderate.
Loudoun County		Nonattainment		Subpart 2/Moderate.
Manassas City		Nonattainment		Subpart 2/Moderate.
Manassas Park City		Nonattainment		Subpart 2/Moderate.
Prince William County		Unattainment		Subpart 2/Moderate.
AQCR 207 Eastern Tennessee-SW Virginia Interstate (remainder of).		Unclassifiable/Attainment.		
Bland County				
Bristol City				
Buchanan County				
Carroll County				
Dickenson County				
Galax City				
Grayson County				
Lee County				
Norton City				
Russell County				
Scott County				
Smyth County				
Tazewell County				
Washington County				
Wise County				
Wythe County				
AQCR 222 Central Virginia Intrastate		Unclassifiable/Attainment.		
Amelia County				
Amherst County				
Appomattox County				
Bedford City				
Bedford County				
Brunswick County				

VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Buckingham County				
Campbell County				
Charlotte County				
Cumberland County				
Danville City				
Franklin County				
Halifax County				
Henry County				
Lunenburg County				
Lynchburg City				
Martinsville City				
Mecklenburg County				
Nottoway County				
Patrick County				
Pittsylvania County				
Prince Edward County				
AQCR 223 Hampton Roads Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Franklin City				
Southampton County				
AQCR 224 NE Virginia Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Accomack County				
Albemarle County				
Caroline County				
Charlottesville City				
Culpeper County				
Essex County				
Fauquier County				
Fluvanna County				
Greene County				
King and Queen County				
King George County				
King William County				
Lancaster County				
Louisa County				
Madison County (part) remainder				
Mathews County				
Middlesex County				
Nelson County				
Northampton County				
Northumberland County				
Orange County				
Rappahannock County				
Richmond County				
Westmoreland County				
AQCR 225 State Capital Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Dinwiddie County				
Emporia City				
Goochland County				
Greensville County				
New Kent County				
Petersburg City				
Powhatan County				
Surry County				
Sussex County				
AQCR 226 Valley of Virginia Intrastate	.....	Unclassifiable/Attainment.		
Alleghany County				
Augusta County				
Bath County				
Buena Vista City				
Clarke County				
Covington City				
Craig County				
Floyd County				
Giles County				
Harrisonburg City				
Highland County				
Lexington City				
Montgomery County				
Page County (part) remainder				
Pulaski County				

VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Radford City				
Rockbridge County				
Rockingham County				
Shenandoah County				
Staunton City				
Warren County				
Waynesboro City				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 49. In § 81.348, the table entitled "Washington—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE (8-HOUR STANDARD)

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Portland-Vancouver AQMA Area:				
Clark County (part)		Unclassifiable/Attainment.		
Air Quality Maintenance Area				
Seattle-Tacoma Area:		Unclassifiable/Attainment.		

WASHINGTON—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the westem portion of Snohomish County: Starting at the mouth of the Nisqually river extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southernmost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. NE., and Menzel Lake Rd.; thence south-southeasterly along the Menzel Lake Rd., and the Lake Roesiger Rd., a distance of approximately 6 miles to the northemmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.				
AQCR 062 E Washington-N Idaho Interstate (part)	.....	Unclassifiable/Attainment.		
Spokane County	.....	Unclassifiable/Attainment.		
AQCR 062 E Washington-N Idaho Interstate (remainder of).	.....	Unclassifiable/Attainment.		
Adams County				
Asotin County				
Columbia County				
Garfield County				
Grant County				
Lincoln County				
Whitman County				
AQCR 193 Portland Interstate (remainder of)	.....	Unclassifiable/Attainment.		
Clark County (part) remainder				
Cowlitz County				
Lewis County				
Skamania County				
Wahkiakum County				
AQCR 227 Northern Washington Intrastate	.....	Unclassifiable/Attainment.		
Chelan County				
Douglas County				
Ferry County				
Okanogan County				
Pend Oreille County				
Stevens County				
AQCR 228 Olympic-Northwest Washington Intrastate	.....	Unclassifiable/Attainment.		

WASHINGTON—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Clallam County				
Grays Harbor County				
Island County				
Jefferson County				
Mason County				
Pacific County				
San Juan County				
Skagit County				
Thurston County				
Whatcom County				
AQCR 229 Puget Sound Intrastate (remainder of)		Unclassifiable/Attainment.		
King County (part) remainder				
Kitsap County				
Snohomish County (part) remainder				
AQCR 230 South Central Washington Intrastate		Unclassifiable/Attainment.		
Benton County				
Franklin County				
Kittitas County				
Klickitat County				
Walla Walla County				
Yakima County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 50. In § 81.349, the table entitled "West Virginia—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Berkeley & Jefferson Cos, WV:				
Berkeley County	(2)	Nonattainment	(2)	Subpart 1.
Jefferson County	(2)	Nonattainment	(2)	Subpart 1.
Charleston, WV:				
Kanawha County		Nonattainment		Subpart 1.
Putnam County		Nonattainment		Subpart 1.
Huntington-Ashland, WV-KY:				
Cabell County		Nonattainment		Subpart 1.
Wayne County		Nonattainment		Subpart 1.
Parkersburg-Marietta, WV-OH:				
Wood County		Nonattainment		Subpart 1.
Wheeling, WV-OH:				
Marshall County		Nonattainment		Subpart 1.
Ohio County		Nonattainment		Subpart 1.
Steubenville-Weirton, OH-WV:				
Brooke County		Nonattainment		Subpart 1.
Hancock County		Nonattainment		Subpart 1.
Rest of State		Unclassifiable/Attainment.		
Barbour County				
Boone County				
Braxton County				
Calhoun County				
Clay County				
Doddridge County				
Fayette County				
Gilmer County				
Grant County				
Greenbrier County				
Hampshire County				
Hardy County				
Harrison County				
Jackson County				
Lewis County				
Lincoln County				

WEST VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Logan County				
Marion County				
Mason County				
McDowell County				
Mercer County				
Mineral County				
Mingo County				
Monongalia County				
Monroe County				
Morgan County				
Nicholas County				
Pendleton County				
Pleasants County				
Pocahontas County				
Preston County				
Raleigh County				
Randolph County				
Ritchie County				
Roane County				
Summers County				
Taylor County				
Tucker County				
Tyler County				
Upshur County				
Webster County				
Wetzel County				
Wirt County				
Wyoming County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 51. In § 81.350, the table entitled "Wisconsin—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Door County, WI:				
Door County		Nonattainment		Subpart 1.
Kewaunee County, WI:				
Kewaunee County		Nonattainment		Subpart 1.
Manitowoc County, WI:				
Manitowoc County		Nonattainment		Subpart 1.
Milwaukee-Racine, WI:				
Kenosha County		Nonattainment		Subpart 2/Moderate.
Milwaukee County		Nonattainment		Subpart 2/Moderate.
Ozaukee County		Nonattainment		Subpart 2/Moderate.
Racine County		Nonattainment		Subpart 2/Moderate.
Washington County		Nonattainment		Subpart 2/Moderate.
Waukesha County		Nonattainment		Subpart 2/Moderate.
Sheboygan, WI:				
Sheboygan County		Nonattainment		Subpart 2/Moderate.
Rest of State:				
Adams County		Unclassifiable/Attainment.		
Ashland County		Unclassifiable/Attainment.		
Barron County		Unclassifiable/Attainment.		
Bayfield County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Buffalo County		Unclassifiable/Attainment.		
Burnett County		Unclassifiable/Attainment.		
Calumet County		Unclassifiable/Attainment.		
Chippewa County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		

WISCONSIN—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Columbia County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Dane County		Unclassifiable/Attainment.		
Dodge County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Dunn County		Unclassifiable/Attainment.		
Eau Claire County.		Unclassifiable/Attainment.		
Florence County		Unclassifiable/Attainment.		
Fond du Lac County		Unclassifiable/Attainment.		
Forest County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Green County		Unclassifiable/Attainment.		
Green Lake County		Unclassifiable/Attainment.		
Iowa County		Unclassifiable/Attainment.		
Iron County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Juneau County		Unclassifiable/Attainment.		
La Crosse County		Unclassifiable/Attainment.		
Lafayette County		Unclassifiable/Attainment.		
Langlade County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Marathon County		Unclassifiable/Attainment.		
Marinette County		Unclassifiable/Attainment.		
Marquette County		Unclassifiable/Attainment.		
Menominee County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Oconto County		Unclassifiable/Attainment.		
Oneida County		Unclassifiable/Attainment.		
Outagamie County		Unclassifiable/Attainment.		
Pepin County		Unclassifiable/Attainment.		
Pierce County		Unclassifiable/Attainment.		
Polk County		Unclassifiable/Attainment.		
Portage County		Unclassifiable/Attainment.		
Price County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Rock County		Unclassifiable/Attainment.		
Rusk County		Unclassifiable/Attainment.		
St. Croix County		Unclassifiable/Attainment.		
Sauk County		Unclassifiable/Attainment.		
Sawyer County		Unclassifiable/Attainment.		
Shawano County		Unclassifiable/Attainment.		
Taylor County		Unclassifiable/Attainment.		
Trempealeau County		Unclassifiable/Attainment.		
Vernon County		Unclassifiable/Attainment.		
Vilas County		Unclassifiable/Attainment.		
Walworth County		Unclassifiable/Attainment.		
Washburn County		Unclassifiable/Attainment.		
Waupaca County		Unclassifiable/Attainment.		
Waushara County		Unclassifiable/Attainment.		
Winnebago County		Unclassifiable/Attainment.		
Wood County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 52. In § 81.351, the table entitled "Wyoming—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.351 Wyoming.

* * * * *

WYOMING—OZONE (8-HOUR STANDARD)

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment.		
Albany County		Unclassifiable/Attainment.		
Big Horn County		Unclassifiable/Attainment.		

WYOMING—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Campbell County		Unclassifiable/Attainment.		
Carbon County		Unclassifiable/Attainment.		
Converse County		Unclassifiable/Attainment.		
Crook County		Unclassifiable/Attainment.		
Fremont County		Unclassifiable/Attainment.		
Goshen County		Unclassifiable/Attainment.		
Hot Springs County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Laramie County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Natrona County		Unclassifiable/Attainment.		
Niobrara County		Unclassifiable/Attainment.		
Park County		Unclassifiable/Attainment.		
Platte County		Unclassifiable/Attainment.		
Sheridan County		Unclassifiable/Attainment.		
Sublette County		Unclassifiable/Attainment.		
Sweetwater County		Unclassifiable/Attainment.		
Teton County		Unclassifiable/Attainment.		
Uinta County		Unclassifiable/Attainment.		
Washakie County		Unclassifiable/Attainment.		
Weston County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 53. In § 81.352, the table entitled "American Samoa—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.352 American Samoa.

* * * * *

AMERICAN SAMOA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

■ 54. In § 81.353, the table entitled "Guam—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.353 Guam.

* * * * *

GUAM—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

■ 55. In § 81.354, the table entitled "Northern Mariana Islands—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.354 Northern Mariana Islands.

* * * * *

NORTHERN MARIANA ISLANDS—OZONE (8-HOUR STANDARD)

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
Whole State		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

■ 56. In § 81.355, the table entitled "Puerto Rico—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.355 Puerto Rico.

* * * * *

PUERTO RICO—OZONE (8-HOUR STANDARD)

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Adjuntas Municipio				
Aguada Municipio				
Aguadilla Municipio				
Aguas Buenas Municipio				
Aibonito Municipio				
Añasco Municipio				
Arecibo Municipio				
Arroyo Municipio				
Barceloneta Municipio				
Barranquitas Municipio				
Bayamón County				
Cabo Rojo Municipio				
Caguas Municipio				
Camuy Municipio				
Canóvanas Municipio				
Carolina Municipio				
Cataño County				
Cayey Municipio				
Ceiba Municipio				
Ciales Municipio				
Cidra Municipio				
Coamo Municipio				
Comerío Municipio				
Corozal Municipio				
Culebra Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guánica Municipio				
Guayama Municipio				
Guayanilla Municipio				
Guaynabo County				
Gurabo Municipio				
Hatillo Municipio				
Hormigueros Municipio				
Humacao Municipio				
Isabela Municipio				
Jayuya Municipio				
Juana Díaz Municipio				
Juncos Municipio				
Lajas Municipio				
Lares Municipio				
Las Marías Municipio				
Las Piedras Municipio				
Loíza Municipio				
Luquillo Municipio				
Manatí Municipio				
Maricao Municipio				
Maunabo Municipio				
Mayagüez Municipio				
Moca Municipio				
Morovis Municipio				
Naguabo Municipio				
Naranjito Municipio				
Orocovis Municipio				
Patillas Municipio				
Peñuelas Municipio				
Ponce Municipio				
Quebradillas Municipio				
Rincón Municipio				
Río Grande Municipio				
Sabana Grande Municipio				
Salinas Municipio				
San Germán Municipio				
San Juan Municipio				

PUERTO RICO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
San Lorenzo Municipio San Sebastián Municipio Santa Isabel Municipio Toa Alta Municipio Toa Baja County Trujillo Alto Municipio Utuado Municipio Vega Alta Municipio Vega Baja Municipio Vieques Municipio Villalba Municipio Yabucoa Municipio Yauco Municipio				

[1] This date is June 15, 2004, unless otherwise noted.

■ 57. In § 81.356, the table entitled "Virgin Islands—Ozone (8-Hour Standard)" is added to read as follows:

§ 81.356 Virgin Islands.

* * * * *

VIRGIN ISLANDS—OZONE (8-HOUR STANDARD)

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
St. Croix St. John St. Thomas				

[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 04–9152 Filed 4–29–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51 and 81

[OAR 2003–0079, FRL–7651–7]

RIN 2060–AJ99

Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is taking final action on key elements of the program to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). This final rule addresses the following topics: classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS (*i.e.*, when the 1-hour NAAQS will no longer apply); how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS; attainment dates; and the timing of emissions reductions needed for attainment. We are issuing this rule so that States and Tribes will know how we plan to classify areas and transition from implementation of the 1-hour NAAQS to implementation of the 8-hour NAAQS. The intended effect of the rule is to provide certainty to States and Tribes regarding classifications for the 8-hour NAAQS and their continued obligations with respect to existing requirements. This document is Phase 1 of the program to implement the 8-hour ozone NAAQS. We plan to issue a second rule, Phase 2, within the next several months which will address the remaining 8-hour implementation issues, *e.g.*, requirements for reasonable further progress (RFP), requirements for modeling and attainment demonstrations, and requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT).

DATES: Effective Date: This rule is effective on June 15, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0079. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, we have placed a variety of earlier materials regarding implementation of the 8-hour ozone NAAQS on the Web site: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.*

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality

Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541-5666, fax number (919) 541-0824 or by e-mail at *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541-5550, fax number (919) 541-0824 or by e-mail at *gerth.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

I. When Did EPA Propose This Rule?

On June 2, 2003 (68 FR 32805), we published a proposed rule to implement the 8-hour ozone NAAQS. The proposal addressed a number of implementation issues, including the two core implementation issues addressed in this final rule, *e.g.*, how the Clean Air Act (CAA or Act) classification provisions will apply for the 8-hour ozone NAAQS and the transition from the 1-hour NAAQS to the 8-hour NAAQS, including when the 1-hour NAAQS will be revoked and anti-backsliding principles. We proposed one or more options for each issue addressed in the proposal. In addition, we included two possible frameworks to implement the 8-hour ozone NAAQS. These frameworks were complete implementation strategies comprised of one option for each implementation issue addressed in the proposed rule. The following principles guided us in the development of the underlying

options and the frameworks to implement the 8-hour ozone NAAQS in the proposed rule: to protect public health, provide incentives for expeditious attainment of the 8-hour ozone NAAQS and avoid incentives for delay; to provide reasonable but expeditious attainment deadlines; to establish a basic, straightforward structure that could be communicated easily; to provide flexibility to States and EPA on implementation approaches and control measures while ensuring that the implementation strategy is supported by the CAA; to emphasize national and regional measures to help areas come into attainment and, where possible, reduce the need for those local controls that are more expensive than national and regional measures; and to provide a smooth transition from implementation of the 1-hour ozone NAAQS to implementation of the 8-hour ozone NAAQS. An additional goal was to clarify the role of Tribes in implementing the 8-hour ozone NAAQS. Section 301(d) of the CAA recognizes that the American Indian Tribal governments are generally the appropriate authority to implement the CAA in Indian country. As discussed in the Tribal Authority Rule (TAR) (63 FR 7262, February 12, 1998, and 59 FR 43960–43961, August 25, 1994), it is appropriate to treat Tribes in the same manner as States. Therefore, when we discuss the role of the State in implementing this rule we are also referring to the Tribes. Please refer to the proposed rule (68 FR 32802, June 2, 2003) for a detailed discussion and background information on the 8-hour ozone problem and EPA's strategy for addressing it, the 8-hour ozone NAAQS and associated litigation, and the stakeholder process for gathering input into this effort, among other topics.

On August 6, 2002 (68 FR 46536), we published a notice of availability of the draft regulatory text for the proposed rule to implement the 8-hour ozone NAAQS. This notice started a 30-day public comment period on the draft regulatory text. In addition, on October 21, 2003 (68 FR 60054), we reopened the public comment period for 15 days to solicit additional comment on alternative approaches for classifying ozone nonattainment areas, based on comments received during the comment period.

II. What Is EPA's Schedule for Taking Final Action on the Proposal?

In our June 2, 2003 proposal, we stated that we planned to issue the final implementation rule in December of 2003. While there is not a CAA deadline for promulgating a strategy to implement the 8-hour ozone NAAQS, the CAA does establish a deadline for EPA to promulgate designations of nonattainment areas under section 107 of the CAA.[1] We have entered into a consent decree that requires us to promulgate designations by April 15, 2004.[2] Our goal was to issue a final implementation rule by the end of 2003 because the States and Tribes indicated a strong interest in having an opportunity to understand the impacts of being designated nonattainment prior to promulgation of designations for the 8-hour NAAQS. Based on the large number of public comments received on our proposal and our need to consider and respond to those comments before taking final action, we were unable to issue a final rule prior to April 15, 2004 that addresses all issues raised in the proposal. This final rule addresses several key components of the proposed rule: how the classification provisions of the CAA will apply for purposes of the 8-hour ozone NAAQS and the transition from the 1-hour NAAQS to the 8-hour NAAQS, including when the 1-hour NAAQS will be revoked, how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS, attainment dates, and the timing of emissions reductions needed for attainment.

Within the next several months, we plan to issue a second final rule, Phase 2, which will address many of the planning and control obligations under sections 172 and 182 of the CAA that will apply for purposes of implementing the 8-hour ozone NAAQS. These include, among other things, RFP, RACT, attainment demonstrations and maintenance plans, and new source review (NSR). Neither Phase 1 nor Phase 2 will address the appropriate tests under the 8-hour ozone NAAQS for demonstrating conformity of Federal actions to State implementation plans (SIPs). A proposed rule was published on November 5, 2003 (68 FR 62689) addressing transportation conformity requirements applicable in 8-hour ozone nonattainment areas. In addition, EPA is revising its general conformity regulations and plans to issue a proposed rule in the spring of 2004.

[1] Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA–21) revised the deadline to promulgate nonattainment designations to provide an additional year (to July 2000) but HR3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling in the litigation challenging the NAAQS, whichever came first.

[2] American Lung Association v. EPA (D.D.C. No. 1:02CV02239).

III. What Is Included in This Rule?

Today's action, Phase 1 of the implementation rule, focuses on two key implementation issues: (1) Classifying areas for the 8-hour NAAQS and (2) transitioning from the 1-hour to the 8-hour NAAQS, which includes revocation of the 1-hour NAAQS and the anti-backsliding principles that should apply upon revocation.[3] In addition, it addresses several additional, related issues. We believe that classifications and anti-backsliding are key elements of the implementation program that are of primary interest to the States and Tribes prior to the final designations. In addition, because section 182(a) of the CAA provides that classifications will occur "by operation of law" at the time of designation, EPA believes it is critical that the public understands at the time of designations how the classification provisions will apply.

IV. In Short, What Does This Final Rule Contain?

This summary is intended to give only a convenient overview of our final rule. It should not be relied on for the details of the actual rule. The final rule (regulatory text) and the discussion of it in the next section below should be consulted directly.

Both the preamble and the rule may use the following terms to discuss four categories of areas for purposes of the anti-backsliding provisions: (1) 8-hour NAAQS Nonattainment/1-hour NAAQS Nonattainment; (2) 8-hour NAAQS Nonattainment/1-hour NAAQS Maintenance; (3) 8-hour NAAQS Attainment/1-hour NAAQS Nonattainment; (4) 8-hour NAAQS Attainment/1-hour NAAQS Maintenance. These categories are, respectively: (1) Areas that remain designated nonattainment for the 1-hour NAAQS at the time of designation as nonattainment for the 8-hour NAAQS; (2) Areas that are maintenance areas for the 1-hour NAAQS at the time of designation as nonattainment for the 8-hour NAAQS; (3) Areas that remain designated nonattainment for the 1-hour NAAQS at the time of designation as attainment for the 8-hour NAAQS; and (4) Areas that are maintenance areas for the 1-hour NAAQS at the time of designation as attainment for the 8-hour NAAQS.

[3] We use the term "revocation" as shorthand for a determination under 40 CFR 50.9(b) that the 1-hour NAAQS no longer applies to one or more areas.

A. How Will EPA Reconcile the Classification Provisions of Subparts 1 and 2? How Will EPA Classify Nonattainment Areas for the 8-Hour Standard?

The final rule incorporates Option 2 of the proposal. Each area with a current 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) will be classified under subpart 2 based on its 8-hour design value. All other areas will be covered under subpart 1 using their 8-hour design values.

In brief, this approach works as follows:

- First, we will determine which 8-hour areas will be covered under subpart 2 and which under subpart 1. Any area with a 1-hour ozone design value (at the time of designation) that meets or exceeds the statutory level of 0.121 ppm that Congress specified in Table 1 of section 181 will be classified under subpart 2 and will be subject to the control obligations associated with its classification.[4] Any area with a 1-hour design value (at the time of designation) that is below the level of 0.121 ppm will be covered under subpart 1 and subject to the control obligations in section 172.
- Second, subpart 2 areas will be classified as marginal, moderate, serious, severe or extreme based on the area's 8-hour design value (at the time of designation). Since Table 1 is based on 1-hour design values, and application of the Table as written would produce absurd results, we are promulgating a regulation translating the thresholds in Table 1 of section 181 from 1-hour values to 8-hour values.

Under the Final Classification Approach, How Will EPA Classify Subpart 1 Areas?

We are adopting the second option but modified as a result of comments. We are creating an overwhelming transport classification that will be available to subpart 1 areas that demonstrate they are affected by overwhelming transport of ozone and its precursors and demonstrate they meet the definition of a rural transport area in section 182(h). However, areas would not have to demonstrate that transport was due solely to sources from outside the State (interstate transport) as was implied by the June 2, 2003 proposal. All other areas that do not qualify for the overwhelming transport classification would not be classified.

[4] In the Phase 2 rule, we will address the control obligations that apply to areas under both subpart 1 and subpart 2.

Proposed Incentive Feature

We are not including the proposed incentive feature in the final rule.

B. How Will EPA Treat Attainment Dates for the 8-Hour Ozone Standard?

We are adopting the time periods for attainment that we proposed for areas under both subpart 1 and subpart 2 of the CAA. For areas subject to subpart 2 of the CAA, the maximum period for attainment will run from the effective date of designations and classifications for the 8-hour standard and will be the same periods as provided in Table 1 of section 181(a):

- Marginal—3 years
- Moderate—6 years
- Serious—9 years
- Severe—15 or 17 years
- Extreme—20 years

Consistent with section 172(a)(2)(A), for areas subject to subpart 1 of the CAA, the period for attainment will be no later than 5 years after the effective date of the designation. However, EPA may grant an area an attainment date no later than 10 years after designation, if warranted based on the factors provided in section 172(a)(2)(A).

How Will EPA Address the Provision Regarding 1-Year Extensions?

We are adopting the interpretation that we proposed on June 2, 2003. Under both sections 172(a)(2)(C) and 181(a)(5), an area will be eligible for the first of the 1-year extensions under the 8-hour standard if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

C. How Will EPA Implement the Transition From the 1-Hour to the 8-Hour Standard in a Way To Ensure Continued Momentum in States' Efforts Toward Cleaner Air?

There are two key issues that EPA considered together regarding the transition from the 1-hour standard to the 8-hour standard: (1) When will the 1-hour standard no longer apply (*i.e.*, be "revoked"); and (2) what protections are in place to ensure that, once the 1-hour standard is revoked, air quality will not degrade and that progress toward attainment will continue as areas transition from implementing the 1-hour standard to implementing the 8-hour standard. As in the proposed rule, the second key issue has three components: (1) What requirements that applied based on an area's classification for the 1-hour standard must continue to apply to that area; (2) for how long; and (3) in what area. Below, we set forth our final transition approach in four parts: (1) When will the 1-hour standard no longer apply (*i.e.*, when will it be revoked); (2) what 1-hour obligations should continue to apply once the 1-hour standard is revoked; (3) how long should those requirements continue to apply; and (4) what is the geographic area subject to the requirement.

1. When Will EPA Revoke the 1-Hour Standard?

We are adopting Option 1. We will revoke the 1-hour standard in full, including the associated designations and classifications, 1 year following the effective date of the designations for the 8-hour NAAQS.

2. What Requirements That Applied in an Area for the 1-Hour NAAQS Continue To Apply After Revocation of the 1-Hour NAAQS for That Area?

The approach we are adopting in the final rule is summarized below under the individual sections discussing each category of area and type of control obligation.

a. *Section 51.905(a)(1): 8-Hour NAAQS Nonattainment/1-Hour NAAQS Nonattainment*

(i) *Mandatory control measures.* We are adopting the approach we proposed. All areas designated nonattainment for the 8-hour ozone NAAQS and designated nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour NAAQS remain subject to control measures that applied by virtue of the area's classification for the 1-hour standard.

(ii) *Discretionary control measures.* We are adopting the approach we set forth in our proposed rule. A State may revise or remove discretionary control measures (including enforceable commitments) contained in its SIP for the 1-hour standard so long as the State demonstrates consistent with section 110(l) that such removal or modification will not interfere with attainment of or progress toward the 8-hour ozone NAAQS (or any other applicable requirement of the CAA).

(iii) *Measures to address growth.* We are not adopting the approach set forth in our proposed rule. For areas designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS and that are designated nonattainment for the 8-hour NAAQS, the major source applicability cut-offs and offset ratios for the area's 1-hour classification would not continue to apply after revocation of the 1-hour NAAQS.

(iv) *Planning SIPs.*

(A) *Outstanding rate of progress (ROP) Obligation.* We are adopting the approach set forth in our proposed rule for this category of areas. States remain obligated to meet the CAA-mandated ROP emission reduction targets that applied for the 1-hour standard, but discretionary measures adopted to meet those targets may be modified, if the State makes the necessary showing under section 110(l).

(B) *Unmet attainment demonstration obligations.* In the final rule, we are allowing the States to choose among three options that are tailored after the approaches addressed in the proposed rule. Thus, rather than establishing one mandatory approach, we are adopting a rule that will allow States to choose any one of the following three options:

- *Option 1.* Submit a 1-hour attainment demonstration.
- *Option 2.* Submit, no later than 1 year after the effective date of the 8-hour designations, an early five percent increment of progress plan toward the 8-hour standard.
- *Option 3.* Submit an early 8-hour ozone attainment demonstration SIP that ensures that the first segment of RFP is achieved early.

b. *Section 51.905(a)(2): 8-Hour NAAQS Nonattainment/1-Hour NAAQS Maintenance*

(i) *Mandatory control measures.* We are adopting the approach we took in the proposal and the draft regulatory text. This category of areas must continue to implement mandatory control requirements (*i.e.*, "applicable requirements") that have been approved into the SIP. However, since maintenance areas do not have any outstanding obligation to adopt mandatory control obligations for the 1-hour standard, the provision only addresses implementation, not adoption. In addition, this section recognizes that maintenance areas had the flexibility to move mandatory controls to the contingency measures portion of their maintenance plan.

(ii) *Discretionary control measures.* As with discretionary control measures for 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas, 1-hour NAAQS nonattainment/1-hour NAAQS maintenance areas will retain the discretion to modify any discretionary control measures upon a demonstration under section 110(l). We are not promulgating regulatory text because sections 110(l) and 193 of the CAA govern such SIP revisions.

(iii) *Measures to address growth.* We are adopting the approach we proposed, but our rationale relies on the final rule's provision that NSR under the 1-hour standard will no longer be a required implementation plan element as of revocation of the 1-hour standard. If an area has been redesignated to attainment for the 1-hour standard as of the effective date of the 8-hour nonattainment designation and is no longer required to implement a nonattainment NSR program, the area will not be required to revert back to the program it had for purposes of the 1-hour ozone standard.

As noted elsewhere, NSR offset ratios and major stationary source applicability provisions under the 1-hour standard are not being defined as "applicable requirements" after the 1-hour standard is revoked.

(iv) *Planning SIPs.* We are adopting the approach taken in the draft regulatory text. In redesignating an area to attainment, EPA must conclude that the area has met all requirements applicable under section 110 and part D. Thus, maintenance areas do not have continuing progress and attainment demonstration requirements.

c. *Section 51.905(a)(3): 8-Hour NAAQS Attainment/1-Hour NAAQS Nonattainment*

(i) *Mandatory control obligations.* We are adopting an approach consistent with our proposed rule. We have determined that mandatory control obligations will no longer apply once an area attains the 8-hour standard. Thus, because these areas are attaining the 8-hour standard, the State may request that obligations under applicable requirements be shifted to contingency measures once the 1-hour standard is revoked, consistent with sections 110(l) and 193 of the CAA. However, the State cannot remove the obligations from the SIP.

(ii) *Discretionary control obligations.* 8-hour NAAQS attainment/1-hour NAAQS nonattainment areas will retain the discretion to modify any discretionary controls upon a demonstration under section 110(l). However, such controls must remain in the SIP as contingency measures.

(iii) *Measures to address growth.* We are adopting the approach we set forth in our proposed rule for this category of areas. After the 1-hour standard is revoked, the CAA requires such areas to comply with prevention of significant deterioration (PSD), not NSR.

(iv) *Planning SIPs.* We are adopting our proposal with some modification. An area of this category will not be required to develop and submit outstanding attainment demonstration and ROP plans for the 1-hour standard for so long as the area continues to maintain the 8-hour NAAQS. However, if the area violates the 8-hour NAAQS prior to having an approved 8-hour maintenance plan under section 110(a)(1), the area will be required to submit a SIP revision to address outstanding ROP and attainment demonstration plans.

(v) *Maintenance plans for the 8-hour NAAQS.* We are adopting the approach we proposed. Areas that are either 8-hour NAAQS attainment/1-hour NAAQS nonattainment or 8-hour NAAQS attainment /1-hour NAAQS maintenance must adopt and submit a maintenance plan consistent with section 110(a)(1) within 3 years of designation as attainment for the 8-hour NAAQS. The maintenance plan should provide for continued maintenance of the 8-hour standard for 10 years following designation for the 8-hour NAAQS and should include contingency measures.

d. *Section 51.905(a)(4): 8-Hour NAAQS Attainment/1-Hour NAAQS Maintenance*

In the final rule, we created a section 51.905(a)(4) to apply to this category of areas. It covers obligations in an approved SIP and maintenance plans similar in manner to areas that are attainment for the 8-hour standard and were attainment for the 1-hour standard and had a maintenance plan.

3. For How Long Do These Obligations Continue To Apply?

We are adopting Option 2—control obligations an area is required to retain in the approved SIP for an area's 1-hour classification must continue to be implemented under the SIP until the area attains and is redesignated to attainment for the 8-hour NAAQS. At that time, the State may relegate such controls to the contingency measure portion of the SIP if the State demonstrates in accordance with section 110(l) that doing so will not interfere with maintenance of the 8-hour NAAQS or any other applicable requirement of the CAA. If at the time the area is redesignated to attainment for the 8-hour standard the State has an outstanding obligation to adopt a control requirement under the 1-hour standard, it remains obligated to do so, but may adopt it as a contingency measure.

4. Which Portions of an Area Designated for the 8-Hour NAAQS Remain Subject to the 1-Hour NAAQS Obligations?

The final rule incorporates most aspects of the approach as that contained in the proposal and in the draft regulatory text. The final rule provides that only the portion of the designated area for the 8-hour NAAQS that was designated nonattainment for

the 1-hour NAAQS is required to comply with the planning obligations, except in one circumstance: if the State elects to provide an early increment of progress or an early 8-hour attainment demonstration in lieu of an outstanding 1-hour attainment demonstration (for an 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment area under 51.905(a)(1)(ii)(B) and (C)), the increment of progress or early 8-hour attainment plan must apply for purposes of the entire 8-hour nonattainment area.

The final rule does not follow the approach in the proposal for the maintenance plan requirement for 8-hour attainment areas. The maintenance plans required for these areas must demonstrate maintenance only for the area designated nonattainment for the 1-hour NAAQS at the time of designation of the 8-hour standard.

5. What Obligations That Applied for the 1-hour NAAQS Will No Longer Apply After Revocation of the 1-hour NAAQS for an Area?

We are revising the approach we set forth in our proposed rule. In addition to the obligations noted in our proposal that would no longer apply after the 1-hour NAAQS is revoked, we are also providing clarification regarding the penalty obligations under sections 181(b)(4) and 185 of the CAA that apply in severe and extreme areas that do not attain the 1-hour standard by the applicable attainment date. The final rule also would not retain NSR under the 1-hour NAAQS. The final rule provides that as of the effective date of revocation of the 1-hour standard:

- We will no longer make findings of failure to attain the 1-hour standard and, therefore, (a) we will not reclassify areas to a higher classification for the 1-hour standard based on such a finding, and (b) areas that were classified as severe or extreme for the 1-hour NAAQS are not obligated to impose fees as provided under sections 181(b)(4) and 185 of the CAA under the 1-hour standard.
- Areas will not be obligated to continue to demonstrate conformity for the 1-hour NAAQS as of the effective date of the revocation of the 1-hour NAAQS.
- An area with an approved 1-hour maintenance plan under section 175A of the CAA may modify the maintenance plan to remove obligations related to developing a second 10-year maintenance plan for the 1-hour NAAQS and the obligation to implement contingency measures upon a violation of the 1-hour NAAQS.
- NSR under the 1-hour NAAQS will no longer be a required implementation plan element in areas that are 8-Hour NAAQS nonattainment/1-Hour NAAQS nonattainment. Instead, NSR under the 8-hour NAAQS will apply.

6. What Is the Continued Applicability of the NO_X SIP Call After Revocation of the 1-hour NAAQS?

We are adopting the approach we set forth in our proposed rule and draft regulatory text. States must continue to adhere to the emission budgets established by the NO_X transport rules after the 1-hour standard is revoked. States retain the authority to revise control obligations they have established for specific sources or source categories under the NO_X SIP Call rule so long as the State demonstrates consistent with section 110(l) that such modification will not interfere with attainment of or progress toward meeting the 8-hour NAAQS or any other applicable requirement of the CAA.

D. What Is the Required Timeframe for Obtaining Emissions Reductions to Ensure Attainment by the Attainment Date?

We are adopting the approach we set forth in our proposed rule, namely that emissions reductions needed for attainment must be implemented by the beginning of the ozone season immediately preceding the area's attainment date.

V. EPA's Final Rule

A. How Will EPA Reconcile the Classification Provisions of Subparts 1 and 2? How Will EPA Classify Nonattainment Areas for the 8-hour NAAQS? (Section VI.A. of Proposal; See 68 FR 32811; Section 51.902 of Draft and Final Rules)

1. Background

a. *Statutory framework and Supreme Court decision.* The CAA contains two sets of requirements—subpart 1 and subpart 2—that establish requirements for State plans implementing the ozone NAAQS in nonattainment areas. (Both are found in title I, part D.) Subpart 1 contains general, less prescriptive, requirements for SIPs for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment SIPs.[5]

When we promulgated the 8-hour ozone NAAQS on July 18, 1997, we indicated that we anticipated that States would implement the 8-hour NAAQS under the less prescriptive subpart 1 requirements. More specifically, we concluded that the CAA required areas designated nonattainment for the 1-hour ozone NAAQS to remain subject to the subpart 2 requirements for purposes of the 1-hour NAAQS until such time as they met that NAAQS (62 FR 38872). We also stated that those areas and all other areas would be subject only to subpart 1 for purposes of planning for the 8-hour ozone NAAQS. We determined not to immediately revoke the 1-hour NAAQS for all areas but to promulgate a rule (40 CFR 50.9(b)) providing that the 1-hour NAAQS and the associated designation would no longer apply to an area once EPA determined the area had attained the 1-hour NAAQS. Thus, areas that had not yet attained the 1-hour NAAQS retained their designation for that NAAQS and remained subject to the control obligations associated with their classification for the 1-hour NAAQS until they met it.

In February 2001, the Supreme Court ruled that the statute was ambiguous as to the relationship of subparts 1 and 2 for purposes of implementing the 8-hour NAAQS. *Whitman* v. *American Trucking Associations*, 531 U.S. 457, 481–86 (2001). The Court concluded, however, that the implementation approach set forth in the final NAAQS rule, which provided no role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* Specifically, with respect to classifying areas, the Supreme Court stated: [D]oes subpart 2 provide for classifying nonattainment ozone areas under the revised standard? It unquestionably does." *Whitman*, 531 U.S. at 482.

Despite recognizing that the classification provisions of subpart 2 (section 181(a)) apply for purposes of the 8-hour NAAQS, the Supreme Court also recognized that the subpart 2 classification scheme does not entirely fit with the revised 8-hour NAAQS and left it to EPA to develop a reasonable resolution of the roles of subparts 1 and 2 in classifying areas for and implementing a revised ozone NAAQS. *Id.* at 482–486.

In particular, the Court noted three portions of section 181—the classification provision in subpart 2—that it indicated were "ill-fitted to implementation of the revised standard." Id. at 483.

- First, the Court recognized that "using the old 1-hour averages of ozone levels * * * as subpart 2 requires * * * would produce at best an inexact estimate of the new 8-hour averages * * *" *Id.*

[5] State Implementation Plans; General Preamble for the Implementation of Title of the CAA Amendments of 1990; Proposed Rule." April 16, 1992 (57 FR 13498 at 13501 and 13510).

• Second, the Court recognized that the design values in Table 1 is based on the level of the 1-hour NAAQS (0.12 ppm) and noted that "to the extent the new ozone standard is stricter than the old one, * * * the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard (and thus nonattaining) but less than the approximation of the old standard codified by Table 1." *Id.*

• Third, the Court recognized that "Subpart 2's method for calculating attainment dates—which is simply to count forward a certain number of years from November 15, 1990 * * * seems to make no sense for areas that are first classified under a new standard after November 15, 1990." More specifically, the Court recognized that attainment dates for marginal (1993), moderate (1996), and serious (1999) areas had passed. *Id.* at 483–484.

b. *EPA's proposed rule and notice reopening the comment period.* In light of the Supreme Court's ruling, we examined the statute to determine the manner in which the subpart 2 classifications should apply for purposes of the 8-hour ozone NAAQS. We paid particular attention to the three portions of section 181 that the Supreme Court noted were ill-fitted for implementation of the revised 8-hour NAAQS. We examined those provisions in light of the legislative history and the overall structure of the CAA to determine what Congress intended for purposes of implementing a revised, more stringent ozone NAAQS.

On June 2, 2003 (68 FR 32802), we issued a proposed rule which identified two options for classifying areas for the 8-hour ozone NAAQS. Under Option 1 (68 FR 32812), we proposed to classify 8-hour ozone nonattainment areas according to the severity of their ozone pollution based on 8-hour design values.[6] Because the subpart 2 classification table is based on 1-hour design values, we proposed to translate the classification thresholds in Table 1 of section 181 to 8-hour design values. Under this option, all 8-hour nonattainment areas would be classified under subpart 2 as marginal, moderate, serious, severe or extreme.

Under Option 1, the threshold for the marginal classification would be an 8-hour design value of 0.085 ppm. Each of the 8-hour classification thresholds would be the same percentage above the 8-hour NAAQS as the corresponding statutory 1-hour threshold is above the 1-hour NAAQS. For example, since the statutory 1-hour ozone level for the moderate classification is 15 percent above the 1-hour NAAQS, the 8-hour ozone level for the moderate classification would be 15 percent above the 8-hour NAAQS.

The EPA developed a second option designed to provide States with greater flexibility on the measures included in their plans for meeting the 8-hour NAAQS. Under Option 2 (68 FR 32812), which we indicated was our preferred option, we proposed a two-step system for determining classifications for areas. We proposed as a first step, to divide areas into two groups based on each area's current 1-hour ozone design value. In accordance with the portion of the Supreme Court decision which indicated that there was no gap in the statute for those areas with a 1-hour design value above 0.121 ppm—the lowest level in Table 1 in section 181(a)—we proposed that areas with a current (*i.e.*, determined at the time of designation) 1-hour ozone design value greater than or equal to 0.121 ppm would be classified under subpart 2 for the 8-hour NAAQS. For areas with a 1-hour design value less than 0.121 ppm, *i.e.*, those areas the Court stated fell into the gap, we concluded that we must make a reasonable determination whether they should be covered under subpart 1 or subpart 2. We proposed that all of these areas would be covered under subpart 1. For the areas that did not fall into the gap and which must be classified under subpart 2, we proposed to classify them based on our translation of Table 1 in section 181(a), as described under Option 1.

We received a large number of comments on the classification options that we proposed, including recommendations for other approaches, most of which were variations on the options we proposed. On October 21, 2003 (68 FR 60054), we reopened the comment period on the proposed rule for 15 days to provide the public with an opportunity for additional comment on alternative approaches for classifying areas for the 8-hour ozone NAAQS that were suggested during the comment period. We also included two alternative strategies (Alternatives A and B) for classifying areas that EPA developed by combining ideas suggested by different commenters during the initial comment period.[7]

Alternatives A and B were designed to place more areas in higher classifications, which would provide areas with more time to attain but would impose additional mandatory control requirements. These alternatives also were designed to avoid or reduce instances in which a subpart 1 area could have higher 8-hour ozone levels than a subpart 2 area.

Alternative A would classify areas solely on the basis of 8-hour design values. The key feature of this alternative was that EPA would create a classification table of 8-hour values starting from an 8-hour design value that, to the extent possible, would be approximately equivalent to the 1-hour design value of 0.121 ppm in Table 1. Thus, the lowest level in the regulatory table was the 8-hour approximation of the 1-hour NAAQS as suggested by commenters, *i.e.*, 0.091 ppm. Areas with an 8-hour design value less than 0.091 ppm would be covered under subpart 1. Areas with an 8-hour design value at or above this level would be classified under subpart 2. To place areas in higher classifications, we narrowed the range for each classification to use 50 percent (instead of 100 percent) of the percentages that the classification thresholds were above the 1-hour NAAQS in our proposed June 2003 translation of Table 1. In other words, since the moderate threshold for the 1-hour NAAQS is 15 percent above the 1-hour NAAQS, we would adjust the moderate threshold for purposes of the 8-hour NAAQS to be 7.5 percent above 0.091 ppm (the lowest level in Table 1 for Alternative A).

Alternative B, a modified version of Option 2, retained the first step of Option 2, where we divide the areas based on their current 1-hour design value. As in Option 2, areas with 1-hour design values exceeding the statutory 0.121 ppm level would be regulated under subpart 2. In addition, any "gap" area (*i.e.*, those with a 1-hour design value less than 0.121 ppm) with a moderate-level (or higher) design value would be classified under subpart 2. All

[6] The design value of an area is based on the monitor for the area recording the highest ozone levels and indicates whether the area is violating or meeting the ozone NAAQS. For the 1-hour ozone NAAQS, the design value for an area is generally the 4th highest monitored ozone level at the monitor over a 3-year period. *See* 40 CFR part 50, appendix H and Memorandum of June 18, 1990 from William G. Laxton re "Ozone and Carbon Monoxide Design Value Calculations." Available at *http://www.epa.gov/ttn/naaqs/ozone/ozonetech/laxton.htm*. For the 8-hour ozone NAAQS, the design value is the average of each yearly 4th highest reading at a monitor over a 3-year period. *See* 40 CFR part 50, appendix I.

[7] The notice also solicited comment on additional issues that would arise if we selected one of the approaches identified in the notice reopening the comment period: (1) Whether we should modify the 5 percent reclassification feature of section 181(a)(4) of the CAA if we change our classification scheme to have a narrower range for each classification; (2) whether we should adopt the suggestion by commenters on the June 2, 2003 proposal that we change the 1-hour ozone threshold to 0.125 ppm rather than 0.121 ppm to determine if an area falls into subpart 1 vs. subpart 2 under classification Option 2; and (3) whether an adjustment other than 50 percent would be more appropriate for narrowing the range of each classification.

other gap areas would be covered by subpart 1. As with Alternative A, to place subpart 2 areas in higher classifications, we narrowed the range for each classification to 50 percent of the range in Table 1 of section 181. In other words, the moderate threshold would be 7.5 percent above the 8-hour NAAQS (0.085 ppm).

2. Summary of Final Rule

After considering all of the comments that were submitted, we are adopting Option 2. Each area with a current 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) will be classified under subpart 2 based on its 8-hour design value. All other areas will be covered under subpart 1 using their 8-hour design values.

In brief, this approach works as follows:

- First, we will determine which 8-hour areas will be covered under subpart 2 and which under subpart 1. Any area with a 1-hour ozone design value (at the time of designation) that meets or exceeds the statutory level of 0.121 ppm that Congress specified in Table 1 of section 181 will be classified under subpart 2 and will be subject to the control obligations associated with its classification.[8] Any area with a 1-hour design value (at the time of designation) that is below the level of 0.121 ppm will be covered under subpart 1 and subject to the control obligations in section 172.
- Second, subpart 2 areas will be classified as marginal, moderate, serious, severe or extreme based on the area's 8-hour design value (at the time of designation). Since Table 1 of section 181 is based on 1-hour design values, and application of the Table as written would produce absurd results, we are promulgating a regulation translating the thresholds in Table 1 of section 181 from 1-hour values to 8-hour values. (*See* Table 1 "Classification for 8-Hour NAAQS for Areas Subject to Section 51.902(a)" in section 51.903.)
- Third, in accordance with section 181(a)(4) and 181(b)(3), the State may request a lower or higher classification.
- Finally, as described in more detail below, section 172(a)(1) provides EPA with discretion whether to classify areas under subpart 1 and we are creating one classification—for qualifying areas affected by overwhelming transport. All other areas covered under subpart 1 will not be classified.

a. *Why did EPA select Option 2?* The EPA carefully considered the many comments we received on classification options and, in fact, sought additional input on alternatives presented and developed pursuant to comments received on the June 2003 proposal. The commenters were deeply divided on the merits of the options. Even after the conclusion of the October 2003 comment period, most commenters still favored Option 2 or Option 1. Only a few favored either Alternative A or Alternative B. Those commenters who suggested alternatives to Option 1 or Option 2 during the initial 60-day comment period did not support Alternatives A and B (which blended several suggestions from the initial comments) and they remained convinced that their suggested approach was the best classification approach.

Because the commenters were strongly divided over the appropriate classification approach, EPA re-examined the various alternatives in light of their consistency with the CAA, as interpreted by the Supreme Court, and their consistency with EPA's stated goals. While EPA believes that Options 1 and 2 and Alternatives A and B are all legally supportable under the CAA, we concluded that Option 2 best fits with the policy goals enunciated by EPA in the proposal and re-affirmed here. Thus, EPA has selected Option 2. We explain below why Option 2 will best accomplish the policy goals of EPA and why we believe it is consistent with the CAA.

(i) *Why will Option 2 best accomplish the policy goals of EPA?* One of EPA's stated goals at proposal was to provide flexibility to States and Tribes on implementation approaches and control measures within the structure of the CAA. As compared with the other alternatives considered, Option 2 places more areas under the more flexible provisions of the CAA (subpart 1), which will provide the States and Tribes with greater discretion in determining the mix of controls needed to expeditiously attain the 8-hour NAAQS. For example, Option 1 would place all areas under subpart 2, which mandates a number of specific control measures, thus limiting the States and Tribes ability to consider whether there are more effective and less costly ways to achieve the same level of emission reductions.[9] For example, an area might be able to achieve greater air quality improvement at less cost from local NO_X reductions than from local volatile organic compounds (VOC) reductions of 15 percent mandated for certain subpart 2 areas. This will enable some areas to meet the 8-hour NAAQS at less cost than under the other classification options because the States and Tribes will have greater flexibility in determining which control requirements to adopt to meet the NAAQS. Because areas are required to attain the NAAQS as expeditiously as practicable under both subpart 1 and subpart 2, Option 2 should not result in longer attainment periods than Option 1, with the exception of areas significantly affected by transported pollution (discussed below).

Additionally, placing some areas in subpart 1 provides States and EPA with greater flexibility to determine appropriate controls for areas that would have difficulty attaining the 8-hour NAAQS due to interstate pollution transport. In the 13 years since the CAA Amendments of 1990 were enacted (at which time, Congress created subpart 2), we have learned much about the long-range transport of ozone and the importance of employing regional controls in addition to local controls. Subpart 2 does not allow EPA and the States to consider transported pollution in determining the feasibility and benefits of mandated controls or in determining the appropriate attainment date for an area. Because of our increased understanding of transported pollution since Congress enacted the more restrictive provisions of subpart 2, we believe it makes sense to adopt an approach that does not shift "gap" areas into subpart 2. In other words, where Congress has not explicitly mandated that areas are subject to subpart 2, we don't believe it makes sense to adopt an approach that would shift some or all of those "gap" areas to subpart 2, which provides significantly less flexibility for bringing areas affected by transported pollution into attainment. (We discuss in more detail the flexibility provided by subpart 1 and how it better allows consideration of the current scientific knowledge regarding ozone formation and transport in the section below discussing why we place all of the "gap" areas in subpart 1.)

The EPA recognizes that the flexibility of Option 2 comes with some added complexity. One of EPA's stated goals was to establish an approach that is easy to understand. While Option 1 (classifying all areas under subpart 2) is simpler, we believe our goals regarding flexibility outweigh the simplicity of Option 1.

Another of EPA's stated aims at proposal was to ensure expeditious but reasonable attainment dates for the 8-hour NAAQS. The EPA believes that Option 2 is consistent with this

[8] In the Phase 2 rule, we will address the control and planning obligations that apply to areas under both subpart 1 and subpart 2.

[9] Similarly, Alternatives A and B would result in fewer areas being placed under subpart 1. (*See* 68 FR 60060, Table 2. October 21, 2003).

principle. Compared to Alternatives A and B, Option 2 will place more areas in lower classifications with shorter maximum attainment dates, encouraging expeditious attainment. While some commenters believed that maximum attainment dates under Option 2 would not allow enough time for some areas to meet the NAAQS, we believe that Option 2 provides sufficient time for most areas and that to the extent some areas may have difficulty, the CAA provides an avenue for relief, which is discussed below.

Based on information concerning the hypothetical nonattainment areas,[10] [11] we are confident that under Option 2 most areas currently exceeding the 8-hour NAAQS will be able to meet the NAAQS within the time limits provided for their classification, taking into consideration projected improvements in air quality under current programs and the potential for adoption of further national, regional and local measures.

EPA notes that there are uncertainties at this time about the time periods needed for attainment, especially for the limited number of areas needing substantial emissions reductions to attain. For example, it is difficult to determine in advance of State development of attainment plans when such an area will be able to attain the NAAQS. These plans are based on high-resolution local air quality modeling, refined emissions inventories and detailed analyses of the impacts and costs of potential local control measures.

Another factor is that new methods of achieving cost effective emissions reductions are continuing to be developed. Our repeated experience over the past three decades is that market forces stimulated by the CAA have repeatedly led to technological advances and learning through experience, making it possible over time to achieve greater emissions reductions at lower costs than originally anticipated.[12]

Other uncertainties reflect use of the most recent three years of air quality data for the actual designations and classifications, and use of more refined and area-specific modeling methodologies for projecting future ozone concentrations.

Regarding the use of later air quality data, we have interpreted the CAA's requirements under section 181 such that we must classify nonattainment areas that are covered under subpart 2 based on the most recent ozone design values, which are based on three years of data. Because of year-to-year variations in meteorology, this "snapshot in time" may not be representative of the normal magnitude of problems that a number of areas face.

Regarding modeling methodologies, national/regional modeling may indicate that a number of moderate areas may face difficulty attaining the standard by the maximum attainment date required for an area's classification. However, when a State using photochemical grid modeling predicts concentrations that are above the NAAQS after application of SIP controls, an optional weight of evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models. (Issues related to implementation of the standard—including issues on the attainment demonstration and modeling—will be addressed in the second phase of rulemaking.)

We are aware that some 8-hour nonattainment areas in the Eastern U.S. that are classified moderate using 2001–2003 air quality data will have difficulty attaining the NAAQS by the attainment date of 2010 (6 years after designation). We encourage States to request reclassification upward where the State finds that an area may need more time to attain than their classification would permit. In addition, EPA will consider bumping up areas subject to the five percent provision of section 181(a)(4) of the CAA on our own initiative where there is evidence that an area is unlikely to attain within the period allowed by their classification. The rulemaking that sets forth designations and classifications for the 8-hour standard discusses criteria we would use if we take this action.

If a State finds during the attainment planning process that feasible controls are not available and an area may need more time to attain the 8-hour NAAQS than their classification would permit, the statute provides a remedy. A State can receive more time to attain by voluntarily submitting a request to EPA for a higher classification. Section 181(b)(3) of the CAA directs EPA to grant a State's request for a higher classification and to publish notice of the request and EPA's approval. Although the area would have to meet the additional requirements for the higher classification, the same would be true if the area had been initially classified higher, under a system that placed more areas in higher classifications. Voluntary reclassification may be an attractive option if the State is unable to develop a plan that demonstrates an area will attain within the time period for its assigned classification. Some commenters were concerned that it may be difficult to develop support for a voluntary reclassification among interested parties. However, we believe such dialogue will lead the State to undertake a thorough analysis and balancing of how expeditiously the area can attain the NAAQS and the cost of the measures needed for attainment as these issues will be foremost in the stakeholders' minds.

The EPA prefers Option 2 rather than the alternatives that place more areas into higher classifications because in addition to providing a longer maximum timeframe in which to attain, the higher classifications impose additional statutorily-mandated requirements. While the additional requirements might be appropriate for areas that truly need the longer period to attain, it is likely that a number of areas that do not need a longer period to attain would also be placed in a higher classification under these alternatives. For example, several areas that would be covered by subpart 1 under Option 2, and which EPA projects are likely to attain the 8-hour levels NAAQS within 3 years based on existing programs, would be classified

[10] Revised: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-Hour Ozone National Ambient Air Quality Standard in Relation to Re-Opened Comment Period—Illustrative Analysis Based on 2000–2002 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards. Draft. October 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone,o3imp8hr/*.

[11] Qualitative Assessment of Alternative Coverage and Classification Options. First Addendum to "Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-hour, 0.08ppm Ozone National Ambient Air Quality Standard." Prepared by Innovative Strategies and Economics Group, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, Office of Air and Radiation, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. April 8, 2004.

[12] For instance, the cost of selective catalytic reduction (SCR) catalyst (for control of NO_X) has gone from $11,000—$14,000/cubic meter in 1998 to $3,500—$5,500/cubic meter currently. Advancements in low NO_X burner (LNB) technology and staged combustion have resulted in sharp NO_X reductions at much lower costs. New burner technologies have lowered NO_X emissions reductions by as much as 50 percent from previous designs. Costs have decreased from $25–38/kW in 1993 to about $15/kW in 2003. Memorandum of October 10, 2003 from Jim Staudt, Andover Technology Partners, Re: Prime Contract 68–W–03–028; Subcontract Agreement 23BL00114; ATP Contract #:C–03–007.

as moderate areas under Alternative B.[13] In those areas, the additional moderate-area control requirements are unlikely to be needed for expeditious attainment.

The EPA believes that under any of the classification approaches that were considered there will be areas that are "misclassified"—*i.e.*, the classification will not reflect the time the area needs to attain and the level of controls needed. The statute does not allow EPA to reclassify an area to a lower classification, except as provided in section 181(a)(4) regarding an initial 5 percent adjustment. It does, however, as described above, provide continuing authority for areas to be reclassified to a higher classification. For that reason, EPA believes the better approach is to use a scheme that may classify areas too low and areas that need more time to attain can use the voluntary reclassification provision of the CAA to obtain the appropriate classification.

(ii) *How is Option 2 consistent with the CAA as Interpreted by the Supreme Court?* The legal framework for Option 2 is described in detail in the June 2, 2003 proposed rule (68 FR 32813). In short, EPA relies on the Supreme Court's recognition that there is a gap in the statute with respect to areas "whose ozone levels are greater than the new standard (and thus not attaining) but less than the approximation of the old standard codified by Table 1." Thus, for areas with a 1-hour design value above the level codified in Table 1, EPA interprets the Supreme Court as determining that the CAA mandates that they be classified under subpart 2. For all other areas, the Court indicates there is a gap and EPA must determine a reasonable approach for classifying these areas. Option 2 is consistent with the CAA as interpreted by the Supreme Court because it places all areas with a 1-hour design value of 0.121 ppm or greater in subpart 2 and, for the reasons provided below, EPA's decision to classify all "gap" areas under subpart 1 is reasonable.

As we noted in the June 2, 2003 proposal (68 FR 32814), when faced with a similar issue following enactment of the CAA Amendments of 1990, we determined that areas that Congress did not mandate fall into the classification scheme of subpart 2 should be subject to only the planning obligations of subpart 1.[14] We believe it is appropriate to continue that interpretation of the CAA for 8-hour ozone areas—despite the fact that a significant number of areas designated nonattainment for the 8-hour NAAQS will fall into this group. This decision is reasonable because subpart 2 was developed by Congress 13 years ago and our scientific understanding of the causes of ozone pollution and the transport of ozone and its precursors has significantly advanced. In addition, subpart 1 was developed at the time that the 1-hour NAAQS was the NAAQS of concern. At that time, many areas had a long-term ozone problem that they had been unable to solve under the more flexible pre-1990 provisions of the CAA. The 8-hour NAAQS is different in many ways from the 1-hour NAAQS. Moreover, the areas that will be subject to subpart 1 are primarily areas that have not had the long-term pollution problem that Congress was concerned about when it created subpart 2.

Congress enacted subpart 2 with the understanding that all areas (except marginal areas, for which few, if any, controls for existing sources were required) would have to employ additional local controls to meet the 1-hour ozone NAAQS in a timely fashion. Since then, many local, regional and national control measures have been implemented, our understanding of the importance of interstate pollution transport has improved, and we have promulgated interstate NO_X transport rules to address transported pollution (the NO_X SIP call, October 27, 1998, 63 FR 53756). Today, regional modeling by EPA indicates that the majority of potential 8-hour nonattainment areas that fall into the gap will attain the 8-hour NAAQS by 2007 based on reductions from the NO_X SIP Call, the Federal Motor Vehicle Emissions Control Program, and other existing Federal and State control measures, without further local controls.

Some gap areas would be classified as moderate areas if placed under subpart 2. The EPA regional modeling shows that many of these are projected to attain by 2007 through existing regional or national measures. (The proposal provides estimates of the numbers of areas, *see* 68 FR 32814, col. 3).[15] If these areas were to be classified as moderate, they would be required to implement statutorily specified controls for moderate areas. We believe it is reasonable to adopt an approach that would not mandate new local controls in areas projected to meet the NAAQS within 3 years through emissions reductions required by existing programs.

Some commenters contended that placing these areas in subpart 1 created an "equity" problem because other areas with a similar 8-hour ozone design value would be placed under subpart 2. The EPA considered this issue when it reopened the comment period and set forth alternatives that would have placed areas with similar 8-hour design values in the same classification. While in one light such a situation may be perceived as inequitable, EPA believes that this is generally not the case. As an initial matter, EPA notes that the areas that fall under subpart 2 are areas with higher ozone 1-hour peak concentrations—*i.e.*, areas with levels above the 1-hour NAAQS.[16] Thus, the areas classified under subpart 1 do not have the same type of ozone problem as those classified under subpart 2 and the same control programs may not be needed for both types of areas. We note that the areas that will be classified under subpart 2 are the type of area that Congress considered at the time that it developed subpart 2 and it is more likely that subpart 2 will provide benefits for these areas. We also note that in the proposed rule, we proposed several ways to make the obligations under subpart 1 similar to those under subpart 2 for areas with a similar ozone problem. Thus, there are other means to address any inequities; EPA will

[13] Revised: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard in Relation to Re-Opened Comment Period—Illustrative Analysis Based on 2000–2002 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards. Draft. October 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[14] These areas included: (a) The transitional areas under section 185A (areas that were designated as an ozone nonattainment area as of the date of enactment of the CAA Amendments of 1990 but that did not violate the 1-hour ozone NAAQS between January 1, 1987, and December 31, 1989); (b) nonattainment areas that had incomplete (or no) recent attaining data and therefore could not be designated attainment; and (c) areas that were violating the 1-hour ozone NAAQS by virtue of their expected number of exceedances, but whose design values were lower than the threshold for which an area can be classified under Table 1 of subpart 2 (submarginal areas). *See* 57 FR 13498 at 13524 col. 3 *et seq.* (April 16, 1992).

[15] See also: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard. Illustrative Analysis Based on 1998–2000 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, April 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[16] For instance, the range of 1-hour ozone design values of the hypothetical subpart 1 areas is from 0.101 ppm to 0.120 ppm, with an average of 0.111 ppm. The range of 1-hour design values of subpart 2 areas is from 0.122 ppm to 0.175 ppm with an average of 0.133 ppm. See docket document OAR–2003–0079–0573 (REVISED: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone NAAQS in Relation to Re-Opened Comment Period) for the data used for these statistics.

consider equity and other factors in deciding control requirements for subpart 1 areas in Phase 2.

Most of the gap areas would be classified as marginal if classified under subpart 2 by 8-hour design value.[17] Because control requirements for marginal areas are similar to those for subpart 1 areas, and because most of these areas are projected to attain within 3 years, the distinction in regulatory category may make no practical difference for many of these areas. However, placing these areas under subpart 1 provides States and EPA with greater discretion to handle implementation difficulties that might arise in some of these areas. For example, a gap area might be unable to attain within the maximum attainment date for marginal areas (3 years after designation) because of pollution transport from an upwind nonattainment area with a later attainment deadline. In that event, subpart 2 would call for the area to be reclassified as moderate and for the area to implement additional local controls specified for moderate areas. For areas under subpart 1, however, we could provide additional time for the area to attain while the upwind sources implemented required controls if this were determined to be a more effective or more appropriate solution. Although regional modeling projections indicate that the NO_X SIP Call will bring most gap areas into attainment by 2007, some States have voiced concern that interstate or intrastate pollution transport may make timely attainment difficult for some 8-hour areas with near-term attainment deadlines (*e.g.*, 2007). Subpart 1 would provide States and EPA with more flexibility on the remedy in any such cases, while still requiring that subpart 1 areas adopt all reasonably available control measures to attain as expeditiously as practicable.[18] Some may perceive the placement of gap areas in subpart 1 (based on their 1-hour design values) as inequitable compared to placing other areas that have similar 8-hour design values in subpart 2 (based on their 1-hour design values). We do not believe, however, that it makes sense to limit our authority by placing gap areas in subpart 2 even though they may have 8-hour design values similar to areas that will be classified under subpart 2.

An advantage of Alternatives A and B was that they avoided or reduced equity concerns raised by some commenters with Option 2. Regardless, we believe that equity considerations should not override other considerations in determining how to best help areas attain the 8-hour NAAQS. Congress mandated that areas with 1-hour ozone levels above the level 0.121 ppm be classified under subpart 2. However, Congress did not specifically address the areas that fall into the "gap." Where Congress has left to EPA's discretion how to classify areas, we believe that factors we have considered above[19] outweigh any desire for "equity."

Additionally, we note that since 1990 we have learned that NO_X control is more important for many areas than was recognized at the time of the 1990 CAA Amendments. Some mandatory measures in subpart 2, such as the 15 percent VOC reduction required for certain areas, focus on VOC reductions. In some areas it will be more effective and less costly to reduce ozone through a strategy that places more emphasis on NO_X than VOC, and a 15 percent VOC reduction may not be part of an optimal strategy. Subpart 1 would allow such areas greater flexibility on choice of controls.

In summary, Option 2 meets the policy goals EPA specified in the proposal—most importantly, providing flexibility, and encouraging expeditious attainment of the NAAQS—and is consistent with the Supreme Court's ruling. Commenters were divided on the merits of different classification approaches and no single option appealed to a large majority of stakeholders. On balance, EPA determined that Option 2 was preferable to the other options identified. Thus, EPA is adopting Option 2.

3. Comments and Responses

This preamble briefly summarizes major comments on each portion of the Phase 1 rule and generally provides a brief response to those comments. The response to comment (RTC) document presents a more complete description of comments received and a more complete response to those comments.

Comment: The commenters were split on whether they preferred Option 1, under which all areas are classified under subpart 2 of the CAA, or Option 2, under which 8-hour nonattainment areas with 1-hour ozone design values of 0.121 ppm or greater at the time of designation are classified under subpart 2 and all other 8-hour nonattainment areas are classified under subpart 1. Those who supported Option 2, indicated it made better policy sense, was more flexible and more appropriate than Option 1, cost less, was better integrated with other regulations, provided more reasonable attainment dates, and was more consistent with the Supreme Court decision. A number of commenters supported Option 2, but recommended variations of that approach. These commenters raised one (or both) of two concerns with the approach recommended by EPA: (1) Since most of the areas fall into the lower classifications with short-term attainment dates, it does not provide sufficient time for many areas to attain; and (2) since some areas classified under subpart 1 will have a more severe 8-hour ozone problem than some areas classified under subpart 2, Option 2 is or may be perceived as inequitable. In addition, several commenters recommended options different than either of the options proposed by EPA.

Those who favored Option 1 argued that it was more consistent with the Supreme Court's decision and the CAA, that Subpart 2 was more likely to produce progress and faster attainment, was more consistent with Subpart 2 of the CAA, was more equitable and fair, and that Subpart 1 had other problems that made it less desirable.

Some commenters claimed both Options 1 and 2 were flawed, based on concerns about transport and concerns related to the Supreme Court decision. We received comments on the translation of Section 181's Table 1. These comments addressed the concerns such as: the proposed translation could result in attainment deadlines which are unrealistic and unachievable; it would be more logical and more consistent with the nature of the standard being implemented—the 8-hour standard—for EPA to translate the Table 1 thresholds into approximate 8-hour equivalents; and the starting threshold should be different from what EPA proposed. Some commenters

[17] Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard. Illustrative Analysis Based on 1998–2000 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, April 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[18] Concern about transport is supported by EPA's modeling for the Interstate Air Quality Rule (69 FR 4566, January 30, 2004); EPA has proposed to find that in the absence of further controls, 25 States would significantly contribute to downwind nonattainment in other States in 2010, even after the NO_X SIP Call has been in full effect. As a result, EPA has proposed to require the 25 States to reduce their emissions of NO_X to reduce interstate transport, with the reductions to be achieved by 2010 and 2015.

[19] These include trying to meet the following objectives as discussed above: (a) Providing flexibility in determining the most effective control; (b) achieving attainment at costs lower than those for strategies with prescribed measures; (c) providing flexibility in addressing nonattainment areas that are have difficulty attaining due to transport; and (d) ensuring expeditious but reasonable attainment dates.

offered other alternatives for the translation and/or the starting threshold.

There were several specific comments related to the draft regulatory text.

Our rationale for adopting Option 2 as the final classification approach is presented above. Below is a brief synopsis of the response to major comments.

Response to Comments Supporting Option 2: We generally agree with these comments and the final rule incorporates Option 2.

Response to Comments that Supported Option 2, But Recommending Variations That Would Provide More Time for Attainment: Based on our projections of future air quality based on regional modeling and experience with ozone control in the past, we believe that States may find during the attainment planning process that a limited number of areas may need more time to attain the 8-hour NAAQS than their classification would permit. However, the statute provides a remedy for this situation. A State can receive more time to attain by voluntarily submitting a request to EPA for a higher classification—including the classification they had under the 1-hour NAAQS. The CAA (Section 181(b)(3)) directs EPA to grant a State's request, and to publish notice of the request and EPA's approval. Although the area would have to meet the additional requirements for the higher classification, the same would be true if the area had been initially classified higher, under a classification system that placed more areas in higher classifications. The EPA recognizes that voluntary reclassification is a legitimate option under the CAA, and may be an attractive option if the State is unable to develop a plan that demonstrates an area will attain within the time period for its assigned classification. As noted in the October 21, 2003 notice reopening the comment period, we considered other classification approaches, including those suggested by commenters and EPA's Alternatives A and B, which would provide more areas with later attainment dates by placing more areas in higher classifications. However, EPA found that alternatives that provided more time to the areas with the worst ozone problems also provided higher classifications, accompanied by additional statutorily-mandated requirements, for areas that EPA believes may attain by the 2007 ozone season based on projected emissions reductions from existing programs. Under these approaches, these areas would be subject to controls that may not be necessary for attainment. The EPA believes it is more appropriate to use the statutory mechanism for a voluntary bump up for areas classified "too low" than to mandate controls for areas based on a classification that is "too high."

Response to Comments that Noted that Option 2 May Be Perceived as Inequitable: A number of other commenters dismissed the characterization of Option 2 as being inequitable. The EPA's response to the equity issue is discussed above.

Response to Comments that Recommended Options Different than the Options Proposed by EPA: Certain commenters suggested that areas still not meeting the 1-hour NAAQS should continue to implement the 1-hour NAAQS under subpart 2, but once the NAAQS is attained (or all mandated controls were implemented) the area would implement the 8-hour NAAQS under subpart 1. All areas attaining the 1-hour NAAQS would begin implementing the 8-hour NAAQS under subpart 1.

As explained more fully in the response to comments (RTC) document, EPA does not believe this approach is consistent with the CAA or the Supreme Court's decision on implementation of a revised ozone NAAQS. The issue before the Court was whether the classification provisions of subpart 2 apply for purposes of implementing the revised 8-hour ozone NAAQS. The Court unequivocally stated that those provisions do apply for purposes of implementing the 8-hour ozone NAAQS. 531 U.S. 482–84. We believe that any option that does not provide a role for the subpart 2 classification structure in implementing the 8-hour NAAQS is not consistent with the Court's interpretation of the CAA.

Commenters suggested several other options, some of which were described in our notice reopening the public comment period. Under one of these options, we would reduce the range for the subpart 2 classifications, which would have classified more subpart 2 areas in higher classifications, thereby extending the maximum period for attainment. We have addressed the problems associated with that kind of classification structure above. Under another of these options, the classification structure would have relied solely on 8-hour ozone design values. This approach was a variant of Option 2 in which all areas with 8-hour design value of less than a value that is equivalent to the 1-hour value of 0.121 ppm would be covered by subpart 1. This variant of Option 2 has the effect of moving source areas from Subpart 1 to Subpart 2 and at the same time placing more Subpart 2 areas in lower classification categories. The Subpart 2 areas placed in these lower classification categories would be subject to fewer mandatory requirements. However, EPA believes that this approach would increase the number of areas for which the initial classification would not provide sufficient time to attain.

The EPA's assessment of these and other options is included in the RTC document.

Response to Comments that Favored Option 1 and Argued that it was More Consistent with the Court Decision and the CAA: We believe Option 2 is a reasonable method for addressing the gaps that the Supreme Court recognized in the CAA. Option 2 provides more flexibility than Option 1 to States and Tribes to design strategies to meet the 8-hour ozone NAAQS in the most effective and least costly way considering local circumstances, while requiring and providing incentives for expeditious attainment of the health-based NAAQS. Since Option 1 would require all 8-hour nonattainment areas to be covered under subpart 2 with its set of prescriptive control measures, it would generally cost more but would not require attainment any more expeditiously than Option 2. Both subpart 1 and 2 require attainment dates "as expeditious as practicable" regardless of the maximum attainment dates specified in the CAA.

We believe that Option 2 is consistent both with the CAA and the Supreme Court's decision in *Whitman* as described above and in the June 2, 2003 proposed rule (68 FR 32813). In short, EPA relies on the Supreme Court's recognition that there is a gap in the statute with respect to areas "whose ozone levels are greater than the new standard (and thus not attaining) but less than the approximation of the old standard codified by Table 1." Thus, for areas with a 1-hour design value above the level codified in Table 1, EPA interprets the Supreme Court as determining that the CAA mandates that they be classified under subpart 2. For all other areas, the Court indicates there is a gap and EPA must determine a reasonable approach. For the policy reasons specified above, in the RTC and in the preamble to the proposed rule (68 FR 32814–15), EPA believes it is reasonable to address these "gap" areas under subpart 1.

Response to Comments Asserting that EPA does not have Authority to Modify Table 1 to Reflect 8-Hour Ozone Values: We disagree with those commenters who claim EPA does not have authority to modify Table 1 in section 181(a) to

reflect 8-hour design values. We acknowledge that EPA is applying the statute other than in the way it is written. We believe we have authority to do so because to apply it as written would produce absurd results. In enacting the classification structure in subpart 2, Congress linked the severity of an area's air quality problem with the time needed to attain and the stringency of the controls that an area would be required to adopt. Thus, areas with a more significant air quality problem were granted more time to attain the NAAQS, but were also subject to more stringent controls. If we applied Table 1, as written, for purposes of the 8-hour NAAQS, the classification scheme would not be related to the severity of the area's 8-hour ozone problem.

If 1-hour values were used to classify 8-hour nonattainment areas based solely on Table 1 as presented in section 181 of the CAA, there would be 2 serious areas, 9 moderate areas, and 26 marginal areas.[20] Unlike other areas, marginal areas (as explained elsewhere) are not subject to the requirement for attainment plans to ensure that they identify and adopt the controls necessary for attainment by their attainment date. Based on EPA's modeling projections of future ozone levels and past experience working with states on ozone SIPs, EPA believes it is clear that most of the areas that would be marginal if classified by 1-hour design value would fail to attain the 8-hour standard without additional local controls by the spring 2007 attainment date for marginal areas. These include major cities with elevated 8-hour ozone levels such as Chicago and Dallas-Fort Worth. In fact, over a quarter of these areas that would be marginal if classified by 1-hour design values were not projected to attain the 8-hour NAAQS without additional local controls even by 2010. The projection that many of these areas would not attain by 2010 without additional controls is further evidence they would not attain in 2007 without further controls. Thus, for many areas, classifying by 1-hour design value would not reflect the severity of their 8-hour ozone problem or the time needed to attain.

An additional problem is that the practical effect of placing many areas that cannot attain by 2007 into the marginal classification would be to delay development of plans for improving air quality to meet the 8-hour standard. This would be inconsistent with Congress's intent, reflected in the requirements of the Act, that areas attain air quality standards as expeditiously as practicable. Rather, Congress intended classifications to approximate the attainment needs of areas. In this circumstance, it is appropriate for EPA to make, by way of regulation, a limited modification to Table 1 to reflect Congressional intent.

We recognize that even under the approach adopted by EPA, some of the same anomalies will be created. For example, some areas may need more time to attain than provided by the area's initial classification. However, these anomalies are more limited because the classifications more appropriately recognize an area's 8-hour ozone problem. As noted above in our discussion on the basis for selecting Option 2, we believe the statutory mechanisms such as voluntary bump ups can address these inequities in the limited situations in which they arise. In comparison, if 1-hour values were used to classify 8-hour nonattainment areas based solely on Table 1 as presented in section 181 of the CAA, there would only be 2 serious areas, 9 moderate areas, and 26 marginal areas. This is a much different distribution than using Option 2, in which there would be more areas in the higher classifications (1 severe-17, 4 serious, 21 moderate) and far fewer (11) marginal areas. And, under the adopted approach, the distribution under subpart 2 is based on the area's 8-hour design value not its 1-hour design value.[21]

Response to Comments Favoring Option 1 Arguing that Subpart 2 was more Likely to Produce Progress and Faster Attainment: Other commenters raised concerns that because subpart 1 is less prescriptive than subpart 2 and potentially allows later attainment dates for the less polluted areas, areas will not in fact attain the 8-hour NAAQS as quickly under subpart 1 as they would be required to do under subpart 2. As evidence, these commenters point to the past failure of areas to attain the ozone NAAQS prior to the enactment of subpart 2 in 1990. We disagree.

Subpart 1 and subpart 2 both require areas to attain the 8-hour ozone NAAQS as expeditiously as practicable. Thus, the intention of the CAA is that regardless of whether an area is covered under subpart 1 or subpart 2, it must achieve clean air on the same schedule— *i.e.*, as expeditiously as practicable. In addition, CAA section 172(c)(1) requires that a SIP for a nonattainment area "* * * shall provide for implementation of all reasonably available control measures ["RACM"] as expeditiously as practicable * * * and shall provide for attainment of the [NAAQS]." In reviewing SIPs for approvability under subpart 1, we will evaluate whether the emission control measures in the SIP and the timing of implementation comports with the RACM and attainment provisions to ensure all RACM are adopted and implemented as expeditiously as practicable and that the attainment date is as expeditious as practicable. Subpart 1 sets an initial outside attainment date of 5 years following designation for the 8-hour NAAQS.

Subpart 2 sets the earliest outside attainment date as 3 years following designation[22] for marginal areas. Under subpart 2, marginal areas are not required to submit attainment demonstrations and, for all practical purposes, are not required to adopt additional local controls for existing sources.[23] Thus, in general, Congress anticipated that these areas would come into attainment within 3 years without significant additional local controls. We believe that most areas covered under subpart 1 with air quality problems similar to marginal areas will in fact come into attainment with the 8-hour

[20] Based on data from: Revised: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard in Relation to Re-Opened Comment Period—Illustrative Analysis Based on 2000–2002 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards. Draft. October 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[21] Based on data from: Revised: Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard in Relation to Re-Opened Comment Period—Illustrative Analysis Based on 2000–2002 Data. U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards. Draft. October 2003. Available at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

[22] As provided below, in the section regarding attainment dates for the 8-hour ozone NAAQS, subpart 2 actually specifies that the attainment period runs from the date of the 1990 CAA Amendments rather than the date of designation. However, as we explain in the attainment date section, for purposes of 8-hour NAAQS, we believe Congress intended those dates to run from the date of designation.

[23] The only control obligations mandated for marginal areas are that they fix flaws in their RACT rules and their I/M programs that existed at the time of the 1990 CAA Amendments. Areas designated nonattainment for the 1-hour NAAQS, which were the areas with the pre-90 RACT and I/M obligations, have already made these corrections. It is unlikely that any areas designated nonattainment for the 8-hour NAAQS will not have already made these corrections if they have such programs in place.

NAAQS on a similar timeframe as areas classified as marginal (*i.e.*, 3 years following designation).[24] In fact, we believe the prospects for near-term attainment based on existing programs are more favorable now than they were in 1990 because national and regional control programs already in place will achieve substantial reductions in NO_X and VOC emissions prior to May 2007. These include the regional NO_X SIP Call, which mandates interstate transport controls for certain States by May 31, 2004 (63 FR 53756, October 27, 1998); progressively more stringent emissions standards for new cars and light-duty trucks issued since 1990, most recently the Tier 2 motor vehicle emission standards, and associated sulfur-in-gasoline requirements (65 FR 6698, February 10, 2000); and the heavy duty diesel rule (66 FR 5002, January 18, 2001).

For areas covered under subpart 1 with an air quality problem similar to subpart 2 moderate areas, the presumptive maximum attainment date will be 1 year earlier—*i.e.*, 5 years following designation rather than 6 years. To receive a later attainment date, section 172(a)(2)(A) requires such areas to demonstrate more time is needed based on the severity of nonattainment and the availability and feasibility of pollution control measures. As to the first factor—severity of nonattainment—EPA believes that it would be difficult to justify providing a period longer than 6 years since similar areas classified under subpart 2 would not have a longer time to attain. Thus, such an area would need to demonstrate that the availability and feasibility of control measures (including those mandated under subpart 2) would justify an extension longer than 6 years. A similar analysis would apply if an area with an even more significant air quality problem were covered under subpart 1. For this reason, we do not believe that public health concerns support classifying all areas with similar air quality under subpart 2.

4. Under the Final Classification Approach, How Will EPA Classify Subpart 1 Areas? (Section VI.A.4. of Proposal; 68 FR 32813; Section 51.904 of Draft and Final Rules)

a. *Background.* Section 172(a)(1) provides that EPA has the discretion to classify areas subject to subpart 1. We proposed two options with respect to classifications for areas subject only to subpart 1 (68 FR 32813). First, we proposed to create no classifications. Second, we proposed to create one classification—an interstate overwhelming transport classification for areas that submit a modeled attainment demonstration showing the area's nonattainment problem is due to overwhelming transport and that meet the definition of a rural transport area under section 182(h) of the CAA. As we noted in the June 2, 2003 proposal, the area would receive an attainment date that is consistent with section 172(a)(2)(A), but that takes into consideration the following:

- The attainment date of upwind nonattainment areas that contribute to the downwind area's problem; and
- The implementation schedule for upwind area controls, regardless of their geographic scope (*e.g.*, national, regional, statewide, local).

This option would partially address Tribal concerns about designations where a Tribal area designated nonattainment does not contribute significantly to its own problem. This is one of the key issues for the Tribes who seek to have economic growth from new sources within their jurisdiction but that have difficulty obtaining emission reduction offsets from sources located either inside or outside Tribal areas.

b. *Summary of final rule.* We are adopting the second option but modified as a result of comments. We are creating an overwhelming transport classification that will be available to subpart 1 areas that demonstrate they are affected by overwhelming transport of ozone and its precursors and demonstrate they meet the definition of a rural transport area in section 182(h). However, areas would not have to demonstrate that transport was due solely to sources from outside the State (interstate transport) as was implied by the June 2, 2003 proposal. All other areas that do not qualify for the overwhelming transport classification would not be classified. In addition, an area may consider the effects of international transport of ozone and precursors in determining if the area is affected by overwhelming transport.

An overwhelming transport classification will accomplish several purposes. One purpose is to communicate to the public the need for an attainment date to account for the control timetable for upwind areas whose emissions are overwhelmingly contributing to the area's nonattainment problem. An area will be classified as an "Overwhelming Transport Area" upon full approval of an attainment demonstration SIP that demonstrates, using EPA-approved modeling, that the nonattainment problem in the area is due to "overwhelming transport," as set forth in guidance. The area must also meet that part of the definition of a rural transport area in section 182(h) that requires that an area not be in or adjacent to a Consolidated Metropolitan Statistical Area (CMSA).

In approving an attainment date for the area, EPA will consider: (1) The attainment date of the upwind nonattainment area or areas that contribute to the downwind area's problem; and (2) the implementation schedule for upwind area controls, regardless of their geographic scope (*e.g.*, national, regional, statewide, local).

In the June 2003 proposal, we proposed that such areas would be subject to requirements similar to those that apply to areas classified as marginal under subpart 2. We are considering the comments we received on the issue of applicable requirements for these subpart 1 areas and will address this issue after we issue guidance on assessment of overwhelming transport.

In addition, the proposed rule also indicated that we could consider more flexibility for conformity for such areas. In our proposed transportation conformity rule published on November 5, 2003 (68 FR 62690), we did not propose any specific conformity flexibility for areas affected by ozone transport. However, many of the proposed options, including the types of emissions tests used in conformity, would be available to areas affected by transport, as well as other types of 8-hour ozone areas. In addition, the existing transportation conformity rule already provides flexibility in such things as transportation modeling requirements for smaller areas with less severe local air quality problems. Also, EPA intends to propose in a few months more flexible NSR provisions that would apply in such areas.

We believe the overwhelming transport classification for areas covered under subpart 1 is consistent with the CAA and is reasonable. We believe that the classification should be restricted to rural areas because these areas will generally not have significant sources of emissions to control and therefore are not likely to contribute much to their own nonattainment problem. There are exceptions, of course, such as rural areas with large sources such as power plants, but such areas would also need to meet the other criteria for the classification, such as not contributing significantly to nonattainment in other areas.

In determining an attainment date for areas classified as "transport," we would apply the criteria in section 172(a)(2)(A). The second criterion in section 172(a)(2)(A)—the availability

[24] *See* 68 FR 32814.

and feasibility of control measures—will allow EPA to consider the effects of transported pollution in setting an appropriate attainment date for these areas of no later than 10 years following designation.

We recognize that there may be areas affected by transport that don't meet the definition of rural transport. However, in determining attainment dates for areas under section 172(a)(2)(A), we can consider the availability and feasibility of control measures; thus, areas that do not meet the definition of a rural transport area should be able to adopt an attainment date that reflects the time period for reductions in upwind areas that are contributing to nonattainment.

The EPA decided not to exercise its discretion to create additional classifications for subpart 1 areas. We do not believe another classification is necessary for expeditious attainment of the 8-hour NAAQS for these other subpart 1 areas.

The final rule (section 51.904(a)) provides for a subpart 1 area to be classified as an overwhelming transport area if it meets the criteria as specified for rural transport areas under section 182(h) of the CAA and overwhelming transport guidance that we will issue in the future. Although EPA's June 2, 2003 notice referenced an EPA guidance document as the criteria for determining the contribution of sources in one or more other areas are an overwhelming cause of an area being designated nonattainment, we believe that guidance needs to be updated. Thus, we are retracting our previous guidance and will issue revised guidance. We plan to address control requirements applicable to these areas in Phase 2.

c. Comments and Responses

Comment: Most of the commenters who commented on classifications for subpart 1 areas objected to the requirement that to receive an overwhelming transport area classification an area must demonstrate that it is a rural transport area. Many of these commenters pointed out that there are a number of areas that do not meet that definition and that do not generate a significant portion of emissions that contribute to the area's nonattainment problem. Some also stated that the CAA does not mandate this as a criterion and thus the test was unduly restrictive. These commenters asked that the availability of the overwhelming transport classification be based only on whether an area is a victim of overwhelming transport.

Response: The CAA does not mandate that an area be considered rural in order to receive an overwhelming transport classification under subpart 1. However, we believe that areas that are not rural, even if they are affected to a significant degree by transport, in general contribute at least some degree to their own and likely to other areas' nonattainment problems. The final rule, therefore, is as proposed—the overwhelming transport classification is only available to areas that meet the criteria for rural transport areas under section 182(h) of the CAA.

Comment: One commenter suggested EPA provide increased flexibility for areas that would be classified as nonattainment, primarily for reasons related to transport. A special category for transport areas, should be created for areas that are in attainment of the 1-hour standard but, if not for the impact of transport, would not be in violation of the new 8-hour standard. The regulatory requirements for transport area should be minimal and required compliance dates should extend out at least as long as the upwind states.

Response: We note that 8-hour ozone nonattainment areas covered under subpart 1 generally will be close to attaining the 1-hour standard. We believe the criteria used to determine overwhelming transport will invariably result in a situation where an area subject to overwhelming transport would be in attainment of the standard but for transport. Subpart 1 provides a maximum of 10 years from the effective date of nonattainment designation for attainment. We note, however, that if such an area believes that it would need an attainment date longer than 10 years, it could request to be reclassified under subpart 2 to a classification with a longer attainment date. The area would, of course, have to meet the requirements of its subpart 2 classification (either its requested classification or the rural transport classification if it so qualifies).

5. Will EPA Adjust Classifications? (Section VI.A.9. of Proposal; 68 FR 32816; Section 51.903(b) and (c) of Final Rule)

a. *Background.* Under sections 181(a)(4) and 181(b)(3), an ozone nonattainment area may be reclassified to the next higher or lower classification. Section 181(a)(4) of the CAA states:

> If an area would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

Section 181(b)(3) requires the Administrator to grant the request of any State to reclassify a nonattainment area in the State to a higher classification.

b. *Summary of final rule.* We are adopting the approach we included in the proposal. For areas subject to subpart 2, section 181(a)(4) of the CAA provides that classifications may be adjusted upward or downward for an area if the area's design value is within 5 percent of another classification. If, for example, an area is subject to a subpart 2 classification and there is evidence that the area will not benefit significantly from local controls mandated by subpart 2 for the area's classification and can attain within the time period specified for the next lower classification, the area may obtain some relief based on the 5 percent rule in the CAA if applicable. In addition, section 181(b)(3) requires the Administrator to grant the request of any State to reclassify a nonattainment area in the State to a higher classification.

Section 51.903 was revised from the initial draft regulatory text language to add the reclassification provisions in section 181(a)(4) and 181(b)(3).

c. Comments and Responses

Comment: Several commenters supported the use of provisions in section 181(a)(4) to allow adjustment of a classification. Comments indicated that this approach could result in cost savings in cases where the increased controls of the higher classification would not be needed for attainment. One commenter noted that the Administrator should consider several factors in making the adjustment under section 181(a)(4), including the number of exceedances of the NAAQS and complexity of the problem. The commenter requested that EPA explain how the Administrator would make this decision and the process that will be used. Another commenter recommended that the actual test of compliance with the provisions of section 181(a)(4) should include allowance for meteorological fluctuation in order to avoid States having to meet an average design value well below the NAAQS before deemed in compliance.

Response: The EPA's guidance on the 5 percent bump down provision in section 181(a)(4) is contained in the November 6, 1991 **Federal Register** (56 FR 56698) which established the initial

designations and classifications. In a separate **Federal Register** notice, EPA will invite States to submit bump down requests. The EPA will describe the criteria (including any changes from the 1991 criteria) for approval of 5 percent bump downs in that notice and will provide at least a 30-day period for States to submit their requests. Section 181(a)(4) authorizes the Administrator to adjust a classification within 90 days after the initial classification. The EPA continues to believe, as provided in the June 2, 2003 proposal, that section 181(a)(4) does not provide a basis for an area to move from subpart 2 to subpart 1.

6. Proposed Incentive Feature (Section VI.A.6. of Proposal; See 68 FR 32815; 51.903(b) of Draft Rule)

a. *Background.* In the proposed rule (68 FR 32815), we sought comment on a classification feature that would allow areas classified under subpart 2 to qualify for a lower classification upon a demonstration the area would attain the 8-hour NAAQS by the earlier attainment date of a lower classification. For example, an area that would be classified "moderate" based on its 8-hour design value would qualify for a "marginal" classification by demonstrating it would attain the 8-hour NAAQS within 3 years of designation.

b. *Summary of final rule.* We are not including the proposed incentive feature in the final rule. We received numerous adverse comments on the idea, raising both legal and policy issues. Because we agree as a policy matter that we should not adopt the incentive feature, we do not reach the legal issue of whether the statute grants such authority. Our basis for this decision is provided more fully in the RTC document, portions of which are excerpted below. In short, we believe that only a few areas would have benefitted from this proposal considering the flexibility already available under classification Option 2, and we believe that the difficulties in developing and implementing such an approach outweigh any benefits. In particular, commenters on the June 2, 2003 proposal were concerned that we did not identify the type of modeling that areas could rely on to take advantage of this option. While we had not identified in the June 2, 2003 proposal the type of modeling that could be used, we had referenced our current modeling guidance in the draft regulatory text which was published on August 6, 2003. Additionally, we believe it would be very difficult for an area to have completed the necessary modeling and for us to approve such a SIP submission much in advance of the attainment date for a marginal area. Further, if the area did not meet that attainment date, it would need to begin the modeling process over again almost immediately. We now believe that it makes more sense for the area to prepare the modeling required for its higher classification and, if the area attains the NAAQS earlier than the attainment date for its classification, our Clean Data Policy[25] will provide relief from RFP requirements.

c. Comments and Responses

Comment: About half the commenters that addressed this issue opposed the incentive feature. These comments originated mainly from environmental organizations and some State and local air pollution control agencies and organizations. Many of these commenters questioned the legal basis for such a feature and also believed modeling is too inaccurate or unreliable to be used for classification purposes. They believed that monitoring data should be the sole basis for classifications. The other comments received on this issue supported the incentive feature. These comments originated mainly from industrial representatives and organizations, as well as several State and local air agencies and transportation agencies and organizations.

Response: Our analysis indicates that the incentive feature would not have helped very many areas. Of 21 hypothetical nonattainment areas classified as moderate (based on 2000–2002 air quality data), our modeling projects that only 3 would have qualified without first adopting further controls. No serious or higher classified area would have qualified without further controls. Very few areas would even receive a classification higher than moderate. In addition, even if we adopted this approach, we do not believe there would have been enough time for areas seeking a marginal classification to submit a plan with local controls that demonstrate attainment by a Spring attainment date in 2007 and implement the controls by the Spring of 2006. In addition, we would have to develop guidance for the demonstration. Furthermore, although many commenters supported having the feature, many other commenters objected to the feature on a number of grounds. Because of the difficulties involved in administering such a program, the unfavorable timing, and the anticipated low number of areas that could benefit from the feature, we are not incorporating the feature in the final rule.

A number of commenters who opposed the feature contended that the approach was not supported by the CAA. Since we are not adopting the feature in the final rule on policy grounds, we do not address the legal issues here.

B. How Will EPA Treat Attainment Dates for the 8-Hour Ozone NAAQS? (Section VI.B. of Proposal; See 68 FR 32816; 51.903 and 51.904 Draft and Final Rules)

1. Background

Under Subpart 2 of the CAA, maximum attainment dates are fixed as a function of a nonattainment area's classification under Table 1. The CAA provides that an area's attainment date must be "as expeditious as practicable but no later than" the date provided in Table 1 for that area's classification. The statutory dates are specified as a set number of years from the date of enactment of the CAA Amendments of 1990. Since a strict application of Table 1 would produce absurd results for most areas (*i.e.*, areas classified as marginal would have a November 15, 1993 attainment date, moderate areas would have a November 15, 1996 attainment date, etc.), we are promulgating a targeted revision of Table 1 to reflect attainment dates consistent with Congressional intent.

While the attainment dates in Table 1 are expressly linked to the date of enactment of the CAA Amendments of 1990, this is also the date on which most areas were designated and classified as a matter of law. In addition, as explained in the preamble to the proposed rule (68 FR 32817), other provisions of the CAA specify that the date for attainment shall run from the date of designation and/or classification as a matter of law for an area. Consistent with this, we proposed that the starting point for the set timeframes for attainment would be the date an area is designated and classified for purposes of the 8-hour NAAQS.[26] Thus, for example, an area classified as marginal for the 8-hour NAAQS would have up

[25] Memorandum of May 10, 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: *http://www.epo.gov/ttn/oorpg/t1/memorando/clean15.pdf.*

[26] As explained in our proposed rule, areas will be classified as a matter of law at the same time they are designated; thus, we simply refer to "designation" rather than designation and classification.

to 3 years from designation to meet that NAAQS and a moderate area would have up to 6 years from designation to attain.

For areas covered under subpart 1, attainment dates are set under section 172(a)(2)(A), which provides that the SIP must demonstrate attainment as expeditiously as practicable but no later than 5 years after designation, with up to 10 years after designation permitted if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed. In the draft regulatory text, we provided that EPA would establish the attainment date for an area at the time we approve the area's attainment demonstration.

2. Summary of Final Rule

We are adopting the time periods for attainment that we proposed for areas under both subpart 1 and subpart 2 of the CAA. For areas subject to subpart 2 of the CAA, the maximum period for attainment will run from the effective date of designations and classifications for the 8-hour NAAQS and will be the same periods as provided in Table 1 of section 181(a):

- Marginal—3 years,
- Moderate—6 years,
- Serious—9 years,
- Severe—15 or 17 years, and
- Extreme—20 years.

We are adopting this approach because applying the table, as written, would produce absurd results. For the reasons above and discussed in the preamble to the proposed rule, we believe it is consistent with Congressional intent to begin the time periods for attainment specified in Table 1 in section 181(a) at the time of designation and classification.

Consistent with section 172(a)(2)(A), for areas subject to subpart 1 of the CAA, the period for attainment will be no later than 5 years after the effective date of the designation. However, EPA may grant an area an attainment date no later than 10 years after designation, if warranted based on the factors provided in section 172(a)(2)(A). The EPA will establish an attainment date for each subpart 1 area at the time we approve an attainment demonstration for the area.

3. Comments and Response

Comment: Several commenters reiterated the CAA's requirement that areas attain the NAAQS as "expeditiously as practicable." They felt that the attainment deadlines in the proposed rule would impede the progress that areas have made and would subject the general public to years of unhealthy air quality. One commenter suggested that EPA create enforceable short-term compliance dates to assure citizens of downwind States that upwind States are meeting their longer-term compliance deadlines. Other commenters felt that the attainment dates under both subpart 1 and 2 that were proposed did not provide enough time for areas to attain for a number of reasons, such as: areas would not be able to take credit for emissions reductions from Federal measures, the slow turnover of mobile source fleets would not achieve the needed mobile source reductions in the timeframes proposed, EPA's Clear Skies modeling shows that a number of areas in the mid-Atlantic and northeast will not come into attainment before the middle of the next decade, it would not be feasible to have stationary and mobile source controls in place 3 years before the attainment dates for purposes of monitoring, etc. However, a number of commenters agreed with EPA's proposal to establish attainment dates that correspond to the timeframes established under subpart 2 of the CAA from the date of 8-hour nonattainment designations. In addition, one commenter stated that the proposal did not clearly address how attainment dates for subpart 1 areas would be set. Finally, several commenters recommended that EPA change the attainment dates to November or December of the attainment year rather than in April so areas can use the ozone season air quality data from the attainment year to demonstrate attainment.

Response: As stated in our June 2, 2003 proposal, under subpart 2 of the CAA, maximum attainment dates are fixed as a function of a nonattainment area's classification under Table 1. The CAA provides that an area's attainment date must be "as expeditious as practicable but no later than" the date prescribed in Table 1 for that area's classification. The dates were specified as the number of years from the date of enactment of the CAA Amendments, which was November 15, 1990, which was also the date of designation and classification by operation of law for most subpart 2 areas. We believe that applying the attainment dates as expressly provided under Table 1 would produce absurd results, since a strict application of Table 1 would result in an attainment date of November 15, 1993 for marginal areas and an attainment date of November 15, 1996 for moderate areas. Although we believe a strict application of the statute would produce absurd results, we do not believe that allows broad authority to re-write the statute. Rather, we look to the legislative history and other provisions of the CAA to discern Congressional intent. Consequently, for the reasons provided above and in the preamble to the proposed rule, we have determined that attainment dates will run from the effective date of designations and classifications for the 8-hour ozone NAAQS. Since we are designating and classifying areas for the 8-hour ozone NAAQS with an effective date of June 15, 2004, the corresponding attainment periods would run from June 15, 2004.

We do not believe we have authority to change the attainment dates to November or December of the attainment year as several commenters requested. We believe that Congress would have intended for areas designated nonattainment and classified under subpart 2 for the 8-hour NAAQS to have attainment periods consistent with those in Table 1 (*e.g.*, 3 years for marginal areas, 6 years for moderate areas, etc.) This would result in the 8-hour marginal attainment date being 3 years from the effective date of designations for the 8-hour NAAQS (*i.e.*, June 15, 2007), the moderate attainment being 6 years from the effective date of designations for the 8-hour NAAQS (*i.e.*, June 15, 2010), etc.

Additionally, EPA does not have the authority to shorten attainment dates or lengthen attainment dates to allow areas to take credit for emissions reductions from future Federal or regional measures as several commenters suggested. The statute provides for all areas to attain as expeditiously as practicable. As part of its attainment demonstration, a State must demonstrate that there are no reasonably available controls that can expedite attainment. Therefore, States must address why they cannot attain earlier than the maximum attainment date. As to longer attainment dates, States may request a voluntary bump up if they believe an area cannot attain by its maximum statutory attainment date through the adoption of RACM.

For areas classified under subpart 1, attainment dates will be set under section 172(a)(2)(A), which provides that the SIP must demonstrate attainment as expeditiously as practicable but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed. Under subpart 1, we will establish an attainment date for an area at the time we approve an attainment demonstration for the area. The State

must support that the attainment date is expeditiously as practicable and must justify any attainment date later than 5 years using the factors in section 172(a)(2)(A). The attainment date will be the date in the approved SIP. Thus, if an area submits an approvable attainment demonstration showing that they can attain the 8-hour NAAQS in, *e.g.*, 4 years, the area's attainment date will be 4 years from the effective date of designations for the 8-hour NAAQS.

4. How Will EPA Address the Provision Regarding 1-Year Extensions? (Section VI.B.2 of Proposed Rule; 68 FR 32817; Sections 51.907 of Draft and Final Rules)

a. *Background.* In limited circumstances, both subpart 1 and subpart 2 of the CAA provide for two brief attainment date extensions for areas that do not attain by their attainment date. Section 172(a)(2)(C) of subpart 1 (which applies for all NAAQS) provides for EPA to extend the attainment date for an area by 1 year if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan and no more than a minimal number of exceedances of the NAAQS has occurred in the area in the attainment year. Up to two 1-year extensions may be issued for a single nonattainment area.

Section 181(a)(5) of subpart 2 contains a similar provision for the ozone NAAQS, but instead of providing for an extension where there has been a "minimal" number of exceedances, it allows an extension only if there is no more than one exceedance of the NAAQS in the year preceding the extension year. The language in section 181(a)(5) reflects the form of the 1-hour ozone NAAQS, which is exceedance-based and does not reflect the 8-hour ozone NAAQS, which is concentration-based.[27] We proposed that since section 181(a)(5) does not reflect the form of the 8-hour NAAQS and application would produce an absurd result, it was reasonable to interpret this provision in a manner consistent with Congressional intent, but reflecting the form of the 8-hour NAAQS. In addition, we proposed to apply the test in section 172(a)(2)(C), which applies to areas subject to subpart 1, in the same manner as we apply the test under section 181(a)(5) for areas subject to subpart 2. Specifically, we proposed that an area would be eligible for the first 1-year extension under section 172(a)(2)(C) and under 181(a)(5) if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

b. *Summary of final rule.* We are adopting the interpretation that we proposed on June 2, 2003. Under both sections 172(a)(2)(C) and 181(a)(5), an area will be eligible for the first of the 1-year extensions under the 8-hour NAAQS if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. The area will be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

We believe that it would be absurd to apply section 181(a)(5) as written for purposes of the 8-hour ozone NAAQS. This section was written with the form of the 1-hour NAAQS in mind. For purposes of the 1-hour NAAQS, an area is violating the NAAQS if it has more than three exceedances of the NAAQS at a monitor over a 3-year period. Thus, if an area is averaging more than one exceedance per year at a monitor, it is violating the NAAQS. For the 1-hour NAAQS, it makes sense to consider whether there has been more than one exceedance in the attainment year for purposes of granting an extension because two or more exceedances indicate a significant likelihood the area will not be able to attain the NAAQS with a 1-year extension of the attainment date since four exceedances over a 3-year period mean the area is violating the NAAQS.

For the 8-hour NAAQS, violations are determined based on the concentration as determined by averaging the 4th highest reading at a monitor over a 3-year period. Thus, for each monitor (with complete data), the fourth highest readings for each of 3 consecutive years are averaged to determine whether an area is violating the NAAQS. If the average of those readings is at or above 0.085, then the area is violating the 8-hour ozone NAAQS. Unlike the 1-hour NAAQS, an area could have several exceedances of the 8-hour NAAQS in the attainment year and still be on track to attain the NAAQS the following year since attainment is based on an average of the fourth highest reading. For this reason, and as we proposed, we believe it makes sense to allow for the two 1-year attainment date extensions under section 181(a)(5), based on the 4th highest reading at a monitor rather than based on the number of exceedances. We are interpreting the phrase "minimal number of exceedances" in section 172(a)(2)(C) to apply in the same manner.

c. Comments and Response

Comment: The commenters generally supported EPA's proposed interpretation for granting up to two 1-year attainment date extensions. One commenter requested clarification that the 4th highest daily average 8-hour ozone concentration would be used to grant the first extension and the 4th highest daily average 8-hour ozone concentration of the attainment year and first extension year would be used to determine eligibility for the second 1-year attainment date extension. The commenter further expressed support for this approach since it is consistent with how EPA determines whether an area is violating the 8-hour NAAQS.

Response: No commenters opposed this aspect of EPA's proposal. However, we are re-stating that the 4th highest daily average 8-hour ozone concentration would be used to grant the first 1-year extension and the 4th highest daily average 8-hour ozone concentration of the attainment year and first extension year would be used to determine eligibility for the second 1-year attainment date extension.

C. How Will EPA Implement the Transition From the 1-Hour to the 8-Hour NAAQS in a Way To Ensure Continued Momentum in States' Efforts Toward Cleaner Air? (Section VI.C. of the Proposal; See 68 FR 32818; 51.905 of Draft Rule)

There are two key issues that EPA considered together regarding the transition from the 1-hour NAAQS to the 8-hour NAAQS: (1) When will the 1-hour NAAQS no longer apply (*i.e.*, be "revoked"); and (2) what protections are in place to ensure that, once the 1-hour NAAQS is revoked, air quality will not degrade and that progress toward

[27] The 1-hour NAAQS, an exceedance-based NAAQS, is basically allowed to be exceeded an average of only once a year over a 3-year period. (This is a generalization of how attainment is determined; the actual method considers other factors such as completeness of the data.) See 40 CFR, appendix H. In contrast, the level of the 8-hour NAAQS (0.08 ppm, 8-hour average) can be "exceeded" more than once a year on average because the form (concentration-based) of that NAAQS is determined by averaging the 4th high reading for each year over a 3-year period. Section 50.10(b) provides that the 8-hour NAAQS is met at an ambient air quality monitor when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. 40 CFR part 50, appendix I. Example 1 in appendix I provides an example of an ambient monitoring site attaining the 8-hour ozone NAAQS. The example shows that over a 3-year period, there were 10 exceedances of the level of the 8-hour ozone NAAQS, or an average of 3.33 exceedances per year.

attainment will continue as areas transition from implementing the 1-hour NAAQS to implementing the 8-hour NAAQS. As in the proposed rule, the second key issue has three components: (1) What requirements that applied based on an area's classification for the 1-hour NAAQS must continue to apply to that area; (2) for how long; and (3) in what geographic area. Below, we set forth our final transition approach in four parts: (1) When will the 1-hour NAAQS no longer apply (*i.e.*, when will it be revoked); (2) what 1-hour obligations should continue to apply once the 1-hour NAAQS is revoked; (3) how long should those requirements continue to apply; and (4) what is the geographic area subject to the requirement?

1. When Will EPA Revoke the 1-Hour NAAQS? (Section VI.C.2. of Proposal; See 68 FR 32819; Section 50.9.b. of Proposed and Final Rules)

a. *Background.* In the proposed rule (68 FR 32819), EPA provided an in-depth discussion of the background of the transition rule (40 CFR 50.9(b)) and policy as established in July 1997 and as subsequently revised in response to the ongoing litigation over the 8-hour ozone NAAQS and court decisions (68 FR 32818–19). In short, at the time the 8-hour NAAQS was promulgated in 1997, EPA anticipated that areas would implement the 8-hour ozone NAAQS under subpart 1. Areas that were not meeting the 1-hour NAAQS were obligated to continue to meet that NAAQS and would remain subject to most of the requirements that applied due to the area's 1-hour classification, including obligations under subpart 2 (62 FR 38873). Although EPA concluded in the NAAQS rulemaking that the 1-hour NAAQS was not necessary to protect public health and that the 8-hour NAAQS would replace the 1-hour NAAQS (62 FR 38863), we determined to delay revocation of the 1-hour NAAQS for areas not yet meeting that NAAQS in order to facilitate continued implementation of the 1-hour obligations (62 FR 38873). Thus, we promulgated a rule providing for the phase-out of the 1-hour ozone NAAQS on an area-by-area basis based upon a determination by EPA for each area that it had met the 1-hour NAAQS (40 CFR 50.9(b), as promulgated at 62 FR 38894) ("revocation rule").

Subsequently, because the pending litigation over the 8-hour NAAQS created uncertainty regarding the 8-hour NAAQS and our implementation strategy, we placed two limitations on our authority to apply the revocation rule: (1) the 8-hour NAAQS must no longer be subject to legal challenge, and (2) it must be fully enforceable.[28] (65 FR 45182, July 20, 2000).

Ultimately, the Supreme Court struck down the implementation strategy provided for in the preamble to the final NAAQS rule. Although the Court agreed with EPA's conclusion that the statute was ambiguous as to how a revised, more stringent ozone NAAQS should be implemented, the Court found unreasonable the implementation strategy EPA anticipated at the time the 8-hour NAAQS was promulgated. Because EPA believes the time at which the 1-hour NAAQS should no longer apply is inextricably linked to the overall implementation strategy, EPA determined that it should reconsider 40 CFR 50.9(b) in the context of this rulemaking. (68 FR 32818–19).

Consistent with the decision of the Supreme Court, our proposed June 2003 implementation rule anticipated that some, if not all, 8-hour ozone nonattainment areas would implement that NAAQS under subpart 2 of the CAA. There was no longer the clear cut dichotomy that we anticipated in 1997—*i.e.*, that 8-hour implementation would occur under subpart 1 and 1-hour implementation would continue to occur under subpart 2. Thus, the approach from 1997—where we retained the 1-hour NAAQS for areas that had not met it in order to make clear that such areas retained subpart 2 obligations—merited reconsideration. In addition, we indicated that the area-by-area approach to revocation of the NAAQS was needlessly burdensome and that it made more sense to promulgate one rule establishing the date of revocation of the 1-hour NAAQS for all areas.

With respect to the time at which the 1-hour NAAQS should no longer apply to areas, we sought comment on two options. Under Option 1, we would revoke the 1-hour NAAQS in full 1 year after the effective date of designations for the 8-hour NAAQS. The key consideration for when the NAAQS would be revoked was the time at which areas designated nonattainment for the 8-hour NAAQS would be subject to conformity requirements for the 8-hour ozone NAAQS and our concern that areas not be subject to conformity for both the 8-hour and the 1-hour NAAQS at the same time. We believed that since our proposed anti-backsliding provisions would ensure that progress toward clean air continued and would obligate areas to continue to meet the control obligations associated with the area's 1-hour classification, there was no need to retain the NAAQS and the associated designations and classifications.

Under Option 2, we proposed to retain the NAAQS itself (and the associated designations and classifications) for limited purposes (viz., those identified and discussed in section VI.C.3. of the proposed rule, which are the same obligations that would continue to apply under Option 1). For all remaining purposes, we would revoke the 1-hour NAAQS and the associated designations and classifications 1 year after the effective date of designations for the 8-hour NAAQS. This approach would not create a different substantive result than Option 1; under both Options, areas would remain subject to the same obligations that applied based on their 1-hour classification. Rather, Option 2 was based on a somewhat different legal rationale than Option 1.

b. *Summary of final rule.* We are adopting Option 1. We will revoke the 1-hour NAAQS in full, including the associated designations and classifications, 1 year following the effective date of the designations for the 8-hour NAAQS. However, we are adopting strong anti-backsliding provisions which preserve control obligations mandated by subpart 2 for an area's classification for the 1-hour NAAQS. In light of the anti-backsliding provisions, the deciding factor supporting the schedule for revocation is the conformity obligation for areas. We believe it is unnecessary to require areas to meet conformity for both the 1-hour and 8-hour NAAQS at the same time; equally important, however, is the need to ensure that there is no time when conformity stops applying for areas that are subject to it under the 1-hour NAAQS and designated nonattainment for the 8-hour NAAQS. Thus, we are adopting a regulation that provides for revocation of the 1-hour NAAQS 1 year following the effective date of the designation of the area for the 8-hour NAAQS since that is the time an area designated as nonattainment for the 8-hour NAAQS will be subject to conformity requirements for the 8-hour NAAQS.

Our final anti-backsliding provisions will ensure that mandatory subpart 2 control measures that applied due to an area's classification under the 1-hour NAAQS will continue to apply after the 1-hour NAAQS is revoked in full.

Many commenters believed, and we agree, that Option 1 is a clearer approach than Option 2. Since both

[28] In addition, in June 2003, we stayed our authority to apply the revocation rule pending our reconsideration in this rulemaking of the basis for revocation. (68 FR 38160, June 26, 2003).

options would lead to the same substantive result, we are adopting the clearer approach. Many commenters recommended alternatives other than those proposed by EPA. Our basis for rejecting these approaches is provided below and in the RTC document.

c. Comments and responses.

Comment: Most of the comments we received addressed the issue of when we should revoke the 1-hour NAAQS. About half of the commenters favored revocation of the 1-hour NAAQS in full 1 year after the effective date of the 8-hour designations (proposed Option 1). Only a handful of commenters favored partial revocation of the 1-hour NAAQS (proposed Option 2). Almost a third of the commenters who addressed this issue opposed revocation of the 1-hour NAAQS. Many of the commenters in this group insisted that EPA should retain the 1-hour NAAQS because it is necessary to protect public health and some noted that it may be more protective of public health than the 8-hour NAAQS in several areas such as the South Coast and Houston. A number of these commenters also suggested that revocation would be contrary to the CAA and Congressional intent. Several commenters recommended alternative means or timing for the revocation of the 1-hour NAAQS, including a recommendation to revoke the 1-hour NAAQS immediately upon designations for the 8-hour NAAQS.

Response to Major Comments: Several commenters opposed revocation at all because they believe the 1-hour NAAQS is necessary to protect public health. The issue of whether the 1-hour NAAQS is necessary to protect public health is a standard-setting issue that was resolved in 1997. At that time, EPA determined that it was not necessary to retain the 1-hour NAAQS as a NAAQS in order to protect public health. In setting the 8-hour NAAQS in 1997, we concluded that replacing the current 1-hour NAAQS with an 8-hour NAAQS is appropriate to provide adequate and more uniform protection of public health from both short-term (1 to 3 hours) and prolonged (6 to 8 hours) exposures to ozone in the ambient air (62 FR 38863). The sole issue here is how and when the transition from implementation of the 1-hour NAAQS to implementation of the 8-hour NAAQS should occur.

We believe the strong anti-backsliding provisions in section 51.905 will ensure that not only will controls already adopted under the 1-hour NAAQS continue to be implemented until an area attains the 8-hour ozone NAAQS, but also that there will be no or minimal delay in obtaining additional emissions reductions comparable to those that would have been required had the 1-hour NAAQS remained in place. Although attainment of the 1-hour NAAQS would no longer be a goal, the provisions of section 51.905 would retain the ROP obligations that would have been required under the 1-hour NAAQS. Furthermore, the provisions of section 51.905 also would retain an area's obligation to either expeditiously complete the 1-hour attainment demonstration or obtain emissions reductions toward meeting the 8-hour NAAQS that substitute for those that would have been required had an area completed its attainment demonstration on a schedule more expeditious than that required solely for the 8-hour NAAQS. Thus, retaining the 1-hour NAAQS itself would become largely superfluous from the standpoint of obtaining timely emissions reductions.

We disagree with comments that recommended that EPA revoke the 1-hour NAAQS immediately upon a nonattainment designation for the 8-hour NAAQS. We believe that such timing would create a gap when conformity would not apply in the year following designation under the 8-hour NAAQS (since conformity does not apply for the 8-hour NAAQS until 1-year after designation).

Comment: A major concern raised by commenters was that if the NAAQS were revoked, areas would no longer have to meet the SIP budgets established for the 1-hour NAAQS for conformity purposes. These commenters were concerned that 8-hour ozone nonattainment areas that were nonattainment or maintenance for the 1-hour NAAQS would be able to determine conformity using another less protective test, such as the "build/no-build" test. One commenter said that if conformity is weakened, billions of dollars will be spent on transportation without accountability for public health impacts. To avoid these results, commenters suggested that conformity requirements for the 1-hour NAAQS continue to apply until some other point, such as when budgets for the 8-hour NAAQS are available, when areas have an approved maintenance plan for the 8-hour NAAQS, or the end of areas' 1-hour maintenance planning periods (assuming these periods would remain as they are, and would not be affected by revocation of the 1-hour NAAQS).

Response: The EPA proposed conformity regulations for the new 8-hour ozone NAAQS and new fine particulate matter NAAQS on November 5, 2003 (68 FR 62690). We proposed that new 8-hour ozone nonattainment areas that have 1-hour ozone SIPs would meet one of several tests, and the menu of options we offered differed depending on how the 8-hour area boundary relates to the 1-hour area boundary. We will consider the issues raised by commenters and provide a full response in the context of that rulemaking.

However, at this point EPA can respond to the suggestions to revoke the 1-hour NAAQS at a later point such as when 8-hour budgets are available, or the end of the 1-hour maintenance planning period. Under these scenarios, there would be a period of years where conformity would have to be determined for both NAAQS at the same time: a result that EPA believes could lead to confusion and additional burden for transportation and air quality planners. The EPA believes it is sufficient that conformity be determined for one ozone NAAQS at a time. Since the 8-hour NAAQS is the health-based standard and it is more stringent than the 1-hour NAAQS, we believe conforming to the 8-hour NAAQS will be sufficient.

Comment: One commenter recommended that we provide an option that allows States to submit an 8-hour conformity budget early and suspend the 1-hour conformity requirements at the time the 8-hour budget is determined to be adequate. A second commenter suggested something similar, that EPA require States to expedite budgets for the 8-hour standard in areas where the 8-hour boundary is larger.

Response: The EPA did not propose to revoke the 1-hour NAAQS earlier than 1 year after designations, in part because we did not believe that areas would be able to submit an 8-hour SIP earlier than 1-year following designation. Furthermore, EPA's proposal was intended to align the revocation of the 1-hour NAAQS with the application of conformity requirements for the 8-hour NAAQS 1 year after the effective date of 8-hour nonattainment designations. The EPA continues to believe it is unlikely that areas will have adequate budgets that address the 8-hour NAAQS before EPA revokes the 1-hour NAAQS. Such budgets cannot stand alone but have to be associated with adopted control measures and demonstrations of either attainment or RFP, and we believe developing these SIPs will take States some time. Once the SIPs are submitted, EPA must find them adequate, a process which EPA intends to complete within 90 days of receiving a SIP. It is unlikely that States will be able to complete the work to submit 8-hour ozone SIPs 1 year from the effective date of 8-hour ozone area designations, and less likely that States will have submitted them

sufficiently in time for EPA to find them adequate before the 1-hour NAAQS is revoked.

Given these facts and the fact that EPA did not propose an option for revoking the standard earlier than 1 year after 8-hour designations are effective, EPA does not intend to provide for early revocation of the 1-hour NAAQS, nor will EPA require 8-hour areas to expedite development of their 8-hour SIP for this purpose. All areas must submit SIPs as soon as practicable, and EPA wants States to devclop quality SIPs to support attainment demonstrations and conformity determinations. Prior to the revocation of the 1-hour NAAQS, new transportation plan and transportation improvement plan must conform to the applicable SIP budgets for the 1-hour NAAQS.

Comment: Some commenters rebutted EPA's assertion that revoking the 1-hour NAAQS is necessary so that agencies can focus on planning for the 8-hour NAAQS. These commenters stated that neither the revocation of the 1-hour NAAQS (or the budgets) is justified on this basis with respect to transportation and emissions modeling, because under either NAAQS, similar work in establishing base year inventories, and future forecasts of travel and emissions must be done. Once the resources are in place to make future forecasts, commenters thought that the level of effort in both time and money to produce analyses to different regional boundaries is relatively small, and ample resources are available to pay for the additional analyses needed to determine conformity to both NAAQS.

The EPA also received comments of the opposite opinion. A number of commenters supported EPA's proposal that conformity apply for one NAAQS at a time. One commenter stated that determining conformity for two separate ozone NAAQS would result in undue administrative burden, create confusion about requirements in the public process and make synchronization of the air quality and transportation planning processes more difficult. A couple of commenters argued that having to determine conformity for both ozone NAAQS would drain limited resources in transportation and environmental agencies. One of these commenters contended that demonstrating conformity for two ozone NAAQS could in fact delay progress, due to the high administrative burdens.

Response: While these comments focus solely on the resources necessary to determine conformity for both NAAQS, EPA believes a discussion of resources should include all aspects of attainment planning. Under EPA's proposal, with revocation of the 1-hour NAAQS, conformity will no longer apply for that NAAQS as a matter of law. Therefore, in order for conformity to apply for both NAAQS as one commenter requests, both NAAQS have to be implemented at the same time, *i.e.*, the 1-hour NAAQS would have to be implemented in addition to the 8-hour NAAQS. This would mean continuation of the requirements to demonstrate attainment and maintenance of the 1-hour as well as the 8-hour NAAQS. The EPA believes that it would be a substantial increase in burden for States to plan for attainment of both NAAQS, which includes conformity but also includes creating inventories for each source sector, determining feasible control measures, writing rules to implement control measures, permitting stationary sources, establishing ROP plans, running iterations of air shed modeling, and demonstrating attainment.

In 1997, EPA determined that the 1-hour NAAQS is not necessary to protect public health. Where they are not required by anti-backsliding provisions, EPA does not believe that the additional burden States would undertake in planning to achieve both the 1-hour and the 8-hour NAAQS is necessary to protect public health.

2. What Requirements That Applied in an Area for the 1-Hour NAAQS Continue To Apply After Revocation of the 1-Hour NAAQS for That Area? (Section VI.C.3. of Proposal; 68 FR 32820; Section 51.905(a) of the Draft and Final Rules)

a. *Background.* In this section of the June 2, 2003 proposed rule (68 FR 32820), we considered what obligations from subpart 2 that applied to an area based on its classification for the 1-hour ozone NAAQS should continue to apply to such area after it has been designated for the 8-hour NAAQS and the 1-hour NAAQS has been revoked. We proposed that the continuity of particular obligations may vary depending on the attainment status of an area for the 8-hour NAAQS. The proposed rule addressed two categories of areas: (1) areas that are designated nonattainment for the 8-hour NAAQS and that were designated nonattainment for the 1-hour NAAQS on or after November 15, 1990; and (2) areas that are designated attainment for the 8-hour NAAQS and that were designated nonattainment for the 1-hour NAAQS on or after November 15, 1990. Furthermore, we divided the types of obligations into four categories for purpose of our analysis: (1) Mandatory control measures (*e.g.*, NO_X RACT, I/M, and fuel programs); (2) discretionary control measures (*e.g.*, control measures or other obligations the State selected and adopted into the SIP for purposes of attainment, ROP or any other goal to benefit air quality, but which are not specifically mandated by subpart 2); (3) growth management (NSR); and (4) planning activities (attainment and maintenance demonstrations and RFP plans). We addressed conformity separately because it is a subpart 1 requirement. In addition, we addressed the NO_X SIP Call separately since this obligation applies statewide and without respect to the designation status of areas within the State.

In the draft regulatory text released in August 2003, for areas designated nonattainment for the 8-hour NAAQS, we broke into two groups the areas designated nonattainment for the 1-hour NAAQS on or after November 15, 1990: (1) Areas that remain designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS; and (2) areas that were designated nonattainment for the 1-hour NAAQS but that have been redesignated to attainment for the 1-hour NAAQS (*i.e.*, "maintenance areas") at the time of revocation of the 1-hour NAAQS.[29] In response to comments on the proposed rule and draft regulatory text, the final regulation creates the same sub-categorization for areas designated attainment for the 8-hour NAAQS. In the final rule and in the preamble discussion below, we also break into the same two groups the areas designated attainment for the 8-hour NAAQS. Thus, in the preamble and rule we consider the obligations that continue to apply for four categories of areas: (1) Areas that remain designated nonattainment for the 1-hour NAAQS at the time of designation as nonattainment for the 8-hour NAAQS; (2) areas that are maintenance areas for the 1-hour NAAQS at the time of designation as nonattainment for the 8-hour NAAQS; (3) areas that remain designated nonattainment for the 1-hour NAAQS at the time of designation as attainment for the 8-hour NAAQS; and (4) areas that are maintenance areas for the 1-hour NAAQS at the time of designation as attainment for the 8-hour NAAQS. Both the preamble and the rule may use the following terms to discuss

[29] The draft regulatory text did not accurately reflect the preamble discussion which distinguished maintenance areas at the time of designation for the 8-hour NAAQS from those that remained designated nonattainment at the time of 8-hour designation. For the final rule, we use the time of 8-hour designations rather than the time the 1-hour NAAQS is revoked.

these four categories: (1) 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment (2) 8-hour NAAQS nonattainment/1-hour NAAQS maintenance; (3) 8-hour NAAQS attainment/1-hour NAAQS nonattainment (4) 8-hour NAAQS attainment/1-hour NAAQS maintenance. Under each of these sections in the preamble, we address how the final rule treats the four types of obligations identified in the proposed rule: (1) Mandatory control measures; (2) discretionary control measures; (3) growth; and (4) planning obligations.

b. *Summary of final rule.* The approach we are adopting in the final rule is summarized below under the individual sections discussing each category of area and type of control obligation.

c. *Section 51.905(a)(1): 8-hour NAAQS nonattainment/1-Hour NAAQS nonattainment.*

(i) *Mandatory control measures.* (Section VI.C.3.a.i. of proposed rule; see 68 FR 32820; sections 51.900(f) and 51.905(a)(1) of the draft and final rules.)

(A) *Background.* For areas designated nonattainment for the 1-hour NAAQS at the time they are designated nonattainment for the 8-hour NAAQS, we proposed that, to the extent the area has met a mandatory SIP obligation under the CAA that is included as part of the approved SIP, the State may not modify or remove that measure except to the extent that it may have modified or removed that measure for purposes of the 1-hour NAAQS (68 FR 32820). For example, if an area was classified as serious for the 1-hour ozone NAAQS and required to have an enhanced I/M program as part of its SIP, the State cannot remove the enhanced I/M program for that area even though it may be classified as marginal or moderate for the 8-hour ozone NAAQS. However, under the proposal, the State may modify the enhanced I/M program consistent with EPA's enhanced I/M regulations, just as it may have done for purposes of the 1-hour NAAQS. (We address below when the obligation to retain such control measures as active control programs no longer applies, the geographic area in which the obligation applies, and the demonstration a State must make at that point to modify the SIP.)

For control measures that the State has not yet adopted, we proposed that the State remains obligated to adopt and submit such control measures. And, once adopted into the approved SIP, the State may not modify or remove such measures except to the same extent that it could have modified or removed them for purposes of the 1-hour NAAQS.

Our draft regulatory text referred to these obligations as "applicable requirements" and we identified the subpart 2 mandatory control measures in the definitions section under "applicable requirements."

(B) *Summary of final rule.* We are adopting the approach we proposed. (See sections 51.905(a)(1)(i)and 51.900(f) of the final rule.) All areas designated nonattainment for the 8-hour ozone NAAQS and designated nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour NAAQS remain subject to control measures that applied by virtue of the area's classification for the 1-hour NAAQS.

As we stated in the preamble to the proposed rule (68 FR 32819), there are a number of provisions in the CAA that we believe are evidence of Congress' intent that these obligations continue to apply despite EPA's determination that the 1-hour NAAQS is no longer necessary to protect public health. For example, at the time of the 1990 Amendments to the CAA, Congress designated and classified existing ozone nonattainment areas (and classified all other ozone nonattainment areas) as a matter of law. Congress also provided that areas could not remove from the SIP controls mandated by subpart 2 even after the area attains the NAAQS and is redesignated to attainment. At most, the State could move such controls to the contingency plan provisions of the SIP. *See* CAA section 175A(d). Also significant is that in 1990, Congress enacted a provision specifying States' obligations with respect to control measures for a NAAQS after EPA revised that NAAQS to be less stringent. In section 172(e), Congress specified that if EPA revises a NAAQS and makes it less stringent, EPA must promulgate regulations applicable to areas that have not yet attained the original NAAQS to require controls that are no less stringent than the controls that applied to areas designated nonattainment prior to such relaxation. We believe that, if Congress intended areas to remain subject to the same level of control where a NAAQS was relaxed, they also intended that such controls not be weakened where the NAAQS is made more stringent. Finally, we noted that the Supreme Court cautioned against making subpart 2 "abruptly obsolete." For areas designated nonattainment in 1990, Congress intended the mandatory requirements of subpart 2 to apply (as implemented controls or contingency measures) for a significant period of time. We believe if we allowed areas to remove those mandated controls from their SIPs it would render those provisions prematurely obsolete, contrary to Congressional intent. We adopt in full the analysis provided at 68 FR 32819, 1st and 2nd columns.

The final rule also reflects, with several exceptions, the table in appendix B of the June proposal which identified the applicable requirements. The definition of "applicable requirements" in section 51.900(f) of the draft regulatory text erroneously excluded some of the requirements included in appendix B. The requirements that weren't included in the proposed regulatory text definition of applicable requirement but are included in the definition in the final rule are:

- Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- Transportation controls under section 182(c)(5) of the CAA.
- Vehicle miles traveled provisions of section 182(d)(1) of the CAA.
- NO_X requirements under section 182(f) of the CAA.

One exception in which the final rule does not reflect appendix B of the proposal concerns the requirement for reformulated gasoline (RFG). Appendix B erroneously included RFG as an applicable requirement under subpart 2. As discussed below under "Comments and responses," it is not an applicable requirement under subpart 2 and is not included as such in section 51.900(f) of the final rule. In addition, Appendix B listed NSR (major source applicability and offsets) as "applicable requirements" under subpart 2. Although these would be applicable requirements under subpart 2 for the 8-hour standard, they would not be applicable requirements under subpart 2 for the 1-hour standard after the 1-hour standard is revoked.[30]

(C) *Comments and responses*

Comment: Concerning the June 2, 2003 proposal, several commenters believed that not all control requirements required by an area's 1-hour classification would necessarily help achieve the 8-hour NAAQS and therefore opposed the proposed anti-backsliding provisions. Other commenters supported the proposal.

Concerning the draft regulatory text, commenters generally reiterated their comments from the June 2, 2003 notice

[30] In addition, Appendix E of the June 2, 2003 proposal treats 1-hour NSR as an applicable requirement after the 1-hour standard is revoked. Under the final rule, 1-hour NSR would not be a required implementation plan element after the 1-hour standard is revoked. Instead, NSR under the 8-hour NAAQS will apply.

in commenting on the draft regulatory text.

Response: As we noted above and in the preamble to the proposed rule, we examined the CAA as a whole to discern Congressional intent since Congress did not specifically address anti-backsliding where EPA promulgated a more stringent NAAQS. After considering the "as a matter of law" designation and classification for the 1-hour NAAQS, section 172(e), and the CAA's redesignation provisions, we believe that Congress intended these areas to continue to implement requirements that applied in the area for the 1-hour NAAQS.

Comments: The EPA's June 2 proposal listed RFG in appendix B as an "applicable requirement" for severe and above ozone nonattainment areas; it was also listed as an "applicable requirement" in the draft regulatory text under section 51.900(f). The EPA received a number of comments addressing RFG requirements. Some commenters argued that the program was of no environmental benefit in certain locations, and should not be required. One commenter suggested that where it is estimated that the costs per ton of VOC removal would be around $36 million per daily ton removed or around $100,000 per annual ton removed, with no measurable benefit to ozone levels, that requiring use of RFG would be an "absurd result" justifying a waiver of the RFG requirement. One commenter argued that the rules providing for ozone nonattainment areas to opt-in to the RFG program should be liberalized, to allow additional areas to avail themselves of the benefits of RFG. Other commenters argued against such liberalization, on the basis that the fuels industry is already burdened with implementation of far-reaching fuels regulations and does not need the additional difficulties that would be associated with the proliferation of RFG opt-ins.

Response: The EPA has decided that it is not appropriate to list RFG as an "applicable requirement" in the final rule in section 51.900(f). The RFG program is not adopted as a State program in SIPs, as are the other "applicable requirements" listed in today's final rule. Rather, RFG is required under a Federal program. It is prescribed in some instances by statute, and in other instances States are allowed to opt-in and opt-out of the program in accordance with Federal statutory prescriptions and EPA rules. The EPA recognizes that the scope and applicability of the RFG program during and after implementation of the new 8-hour ozone standard raises various issues that need further clarification. However, such clarification is more appropriately provided in a separate undertaking. Since Federal RFG does not appear on the final rule's list of "applicable requirements" in subpart 2, there is no need to respond in this rulemaking to the comments regarding implementation of the RFG program. Therefore, while not an "applicable requirement" under today's rules, the RFG requirement is nonetheless applicable under the CAA for certain areas, and EPA will determine in the future whether this requirement would change for these areas when they attain the ozone NAAQS.

Comment: One commenter noted that the language in the draft regulatory text is based upon the date of revocation of the 1-hour ozone NAAQS, which is at least one year later than that specified in the proposed rule. The date of revocation is also highly uncertain compared to the date of designation, which is driven by the Consent Decree. The Draft Regulatory Text therefore conflicts with the proposed rule language. The commenter prefers use of the date of designation for these and other applicable requirements.

Response: The regulatory text has been revised to key the requirement from the effective date of designation for the 8-hour NAAQS.

Comment: One commenter believed there was a conflict between the June 2, 2003 notice and the draft regulatory text concerning the timing of the 1-hour NSR obligation. The draft section 51.905(a)(1) provision would apply for areas designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS, but the June 2, 2003 notice provision would apply to areas designated nonattainment for the 1-hour NAAQS at the time of designation of the 8-hour NAAQS. The commenter recommended that the rule be based on the date of designation for the 8-hour NAAQS.

Response: We agree there was a conflict in the draft regulatory text on this matter. However, as discussed below, the final differs from the proposal in that after the 1-hour NAAQS is revoked, NSR under the 1-hour NAAQS will no longer be a required implementation plan element in areas that are 8-Hour NAAQS nonattainment/ 1-Hour NAAQS nonattainment. Instead, NSR under the 8-hour NAAQS will apply.

(ii) *Discretionary control measures.* This discussion of discretionary measures includes how we plan to treat enforceable commitments approved into the SIP. (section VI.C.3.a.ii. of proposed rule, see 68 FR 32821, and section VI.C.3.a.v. of proposed rule; see 68 FR 32822; section 51.905(d) of draft and final rules; there is no parallel provision in the final rule.)

(A) *Background.* Many approved SIPs contain control measures that are not specified under subpart 2 for the area, but that the State chose to adopt as part of the demonstration of attainment or part of the ROP requirement for the 1-hour NAAQS. For these kinds of measures, we proposed that States retain the discretion they now have to modify these requirements in their SIPs. For purposes of the 1-hour NAAQS, States may currently revise or remove those requirements so long as they make a demonstration consistent with section 110(l) that such removal or modification would not interfere with attainment of or progress toward the 1-hour ozone NAAQS (or any other applicable requirement of the CAA).[31] Once the 1-hour standard is revoked, for purposes of the 8-hour NAAQS, the same discretion to modify a SIP would apply except the State would need to make the demonstration required by section 110(l) with respect to the 8-hour NAAQS, not the 1-hour NAAQS. *See* 68 FR 32821 for an example of how this would work.

We also proposed that States remain obligated to meet enforceable commitments approved into a SIP to the same extent as if they were adopted measures (68 FR 32822). This includes enforceable commitments to perform a mid-course review. The only way a State may modify or remove such a commitment is through a SIP revision making the required demonstration under section 110(l).

(B) *Summary of final rule.* We are adopting the approach we set forth in our proposed rule. A State may revise or remove discretionary control measures (including enforceable commitments) contained in its SIP for the 1-hour NAAQS so long as the State demonstrates consistent with section 110(l) that such removal or modification will not interfere with attainment of or progress toward the 8-hour ozone NAAQS (or any other applicable requirement of the CAA). Under the rule, States remain obligated to meet any SIP-approved commitment to perform a mid-course review. These SIP commitments generally do not bind the

[31] For purposes of the preamble to this rulemaking, whenever we state that a State must make the demonstration required under section 110(l) to modify its SIP, we also mean that the State must make the required demonstration under section 193 to the extent the affected area is designated nonattainment and the SIP requirement the State is modifying was a control requirement in effect or required to be in effect prior to November 15, 1990.

States to take any specific action in response to the results of the mid-course review. The EPA anticipates that rather than using these reviews to ensure areas meet the 1-hour NAAQS (which will have been revoked), States and EPA can use these reviews to ensure progress is being made consistent with needs for the 8-hour NAAQS.

Note, however, that since general provisions for modifying or removing control measures in a SIP are already provided in the statute (sections 110(l) and 193), we do not believe there is a need to have a duplicative provision in this final rule. Therefore, even though the draft regulatory text contained such a provision (section 51.905(d)), the final rule does not contain that provision.

(C) Comments and Responses

Comment: Several commenters supported the proposal regarding discretionary control measures. Other commenters believed that States should not be held to commitments to submit the mid-course review required under their 1-hour SIP. Some commenters objected to the provision in draft regulatory text for allowing "relaxations" of the SIP under sections 110(l) and 193 of the CAA.

Response: Sections 110(l) and 193 allow States to modify the discretionary controls in their SIPs if the provisions of those sections are met. While we believe it is important to prevent backsliding consistent with the statutory provisions, we do not believe it is appropriate to further restrain the discretion Congress granted to States in determining the appropriate mix of controls in the SIP. We believe that a State may revise discretionary controls approved in its SIP as long as it meets the criteria specified in sections 110(l) and 193. We believe the tests provided in sections 110(l) and 193 will prevent the adverse effects envisioned by the commenter.

(iii) *Measures to address growth.* (section VI.C.3.a.iii of proposed rule; see 68 FR 32821; sections 51.900(f) and 51.905(a)(1) of the draft and final rule.)

(A) *Background.* In general, the SIP provisions in the CAA include one provision to address growth—nonattainment NSR. We discuss conformity for all areas in a later section.

For areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment, we proposed in the June 2, 2003 notice that the major source applicability cut-offs and offset ratios for nonattainment NSR that applied for an area's 1-hour classification continue to apply.

(B) *Summary of final rule.* The final rule treats 1-hour NSR as a requirement that will no longer apply once the 1-hour NAAQS is revoked. We provide a more thorough discussion of the approach in our final rule and the rationale in the section below discussing 1-hour NAAQS obligations that no longer apply as of revocation of the 1-hour NAAQS.

(C) *Comments and responses.* Comments and responses are included in the section below discussing 1-hour NAAQS obligations that no longer apply as of revocation of the 1-hour NAAQS.

(iv) *Planning SIPs.*

(A) *Outstanding ROP obligation.* (section VI.C.3.a.iv of proposal; 68 FR 32822; section 51.905(a)(1) of the draft and final rules).

(1) *Background.* In the June 2, 2003 proposal, we proposed that States remain obligated to address separately 1-hour ROP requirements that do not overlap with RFP obligations for the 8-hour NAAQS.[32] Where outstanding ROP and RFP obligations overlap, the area need not submit a separate ROP plan for the 1-hour NAAQS but must show that the 8-hour ROP plan is no less stringent than the 1-hour ROP requirement. For ROP provisions already adopted into the SIP, we proposed that the State may remove or revise control measures needed to meet the ROP milestone if such control measures were discretionary (*i.e.*, not mandated by subpart 2 for the area's 1-hour classification), as discussed above, and the State makes a demonstration under section 110(l) including a demonstration that the revision will not interfere with meeting the 1-hour ROP and 8-hour RFP goals.

(2) *Summary of final rule.* We are adopting the approach set forth in our proposed rule for areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment. States remain obligated to meet the CAA-mandated ROP emission reduction targets that applied for the 1-hour NAAQS, but discretionary measures adopted to meet those targets may be modified, if the State makes the necessary showing under section 110(l).

In addition, we are providing further clarification regarding how this obligation applies. Areas that have an outstanding obligation for an approved 1-hour ROP SIP for one or more of the ROP periods (*e.g.*, 1999–2002, 2002–2005, 2005–2007) must still develop and submit to EPA (if they have not already done so) all outstanding 1-hour ROP plans. Where a 1-hour ROP obligation overlaps with an 8-hour RFP requirement, the State's 8-hour RFP measures can be used to satisfy the 1-hour ROP obligation.

The State may choose to show that both the 8-hour and 1-hour ROP obligations are met through a single 8-hour plan submittal. To prevent backsliding, the State must ensure that the 8-hour RFP emission plan is at least as stringent as the 1-hour ROP emission target, for the year in which 1-hour ROP must be met. The State may do this by first establishing an RFP emission target for the entire 8-hour ozone nonattainment area, for the 1-hour ROP target year. If the 8-hour RFP emission target for the 8-hour area for the same period is more stringent than the 1-hour ROP emission target for the 1-hour area (assuming the 8-hour area includes the entire 1-hour area), the State is not obligated to submit a separate 1-hour ROP plan, but can rely solely on the 8-hour RFP plan and emission target to demonstrate that the 1-hour target will be met. However, the State must ensure that the emission target will be met for the same period as for 1-hour ROP (*e.g.*, 2003–2005). The State may rely on any control measure to meet both ROP for the 1-hour NAAQS and RFP for the 8-hour NAAQS. Appendix A below provides an example of how this might work.

In the June 2, 2003 proposal (68 FR 32835), we proposed that the Agency's Clean Data Policy[33] would remain effective under the 8-hour ozone NAAQS, and we therefore intend to apply this policy in implementing this final rule for areas that achieve the 8-hour NAAQS. Thus, if an area attains the 8-hour ozone NAAQS, under the Agency's "Clean Data Policy," EPA may waive the 1-hour RFP obligation for the area based on a determination that the area has attained the 8-hour NAAQS. Under that policy, the State will not be subject to the 1-hour RFP requirement for so long as the area remains in attainment with the 8-hour NAAQS. (The EPA will address the applicability of the Clean Data Policy for 8-hour ozone nonattainment areas in Phase 2 of the implementation rule.)

We believe that there is ambiguity in the statute regarding whether areas should remain subject to the requirement to submit planning SIPs, such as the 1-hour ROP plans. Unlike control obligations, we do not believe there is as strong an argument that Congress intended areas to continue to

[32] In this rulemaking, we use "ROP" to refer to the rate of progress requirement for the 1-hour NAAQS and "RFP" to refer to both the rate of progress requirement under subpart 2 and the reasonable further progress requirement under subpart 1 for the 8-hour ozone NAAQS.

[33] Op cit.

submit planning SIPs for a NAAQS that EPA has determined is no longer necessary to protect public health. Section 172(e), which applies when EPA relaxes a NAAQS, only requires EPA to ensure that control measures are no less stringent than they were for the more stringent NAAQS that has been replaced. It does not indicate a Congressional intent that areas remain obligated to plan for and meet a NAAQS as it existed before it was revised. However, both attainment demonstrations and ROP plans result in the adoption of control obligations. And, if EPA determined that these planning requirements did not apply at all, areas currently designated nonattainment for the 1-hour NAAQS that have not met these obligations might be subject to less stringent controls than would have otherwise applied. Thus, in considering how to treat this obligation, we balanced the need to ensure the same level of control with the difficulties associated with meeting this obligation.

For purposes of ROP, the exercise of calculating the reductions necessary to meet ROP is relatively simple. Moreover, as provided above, even if the State must calculate ROP separately for the 1-hour and 8-hour NAAQS, it may still rely on one or more of the same control measures to meet both those obligations. Additionally, we believe that most of the areas with an outstanding 1-hour ROP obligation will be able to demonstrate that the 8-hour RFP targets for the same time period will be more stringent and thus will not be required to prepare a separate 1-hour ROP plan. Finally, we note that States have already submitted and, EPA has already approved 1-hour ROP plans for most 1-hour nonattainment areas. Thus, the anti-backsliding provisions regarding the continued obligation to adopt and submit 1-hour ROP plans will affect only a handful of areas. For these reasons, we are adopting a regulation that requires areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment to continue to adopt and achieve the level of ROP reductions mandated by Congress under the CAA for that NAAQS.

(3) Comments and responses

Comments on June 2, 2003 Proposal: Few commenters submitted comments on the portion of the proposed rule discussing the anti-backsliding requirements applicable to 1-hour ROP. Several commenters generally opposed any continued planning obligations under the 1-hour NAAQS, but did not raise specific concerns with respect to ROP. Similarly, a number of other commenters opposed revocation of the 1-hour NAAQS and urged retention of all 1-hour planning and control obligations; but again, these commenters did not raise concerns specific to the proposed anti-backsliding approach for ROP.

One commenter, addressing section 51.905(a)(1)(iii) of the draft regulatory text, argued that States should have the ability to modify ROP measures if it can be demonstrated that they are not needed for purposes of meeting requirements under the 8-hour NAAQS or if measures are no longer appropriate due to updated technical information regarding emissions inventory and control strategy effectiveness. Another commenter objected to retaining the 1-hour ROP requirement, primarily because areas recently reclassified to a higher classification would have a continuing obligation for ROP even if they were not required to develop an RFP plan under the 8-hour NAAQS. Another commenter believed the 1-hour ROP requirement should only be required where it is demonstrated to be needed for attainment of the 8-hour NAAQS.

Response: As provided above, we believe Congress intended areas to continue to have control measures no less stringent than those that applied for the 1-hour NAAQS. Because the ROP obligation results in control obligations, we believe areas should remain obligated to adopt outstanding ROP obligations to ensure that the ROP milestones are met. If a State believes adopted controls are not the best fit for the 8-hour NAAQS, the State retains full discretion to revise those controls so long as the revision doesn't interfere with the ROP milestones.

Without this provision, an area with an unmet obligation to submit and implement a ROP plan under the 1-hour NAAQS could experience backsliding by being released from the obligation to have controls in place that achieve a specified level of emissions reductions during the interim period prior to implementation of the SIP required for the 8-hour NAAQS. In other words, if the 1-hour NAAQS were not revoked, the area would have been required to continue to ensure emissions would be reduced by specified levels in specific timeframes. If the final rule contained no provision comparable to section 51.905(a)(1)(i), achievement of those emissions reductions would almost certainly be delayed. Because we are transitioning to a more stringent and protective air quality NAAQS. We see no reason why there should be provisions that would provide less protection to public health.

(B) *Unmet attainment demonstration obligations* (section VI.C.3.a.iv of proposal; see 68 FR 32822; section 51.905(a)(1)(ii) of the draft and final rules)

(1) *Background.* Most areas designated nonattainment for the 1-hour ozone NAAQS have fully approved attainment demonstrations for the 1-hour NAAQS. Because there are so few areas without approved attainment demonstrations, in the proposed rule we identified the two types of situations of which we were aware and solicited comment on how to handle those situations. First, there are a few areas that do not have a fully approved attainment demonstration because the area has not acted in accordance with the timelines provided under the CAA. The second situation is an area which has a future obligation to submit an attainment demonstration. In general, these are areas that, over the past several years, have been reclassified (*i.e.*, "bumped up") to a higher classification. In the preamble to the proposal, we discussed the policy reasons that would support retention of the obligation to submit an attainment demonstration and the policy reasons that would counsel against retention of that obligation (68 FR 32822). For both these groups of areas, we solicited comment on whether to retain the obligation to develop a 1-hour attainment demonstration. In addition, we solicited comment on two alternatives that would address many of the policy concerns we noted.

Alternative 1 would require that areas with a current or past due obligation to submit a new or revised attainment demonstration instead be required to submit a SIP revision that would obtain an advance increment of local emissions reductions toward attainment of the 8-hour ozone NAAQS within a specified, short-term timeframe; 5 percent and 10 percent were suggested possibilities for the increment. Under Alternative 2, areas with a current or past due obligation to submit a 1-hour attainment demonstration would be required to submit their 8-hour ozone attainment demonstration early in lieu of being required to submit a 1-hour attainment demonstration. The draft regulatory text was developed using the first alternative, and used a 10 percent increment.

(2) *Summary of final rule.* In the final rule, we are allowing the States to choose among three options that are tailored after the approaches addressed in the proposed rule. Thus, rather than establishing one mandatory approach, we are adopting a rule that will allow

States to choose any one of the following three options:

- *Option 1.* Submit a 1-hour attainment demonstration.
- *Option 2.* Submit, no later than 1 year after the effective date of the 8-hour designations, an early increment of progress plan toward the 8-hour NAAQS which provides:
  - A 5 percent increment of reduction from the 2002 emissions baseline (NO_X and/or VOC). The control measures for achieving this increment must be in addition to measures (or enforceable commitments to measures) in the SIP as of the effective date of designation and in addition to national or regional measures. (The State can take credit for this increment of reduction toward its RFP requirement under the 8-hour NAAQS.)
  - For achievement of the emissions reductions within 2 years after submittal (*i.e.*, 3 years after designation).
- *Option 3.* Submit an early 8-hour ozone attainment demonstration SIP 1 year after the effective date of designation for the 8-hour NAAQS that:
  - Demonstrates attainment of the 8-hour NAAQS by the area's attainment date,
  - Provides for 8-hour RFP consistent with the area's classification out to the area's attainment date, and
  - Ensures that the first segment of RFP [34] between the end of 2002 and the end of 2008 is achieved early—by the end of 2007.

With respect to Option 2, the final rule specifies a 2002 baseline year for calculating the early increment of progress whereas the draft regulatory text did not provide a specific baseline year.

As noted above in the ROP section, we believe the statute is ambiguous regarding the need for States to address planning for a NAAQS no longer needed to protect public health. However, since these planning SIPs result in the adoption of control measures, which we believe Congress intended be no less stringent, we examined what approaches would ensure controls are adopted and implemented without unnecessarily obligating States to plan for a NAAQS not needed to protect public health.

Unlike planning for ROP, preparing an attainment demonstration involves complex modeling and analyses that can be resource intensive both in terms of workload and cost. We don't believe it is appropriate or necessary to mandate that States perform the attainment demonstration for a NAAQS that is not needed to protect public health. But we also do not believe it is appropriate to waive in total this obligation in light of the need to ensure there is no delay in achieving emissions reductions to protect public health. We are adopting an approach that provides States with options because it provides maximum flexibility to States that have outstanding attainment demonstration obligations while continuing to obtain in a timely fashion many or all of the emissions reductions that should occur under those obligations, effecting an orderly transition to planning under the 8-hour NAAQS. In addition, we do not believe it is equitable to relieve these areas of this obligation where other areas have already adopted controls to meet these obligations and will not be able to modify or remove such controls unless the State can demonstrate that such action is consistent with section 110(l).

Thus, in balancing Congressional intent to ensure no backsliding, equitable treatment of all areas, the need for areas to begin planning for the 8-hour NAAQS and the limited planning resources that States have available, we believe the best approach is to provide States with several alternatives, each of which will achieve emissions reductions on a timeframe similar to when they would have been achieved for the 1-hour NAAQS through a 1-hour attainment demonstration SIP. The State may choose the option that is least burdensome in light of activities already performed. For example, States with a 1-hour attainment demonstration that is past due or is due in the next several months may have already made significant progress in developing a 1-hour attainment demonstration SIP. Thus, these States may choose the first option. We are aware that one or more States have already begun the process of developing 8-hour attainment demonstrations for some 1-hour nonattainment areas. These States may choose to submit an early 8-hour attainment demonstration SIP. Other areas, which have not yet made significant progress on 1-hour or 8-hour attainment planning, may wish to reserve more time for the attainment demonstration process, which can involve complex modeling, and thus choose the third option—to achieve an early increment of progress.

For the second option available to States, we chose 5—rather than 10—percent as the amount of reduction. Under this option, States must achieve the 5 percent emission reduction from local controls (not currently required by the SIP) and within 3 years of designation for the 8-hour NAAQS. In light of the quick timeframe in which to achieve the reductions following designations and the limitation that such reductions cannot be from regional or national controls or from measures already in the SIP, we concluded that 10 percent was unduly burdensome. The States that choose this option will need to identify and adopt appropriate controls within a 1-year timeframe and require sources to implement the controls within a short time thereafter. These limitations will restrict the control choices available to States. In addition, because of the limited timeframe for adoption and submission of the controls to EPA, we do not believe it is reasonable to require the State to obtain a level of reduction that would force the States to concentrate its resources on the early ROP reduction rather than on an 8-hour attainment plan. However, because the State will not be able to rely on national or regional controls, we are confident that the 5 percent requirement will achieve the anti-backsliding goal.

Finally, as with the 1-hour ROP requirement, we note that EPA may waive the 1-hour attainment demonstration requirement for areas based on a determination that the area has attained the 8-hour NAAQS. The EPA's Clean Data Policy [35] provides that if EPA has determined that an area has attained the 1-hour NAAQS, it will not be obligated to submit a 1-hour attainment demonstration for so long as it maintains the 1-hour NAAQS. Thus, extending this policy to the 8-hour NAAQS, if EPA determines that an area has attained the 8-hour ozone NAAQS before the time the area is obligated to make a submission under this portion of EPA's 8-hour implementation regulations, EPA would waive this requirement for so long as the area remains in attainment with the 8-hour NAAQS. (The EPA will address the applicability of the Clean Data Policy for 8-hour ozone nonattainment areas in Phase 2 of the implementation rule.)

(3) *Comments and responses.*

Comment: Several commenters advocated retaining the planning obligations under the 1-hour NAAQS, expressing the belief that momentum will be lost in implementing controls if these obligations are not retained. In general, most of these commenters also

[34] The amount of which will depend on the ROP option in the final rule and the classification of the area.

[35] Memorandum of May 10, 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: *http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf.*

opposed revocation of the 1-hour NAAQS and believed Congress intended the 1-hour NAAQS to be planned for and met. Some commenters opposed retaining the attainment demonstration requirements under the 1-hour NAAQS after the NAAQS is revoked on the basis that State resources are limited and should be focused on developing plans for implementing the 8-hour rather than the 1-hour NAAQS. A few commenters favored the alternative of requiring an early plan with an advance increment of emissions reductions toward progress of the 8-hour NAAQS in lieu of the attainment demonstration SIP revision. A few other commenters favored the alternative of requiring States to submit an early attainment demonstration SIP for the 8-hour NAAQS.

Only one commenter believed that 10 percent was the appropriate amount under Alternative 1 for an advance increment of progress; several others opposed 10 percent, claiming that it appeared to be punitive, that there was no technical support for that amount, and that it may be more than what was needed for attainment of the 8-hour NAAQS.

Some commenters recommended that exceptions be made for any area that made good faith efforts to develop and submit its plan, such as those with a submitted and approved plan that may have been challenged and overturned by a court.

Response: We have designed the final rule such that an area without an approved attainment demonstration or ROP plan would still be required to submit and implement a ROP plan and an attainment demonstration or substitute plan as required for the 1-hour NAAQS. We believe this approach will ensure there are no delays in achieving emissions reductions as we transition to the more stringent 8-hour ozone NAAQS.

We believe that areas that have not met their planning obligations under the 1-hour NAAQS—if relieved of that obligation after the 1-hour NAAQS is revoked—would provide emissions reductions on a more protracted time schedule than areas that had met their 1-hour NAAQS planning obligations. For example, an area that is classified severe-15 for the 1-hour NAAQS would have to obtain RFP reductions and any additional reductions needed for attainment by the end of 2005, whereas if that same area is moderate under the 8-hour NAAQS, it would not be required to obtain reductions under the RFP provisions until 2008 and additional reductions for attainment by some time in 2009. We believe that the provisions of the final rule—by offering three alternative means of meeting the 1-hour attainment demonstration obligation—allow sufficient flexibility for a State in these circumstances to choose the most appropriate means to achieve these reductions in the time intended by Congress.

d. *Section 51.905(a)(2): 8-hour NAAQS Nonattainment/1-hour NAAQS Maintenance*

In the June 2003 proposal, we discussed the requirements for areas designated as attainment for the 1-hour NAAQS with a maintenance plan at the time of designation for the 8-hour NAAQS in the same sections discussing the requirements for areas designated nonattainment for the 1-hour NAAQS at the time of 8-hour designations. However, in the draft regulatory provisions, we created a separate subparagraph addressing these areas. Below, we indicate briefly where the obligations for these areas, *i.e.*, maintenance areas at the time of designation, are the same as for areas designated nonattainment for the 1-hour NAAQS at the time of 8-hour designations. We discuss in more detail where the obligations differ.

(i) *Mandatory Control Measures.* (section VI.C.3.a.i. of proposed rule; see 68 FR 32821; sections 51.900(f) and 51.905(a)(2) of draft and final rules).

(A) *Background.* In the June 2003 proposal, we proposed that all areas designated nonattainment for the 8-hour NAAQS and that were nonattainment or maintenance for the 1-hour NAAQS at the time of 8-hour designations would be required to continue to implement mandatory measures adopted into the approved SIP. We did not distinguish between areas designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS and areas that are maintenance for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. However, in the draft regulatory text, we created a separate provision for maintenance areas because these areas do not have an outstanding obligation to adopt mandatory control obligations for the 1-hour NAAQS.[36] Thus, the draft regulatory provision for maintenance areas did not address the future adoption of controls; it simply provided that these areas would be required to continue to implement the applicable requirements (as defined in the regulatory text) in the approved SIP.

We also provided in the June 2003 proposal and the draft regulatory text that if a maintenance area had previously shifted a mandatory control measure to the contingency provisions, the area would not be required to begin implementation of that measure based on the 8-hour nonattainment designation. However, the measure would need to remain as a contingency measure for the area and could not be removed from the SIP.

(B) *Final Rule.* We are adopting the approach we took in the proposal and the draft regulatory text. Areas that are maintenance for the 1-hour NAAQS at the time of 8-hour designations and are designated nonattainment for the 8-hour NAAQS, must continue to implement mandatory control requirements (*i.e.*, "applicable requirements") that have been approved into the SIP. However, since maintenance areas do not have any outstanding obligation to adopt mandatory control measures for the 1-hour NAAQS, the provision only addresses implementation, not adoption. In addition, this section recognizes that maintenance areas had the flexibility to move mandatory controls to the contingency measures portion of their maintenance plan. The area would not be required to implement these measures unless it is required to do so for the area's classification for the 8-hour NAAQS. However, the measures would need to remain as contingency measures and could not be removed from the SIP.

We are adopting the requirement that 1-hour maintenance areas are required to continue to implement mandatory controls for the same reasons we provided with respect to 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas above. With respect to mandatory measures that the State has moved to the contingency portion of the maintenance plan, we do not believe that Congress intended to require areas to begin implementing such measures again based on the promulgation of a revised NAAQS unless required based on the area's classification for the revised NAAQS. These areas have fully complied with the process that Congress established—attainment of the (then-existing) NAAQS and redesignation to attainment for that NAAQS based on a plan demonstrating that the area will maintain the NAAQS. While we believe these areas should not "backslide" from existing control levels, we do not believe that for purposes of the 8-hour NAAQS they should be required to begin implementing once more measures that the State has chosen to place in the contingency measures portion of the SIP.

(ii) *Discretionary Control Measures.* (Section VI.C.3.a.ii. of proposed rule,

[36] In order to redesignate these areas to attainment, EPA had to determine these areas had met all obligations under part D. *See* CAA section 107(d)(3)(E).

see 68 FR 32821, Section 51.905(a)(2) of draft regulatory text; there is no parallel provision in the final rule.)

(A) *Background.* The June 2, 2003 proposal did not discuss the requirements for these areas independent of all areas that were designated nonattainment for the 1-hour NAAQS on or after November 15, 1990. The draft regulatory text (section 51.905(a)(2)), however, did provide for this situation separately but did not directly address discretionary measures.

(B) *Summary of Final Rule.* As with discretionary control measures for 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas, 1-hour NAAQS maintenance/8-hour NAAQS nonattainment areas will retain the discretion to modify any discretionary control measures upon a demonstration under section 110(l). We are not promulgating regulatory text because, as described above, sections 110(l) and 193 of the CAA govern such SIP revisions.

(iii) *Measures to address growth.* (Section VI.C.3.a.iii of proposed rule; see 68 FR 32821; sections 51.900(f) and 51.905(a)(1) of the draft and final rules)

(A) *Background.* In the proposal, we recognized that 1-hour maintenance areas generally are subject to the prevention of significant deterioration (PSD) program and are no longer implementing the nonattainment NSR program for their previous 1-hour ozone designation and classification.[37] For areas where the NSR program no longer applies under the SIP, we proposed that the areas would not need to revert back to the NSR program they had for purposes of the 1-hour NAAQS. The proposal provided examples of how this would work (68 FR 32821).

(B) *Summary of final rule.* We are adopting the approach we proposed but our rationale relies on the final rule's provision that NSR under the 1-hour standard will no longer apply as of revocation of the 1-hour standard. If an area has been redesignated to attainment for the 1-hour NAAQS as of the effective date of the 8-hour nonattainment designation and is no longer required to implement a nonattainment NSR program, the area will not be required to revert back to the program it had for purposes of the 1-hour ozone NAAQS. As noted elsewhere, NSR offset ratios and source applicability provisions under the 1-hour standard are not being defined as "applicable requirements" after the 1-hour standard is revoked.

As provided in more detail below for 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas, we have determined that 1-hour NAAQS NSR should not continue to apply once the 1-hour NAAQS is revoked for those areas. It would not be reasonable to require these areas to begin those 1-hour programs again for the 1-year between designation for the 8-hour NAAQS and revocation of the 1-hour standard. Moreover, Congress did not intend the nonattainment NSR program to continue to apply to most areas once they are redesignated to attainment. Rather, such areas are subject to the PSD program. For an area that has met the clean air goals for the 1-hour NAAQS, we see no reason to require such area to revert back to its 1-hour NSR program. These areas will be required to implement the nonattainment NSR program that applies based on their classification for the 8-hour ozone NAAQS.

(iv) *Planning SIPs.* (Section VI.C.3.a.iV. of proposed rule, see 68 FR 32822; no specific provision in draft regulatory text or final rule.)

(A) *Background.* In the June 2003 proposal, we did not discuss maintenance areas separate from 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas. However, the preamble discussion focused on areas with an outstanding obligation to submit a 1-hour ROP or attainment plan and the obligation to ensure that the ROP percentage reduction obligations in the approved SIP are achieved. Maintenance areas for the 1-hour NAAQS do not have an outstanding obligation to submit ROP or attainment plans for the 1-hour NAAQS. Thus, the draft regulatory text did not include language similar to that in 51.905(a)(ii) and (iii) for maintenance areas. The draft regulatory text did reflect ROP as an applicable requirement for maintenance areas, indicating that these areas must ensure that any SIP revision does not interfere with an approved ROP milestone.

(B) *Summary of final rule.* We are adopting the approach taken in the draft regulatory text. In redesignating an area to attainment, EPA must conclude that the area has met all requirements applicable under section 110 and part D. Thus, maintenance areas do not have continuing progress and attainment demonstration requirements, and the final rule does not establish requirements for maintenance areas related to outstanding attainment demonstration and ROP plans. The final rule does identify the ROP percent reduction requirement as an applicable requirement. However, we note that the ROP periods for areas redesignated to attainment for the 1-hour NAAQS have already passed and thus any revision to the SIP should not affect ROP reductions for the periods required for the 1-hour NAAQS.

(C) *Comments and responses.*

Comment: One commenter believed that 1-hour maintenance areas designated nonattainment under the 8-hour NAAQS should not have to submit updates to the 1-hour maintenance plan, since they will be developing 8-hour attainment plans that will subsume the requirements of the maintenance plan previously in effect.

Response: The rule provides that after the 1-hour ozone NAAQS is revoked, areas are relieved of responsibilities to submit updates to their 1-hour maintenance plans. The State may submit a revision to the SIP to remove the provisions that require the update to the maintenance plan.

Comment: One commenter noted that draft Section 51.905(a)(2) would limit shifting of an applicable requirement to the contingency measure portion of an area's maintenance plan. Under the proposal, a State may only make such a shift prior to the revocation of the 1-hour NAAQS; States may only make subsequent shifts by satisfying the requirements of section 110(l) of the CAA. The commenter believes that this criterion for shifting measures to the maintenance plan is more stringent and burdensome than the requirements in section 175A of the CAA for maintenance plans. In the alternative, the commenter recommends that in lieu of the showing required by Section 110(l), that States, instead, be allowed to substitute a control measure with equivalent emissions reductions for the measures they propose to remove from their plan.

Response: We agree with the commenter that section 51.905(a)(2) will limit the authority of an area that was maintenance for the 1-hour standard at the time of designation as nonattainment for the 8-hour standard. However, we disagree with the commenter regarding the statutory provisions that apply for purposes of SIP revisions. The commenter is incorrect that section 110(l) does not apply to revisions to maintenance plans. Prior to being designated nonattainment for the 8-hour NAAQS, such an area could move adopted measures to the contingency measures portion of the maintenance plan based on a demonstration under section 110(l) that such a revision would not interfere with attainment, maintenance or any other applicable requirement of the CAA. Our

[37] If an area located in the Ozone Transport Region was redesignated to attainment, section 184(b)(2) of the CAA required it to retain a nonattainment NSR program. In addition, it is possible that one or more areas still has a nonattainment NSR program in place because of the way the State wrote the SIP.

rule provides that upon designation as nonattainment for the 8-hour NAAQS, a 1-hour maintenance area will not be able to shift adopted mandatory controls (*i.e.*, those identified as "applicable requirements" in the regulation) to contingency measures as those obligations are now defined as "applicable requirements." Once the area is redesignated to attainment for the 8-hour NAAQS, such obligations will no longer be defined as "applicable requirements" and the State can move them to contingency measures based on a demonstration that to do so would not interfere with attainment or maintenance of the 8-hour NAAQS or any other applicable requirement of the CAA. For adopted control measures that are not identified as "applicable requirements" in the regulation, the State will continue to have the same authority it currently has for shifting adopted controls to contingency measures, based on a demonstration under section 110(l).

Comment: One commenter noted that in section 51.905(a)(2), the clause "* * * except to the extent required under its 8-hour obligations * * *" could be interpreted to imply that contingency measures in the 1-hour maintenance plan become 8-hour measures by default. The commenter suggested language to avoid an incorrect interpretation.

Response: The final rule reflects this recommended language change with some slight modifications.

e. *Section 51.905(a)(3): 8-Hour NAAQS Attainment/1-Hour NAAQS Nonattainment*

(i) *Mandatory control obligations.* (Section VI.C.3.b. of proposal, see 68 FR 32823; section 51.905(a)(3)(i) of the draft and final rule)

(A) *Background.* The proposal noted that the issue of what obligation remains with respect to mandatory control measures approved into the SIP or required under the CAA is based on the CAA's requirements for maintenance plans. We proposed that if EPA determined that these areas were required to develop maintenance plans pursuant to section 175A, then they would need to keep (or to adopt and then keep) those control measures in the SIP, though they could shift them to contingency measures.

For an area that was never redesignated to attainment for the 1-hour standard and never had a section 175A maintenance plan, we proposed that if the area wants to revise any part of its current 1-hour SIP, the area must first adopt and submit a maintenance plan consistent with section 110(a)(1) (discussed below). We proposed that these obligations would remain in place but in a later section of the preamble proposed options as to when this obligation would no longer apply.[38]

(B) *Summary of final rule.*

We are adopting an approach consistent with our proposed rule. As we discuss later in this preamble, we have determined that mandatory control obligations will no longer apply once an area attains the 8-hour NAAQS. Thus, because these areas are attaining the 8-hour NAAQS, the State may request that obligations under the applicable requirements of section 51.900(f) be shifted to contingency measures once the 1-hour NAAQS is revoked, consistent with sections 110(l) and 193 of the CAA. However, the State cannot remove the obligations from the SIP.

Because these areas are in attainment with the health-based NAAQS, we believe that Congress—as with areas redesignated from nonattainment to attainment—did not intend the areas to retain these controls as implemented measures if the area can demonstrate maintenance without the controls. As with areas redesignated to attainment, the rule provides that the State cannot remove the measures from the SIP, but rather may move them to the contingency measures portion of the SIP. We did not receive comments directly addressing mandatory control obligations for this category of areas outside the context of maintenance plans for these areas discussed below.

(ii) *Discretionary control obligations.* (Section VI.C.3.b.iii. of proposal; 68 FR 32823; section 51.905(d) of draft regulatory text; no parallel provision in final rule.)

Areas designated nonattainment for the 1-hour NAAQS that are designated attainment for the 8-hour ozone NAAQS will retain the ability to modify any discretionary controls upon a demonstration under section 110(l). However, such controls must remain in the SIP as contingency measures. We are not promulgating regulatory text because, as described above, sections 110(l) and 193 of the CAA govern such SIP revisions. As with mandatory measures, we look to the maintenance plan provision of section 175A to see what Congress' intent may have been for these areas. Because these areas were nonattainment for the 1-hour NAAQS, we believe Congress intended them to retain the measures in the SIP, but could shift them to contingency measures if the area demonstrates it will maintain the 8-hour NAAQS if the measure is no longer implemented. We did receive comments directly addressing discretionary control obligations for this category of areas outside the context of maintenance plans for these areas discussed below.

(iii) *Measures to address growth.* (Section VI.C.3.b.i. of proposal; 68 FR 32823; no provision in draft or final rule.)

(A) *Background.* The proposal explained that NSR applies only in nonattainment areas.[39] Since these areas would be designated attainment for the 8-hour NAAQS—the only ozone NAAQS that exists for the area once the 1-hour NAAQS is revoked—they would be subject to PSD, not NSR, once the 1-hour NAAQS is revoked.

(B) *Summary of final rule.* We are adopting the approach we set forth in our proposed rule for areas designated attainment for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. After the 1-hour NAAQS is revoked, the CAA requires such areas to comply with PSD, not NSR. (The States may need to modify their SIPs so that it provides for PSD rather than NSR in such areas.) We do not see a basis for mandating that such areas retain a nonattainment NSR program and do not believe that Congress intended such a result. As an initial matter, once the 1-hour NAAQS is revoked, these areas are meeting the only ozone NAAQS that is in place. Congress specified that PSD shall apply in areas not designated nonattainment (section 161 of the CAA). In addition, as provided in more detail below for 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas, we have determined that 1-hour NAAQS NSR should not continue to apply once the 1-hour NAAQS is revoked for those areas.

Note that for these areas, the NSR provisions may be removed from the SIP and need not be shifted to contingency measures.[40] We have never interpreted section 175A of the CAA to mandate that nonattainment NSR be retained as a contingency measure in the SIP after an area is redesignated from nonattainment to attainment because we do not interpret NSR to be a control

[38] These two options were: (1) When the area attains the 1-hour NAAQS, or (2) when the area attains the 8-hour NAAQS.

[39] If an area located in the Ozone Transport Region was redesignated to attainment, section 184(b)(2) of the CAA required it to retain a nonattainment NSR program. In addition, it is possible that one or more areas still has a nonattainment NSR program in place because of the way the State wrote the SIP.

[40] Memorandum from Mary Nichols to Regional Air Division Directors dated October 14, 1994, entitled "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment."

measure. (*See, e.g.*, May 12, 2003; 68 FR 25436.)

(C) *Comments and responses.*

Comment: Some commenters believed that the 1-hour NAAQS should remain in effect, and therefore NSR would continue to apply until the area attains the 1-hour NAAQS and is redesignated to attainment for that NAAQS regardless of the area's status for the 8-hour NAAQS. Other commenters generally agreed with the proposal.

Response: We address the broader legal and policy issues regarding revocation of the 1-hour NAAQS in the revocation section of this rule.

(iv) *Planning SIPs.* (Section VI.C.3.b(ii) of proposed rule; see 68 FR 32823; section 51.905(a)(3)(ii) of draft and final rule.)

(A) *Background.* In the June 2, 2003 proposed rule, we proposed that any outstanding SIP planning requirements (ROP plans and attainment demonstrations) that applied for purposes of the 1-hour NAAQS would not continue to apply to areas designated attainment for the 8-hour NAAQS for as long as they continue to maintain the 8-hour NAAQS. If such an area violates the 8-hour NAAQS prior to having an approved maintenance plan meeting the requirements of section 110(a)(1) the obligation to have a 1-hour attainment demonstration and ROP plan would once again apply in the same manner that they apply for 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment areas.

The draft regulatory text (section 51.905(a)(3)) contained specific provisions addressing the obligation for an area designated attainment for the 8-hour NAAQS that subsequently violates the 8-hour NAAQS prior to having an approved maintenance plan under section 110(a)(1). If the area was required to and does not have an approved attainment demonstration or ROP plan for the 1-hour NAAQS, the State would be required to submit a plan providing for a 10 percent emission reduction as a substitute for the attainment demonstration and to adopt and submit any outstanding ROP emission reductions.

(B) *Summary of final rule.* We are adopting our proposal with some modification. As an initial matter, section 51.905(a)(3) now only addresses 8-hour NAAQS attainment/1-hour NAAQS nonattainment areas. We have created a new section 51.905(a)(4) that addresses 8-hour NAAQS attainment/1-hour NAAQS maintenance areas. The section addressing that second category of areas is discussed below. An area that is 8-hour NAAQS attainment/1-hour NAAQS nonattainment will not be required to develop and submit outstanding attainment demonstration and ROP plans for the 1-hour NAAQS for so long as the area continues to maintain the 8-hour NAAQS. However, if the area violates the 8-hour NAAQS prior to having an approved 8-hour maintenance plan under section 110(a)(1), the area will be required to submit a SIP revision to address outstanding ROP and attainment demonstration plans as follows.[41]

(1) *ROP Plans.* For an outstanding 1-hour ROP plan, the State must submit a SIP providing for any outstanding ROP and the 3-year periods for achieving those reductions will begin January 1 of the year following the 3-year period on which EPA bases its determination. For example, if an area was required to and does not have an approved SIP providing for a 9% reduction in emissions from 1996–1999, the obligation to have such a SIP is deferred unless the area violates the 8-hour NAAQS prior to having an approved maintenance plan for the 8-hour NAAQS. If EPA determines in August 2007 that the area violated the 8-hour NAAQS based on ambient air quality data from 2004–2006 and at that time the area does not have an approved maintenance plan for the 8-hour NAAQS, the area will be required to submit a SIP providing for a 9 percent reduction in emissions for the 3-year period of January 2007—December 2009. The State may rely on national and regional controls for purposes of meeting this increment of reduction and the 9 percent should be calculated using the 1990 baseline. (The 1-hour ROP requirement is calculated from a 1990 baseline, not a 2002 baseline, as is the 8-hour RFP requirement.) We have clarified the language in the final regulation to make clear that the requirement to submit the plan for additional emission reductions applies only to the extent that an area had not met its prior planning obligations. For example, if an area was classified as serious for the 1-hour NAAQS and had an approved 15 percent ROP plan and an approved 9 percent ROP plan for 1996–1999, then the area does not have any outstanding ROP obligation that must be met under this provision. However, if the same area only had an approved 15 percent ROP plan, but not an approved 9 percent ROP plan for 1996–1999, then the area has an outstanding 9 percent ROP plan for the 1996–1999 period. If the State had submitted the ROP plan to EPA, but EPA had not yet acted on the submission, the State may notify EPA that it wishes to rely on the previously submitted SIP or it may elect to submit a new or revised SIP.

We believe this approach makes sense as it ensures that the level of emission reduction that the area was required to achieve, but was not yet enforceable under the SIP, will be achieved expeditiously after a violation of the 8-hour NAAQS occurs.

(2) *Attainment Demonstration.* For an outstanding 1-hour attainment demonstration, the final rule requires the State to either: (1) submit an 8-hour maintenance plan that addresses the violation and demonstrates maintenance through EPA-approved modeling; or (2) submit a plan to achieve a 3 percent increment of progress within 3 years after EPA determines the area has violated the NAAQS. The 3 percent increment of progress must be in addition to measures (or enforceable commitments to measures) in the SIP at the time of the effective date of designation and in addition to national or regional measures.

This approach differs from both the June 2003 proposal and the draft regulatory text in that we do not establish precisely the same requirement for these areas that we establish for areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment. For areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment, section 51.905(a)(1)(ii) provides three options for the State. The first option available is that States may choose to submit their 1-hour SIP. We do not believe this option makes good policy sense for an area designated attainment for the 8-hour NAAQS to spend resources to develop a plan to achieve the 1-hour NAAQS (which is likely to have been revoked by that time), when the area will already be in the process of developing the section 110(a)(1) maintenance plan for the area discussed elsewhere in this preamble.

The second and third options under section 51.905(a)(1)(ii) available to areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment are analogous but not identical to the two options we provide for areas designated attainment for the 8-hour NAAQS. Both types of areas are provided with the option of achieving a specified increment of progress. For areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment, we established an increment of 5 percent and for those designated attainment for the 8-hour NAAQS, we established a 3 percent increment. In general, we believe that those areas initially designated attainment for the 8-hour NAAQS will

[41] We discuss the obligation for these areas to adopt a section 110(a)(1) maintenance plan below.

have a less significant 8-hour problem—these areas tend to record values within a few parts per billion of the NAAQS. Thus, since the increment of progress is limited to controls not already adopted into the SIP or required by federal or regional controls, the 5 percent reduction requirement would likely be excessive for purposes of addressing that small deviation from the NAAQS.

The third option available to areas that are 8-hour NAAQS nonattainment/1-hour NAAQS nonattainment is to submit an early 8-hour attainment demonstration. Since areas designated attainment for the 8-hour NAAQS are not required to develop attainment demonstrations, it did not make sense to carry this option over. Rather, we determined it made more sense to allow the area to address the violation in the context of the obligation that it does have, *i.e.*, to develop a maintenance plan for the 8-hour NAAQS. Thus, for these areas, we created the option of performing a more rigorous maintenance demonstration—a demonstration based on EPA-approved modeling.

(C) *Comments and responses.*

Comment: Some commenters on draft regulatory text objected to continuing the obligation for areas to submit ROP plans and/or attainment demonstrations for the 1-hour NAAQS after the 1-hour NAAQS is revoked. Some of the comments reflected the fact that the regulatory text may have been unclear regarding what the requirement entailed and which areas were affected.

Response: We have designed the final rule such that an area with an unmet planning obligation would still be required to submit and implement a rate of progress plan and an attainment demonstration (or substitute plan) under the 1-hour NAAQS if the area violates the 8-hour NAAQS before it has an approved maintenance plan. These are areas that have historically had an ozone problem and, in general, have 8-hour design values within a few parts per billion of the 8-hour NAAQS. Once these areas have an approved 110(a)(1) maintenance plan with contingency measures, that plan will address future violations of the 8-hour NAAQS and the 1-hour obligations will no longer apply. However, until that plan is in place, we believe that Congress would have intended these requirements to still have significance if the area violates the health-based NAAQS.

The final regulatory text was modified to clarify that the provision applies to areas that do not have approved ROP plans and/or attainment demonstrations under the 1-hour NAAQS and that violate the 8-hour NAAQS before having an approved 8-hour maintenance plan under section 110(a)(1). The regulatory text also clarifies the obligation that will apply.

(v) *Maintenance Plans for the 8-hour NAAQS.* (Section VI.C.3.b(iii) of proposed rule; see 68 FR 32823; Section 51.905(a)(3)(iii)of draft and final rules).

(A) *Background.*

In the June 2003 proposal, we proposed that areas designated attainment for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS on or after November 15, 1990, must adopt and submit a maintenance plan consistent with section 110(a)(1) within 3 years of designation as attainment for the 8-hour NAAQS. The maintenance plan should provide for continued maintenance of the 8-hour NAAQS for 10 years following designation for the 8-hour NAAQS and must include contingency measures. Areas with approved 1-hour maintenance plans under section 175A would be able to modify those maintenance plans consistent with their obligation to have a maintenance plan for the 8-hour NAAQS under section 110(a)(1). Such areas could remove from their maintenance SIPs (a) the obligation to submit a maintenance plan for the 1-hour NAAQS 8 years after approval of their initial 1-hour maintenance plan; and (b) the requirement to implement contingency measures upon a violation of the 1-hour ozone NAAQS.

The draft regulatory text reflected the description in the June 2003 proposal.

(B) *Summary of final rule.*

We are adopting the approach we proposed. However, as noted above, we have now created separate subsections in the rule addressing areas that were designated nonattainment for the 1-hour NAAQS at the time of designation for the 1-hour NAAQS and areas that were maintenance areas for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. Section 51.905(a)(3)(iii) applies only to areas designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. Section 51.905(a)(4)(ii) establishes the same requirement for areas that are maintenance for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. These two provisions provide that 1-hour NAAQS nonattainment/8-hour NAAQS attainment (section 51.905(a)(3)(iii)) and 8-hour NAAQS attainment/1-hour NAAQS maintenance (section 51.905(a)(4)(ii)) areas must adopt and submit a maintenance plan consistent with section 110(a)(1) within 3 years of designation as attainment for the 8-hour NAAQS. The maintenance plan should provide for continued maintenance of the 8-hour NAAQS for 10 years following designation for the 8-hour NAAQS and should include contingency measures. We provide additional detail below regarding maintenance areas for the 1-hour NAAQS.

Section 110(a)(1) requires all areas to demonstrate that they will attain and maintain the relevant NAAQS. Most of the areas addressed by this provision of the regulation have historically had problems meeting and/or remaining in attainment of the ozone NAAQS. We think it is important for States to ensure that these areas will continue to have clean air so that the health of citizens will be protected.

(C) *Comments and responses.*

Comment: A number of commenters who addressed this issue in comments on the June 2, 2003 proposal did not support the section 110(a)(1) maintenance plan requirement. Some commenters believed the 1-hour NAAQS should remain in effect and with it any existing 1-hour SIP requirements, including section 175A maintenance plan requirements (which would require conformity determinations). One commenter objected to the proposed requirement, alleging the requirement was unnecessary and not required. Two commenters agreed with the requirement.

In commenting on the draft regulatory text one commenter supported this provision. One commenter recommended that we provide more specific guidance on preparation of section 110(a)(1) maintenance plans and also not require modeling for them. Two commenters objected to maintenance plans under section 110(a)(1) because they would not require conformity (as would maintenance plans under section 175A) for areas that currently have maintenance plans under the 1-hour NAAQS. The commenters believed the maintenance planning should be done under section 175A. Another commenter believed that section 110(a)(1) of the CAA requires neither contingency measures nor a 10-year plan; the commenter suggested that the section 110(a)(1) maintenance plan merely be a continuation of the provisions of the existing maintenance plan.

Response: Because the 1-hour NAAQS would be revoked, the requirements of section 175A would not apply to these areas (areas initially designated attainment for the 8-hour NAAQS but that were designated nonattainment for the 1-hour NAAQS at the time of enactment of the 1990 CAA Amendments.) Section 175A applies to

redesignations, not to initial designations. After the 1-hour NAAQS is revoked, we believe that an area that was previously designated nonattainment for the 1-hour NAAQS or was designated attainment with a maintenance plan and that initially is designated attainment for the 8-hour ozone NAAQS, should be required to demonstrate maintenance only for the 8-hour NAAQS at that point. The area was not "redesignated" attainment for the 8-hour NAAQS, and therefore the section 175A maintenance plan requirement does not apply. We believe that the section 110(a)(1) maintenance provisions—as required in section 51.905—will provide adequate assurance of maintenance of the 8-hour NAAQS. The EPA always retains the authority to require a State that fails to maintain the NAAQS to revise its SIP to provide additional maintenance measures or to redesignate the area nonattainment and require an attainment demonstration.

We do not agree with commenters that opposed a provision requiring a maintenance plan under section 110(a)(1) for these areas. We believe that the CAA requires that SIPs continue to provide for maintenance of the applicable NAAQS under section 110(a)(1). Because these areas have historically experienced ozone problems and generally are close to violating the 8-hour NAAQS, we believe it is prudent to require a demonstration of how they will maintain the 8-hour NAAQS. We think this requirement will benefit citizens by providing better assurance that the air will remain clean and will benefit industry by minimizing the likelihood the area will violate the standard and be redesignated to nonattainment.

f. *Section 51.905(a)(4): 8-Hour NAAQS Attainment/1-Hour NAAQS Maintenance.*

As noted above, in the preamble to the proposed rule, EPA addressed in the same section 1-hour nonattainment areas and 1-hour maintenance areas that are designated nonattainment for the 8-hour NAAQS. Comments on the proposed regulatory text noted that section 51.905(a)(3) only addressed 8-hour attainment areas that were designated nonattainment for the 1-hour ozone NAAQS and not areas that were maintenance for that NAAQS. Thus, the draft rule did not address all aspects of the proposal since it did not include provisions for areas that are maintenance for the 1-hour NAAQS at the time of designations.

We considered revising paragraph 51.905(a)(3) to include 1-hour maintenance areas. However, that subsection included certain requirements not relevant for 1-hour maintenance areas, such as requirements concerning outstanding attainment demonstration and ROP plans. Thus, in the final rule, we created section 51.905(a)(4) to apply to areas designated attainment for the 8-hour NAAQS and that were maintenance areas for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS.

(i) *Obligations in an approved SIP.* (51.905(a)(4)(i)).

This subsection is identical in structure to section 51.905(a)(3)(i). Our reasons are explained in our discussion of section 51.905(a)(3)(i), above.

(ii) *Maintenance plan.* (51.905(a)(4)(ii)). As provided above in the discussion of section 51.905(a)(3)(iii), we are adopting in our final rule our proposed interpretation regarding maintenance plans for areas designated nonattainment for the 1-hour NAAQS on or after November 15, 1990 (*i.e.*, areas that remain designated nonattainment for the 1-hour NAAQS as well as maintenance areas for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS). Specifically, these areas must adopt a maintenance plan under section 110(a)(1) within 3 years of designation for the 8-hour NAAQS. The provision for maintenance areas is the same as for areas designated nonattainment for the 1-hour NAAQS. However, for maintenance areas, section 51.905(e), discussed below, cross-references this provision and addresses the relationship between the existing 1-hour maintenance plan and the 8-hour maintenance plan.

Our reasons for adopting this provision are discussed above. Although these areas already have maintenance plans, those plans only address maintenance of the 1-hour NAAQS. It is important for these areas to ensure that they have a plan addressing maintenance of the 8-hour NAAQS. These areas may evaluate their existing plan and demonstrate how it will ensure maintenance of the 8-hour NAAQS, or may modify their existing plan, or may adopt a new plan, as appropriate.

Comment: One commenter argued that it makes little sense to require the State to continue to expend the effort and resources to update and extend these maintenance plans. The commenter questioned why a newly designated marginal area under the 8-hour NAAQS should be exempt from implementation plan requirements, while an area previously nonattainment for the 1-hour NAAQS, but now in attainment for both NAAQS, should be required to continue with 8 additional years of maintenance plan requirements.

Response: The final rule (section 51.905(a)(4)) clarifies that these areas (areas that are initially designated attainment for the 8-hour NAAQS but were attainment areas under the 1-hour NAAQS with approved maintenance plans) are relieved of the requirement to update their maintenance plan under section 175(A), but must submit a maintenance plan under section 110(a)(1) that provides for maintenance for 10 years. It should be noted that marginal areas under the 8-hour NAAQS are not "exempt" from implementation plan requirements; they are still subject to nonattainment new source review and conformity requirements, for instance. Furthermore, if a marginal area does not attain the NAAQS by its attainment date, the CAA requires that the area be bumped up in classification, which would require the area to submit a revised SIP with an attainment demonstration and control measures required under subpart 2 for the area's new classification. In addition, once the area attains the 8-hour NAAQS, it will be subject to the more stringent maintenance plan provision in section 175A, which requires the areas to demonstrate maintenance for 20 years.

3. For How Long Do These Obligations Continue To Apply? (Section VI.C.4 of Proposed rule; See 68 FR 32824; Section 51.905(b) of Draft and Final Rules)

a. *Background.* In the June 2, 2003 proposed rule, we proposed two options for when the State would no longer be required to continue implementing SIP-approved control obligations required for an area's 1-hour classification. At that time, these requirements could be relegated to the contingency measures portion of the SIP if the State demonstrated that implementation of the controls was not necessary to attain or maintain the 8-hour NAAQS (consistent with section 110(l)). For simplification, we refer to this as the time control obligations may be shifted to the contingency measures. We clarified that the term "control obligations" was intended to refer to the obligations which we determined would continue to apply under the preceding sections of the proposal, including the NO_X transport rules. Under Option 1, control obligations could be shifted to contingency measures when the area achieves the level of the 1-hour ozone NAAQS (even if the area has not yet attained the 8-hour NAAQS). Under Option 2, control obligations could be shifted to contingency measures once the area attains and is redesignated to attainment for the 8-hour NAAQS (regardless of when, if ever, the area

attains the 1-hour NAAQS). The draft regulatory text was developed using Option 1 (when the area achieves the level of the 1-hour ozone NAAQS).

b. *Summary of final rule.* We are adopting Option 2—control obligations an area is required to retain in the approved SIP for an area's 1-hour classification must continue to be implemented under the SIP until the area attains and is redesignated to attainment for the 8-hour NAAQS. At that time, the State may relegate such controls to the contingency measure portion of the SIP if the State demonstrates in accordance with section 110(l) that doing so will not interfere with maintenance of the 8-hour NAAQS or any other applicable requirement of the CAA. If at the time the area is redesignated to attainment for the 8-hour NAAQS the State has an outstanding obligation to adopt a control requirement under the 1-hour NAAQS, it remains obligated to do so, but may adopt it as a contingency measure. As discussed above, under EPA's Clean Data Policy, certain obligations such as the requirement to submit ROP plans and attainment demonstrations may be suspended based on a determination that the area has attained the 8-hour NAAQS and will no longer apply if the area is redesignated to attainment. However, if an area experiences a violation of the 8-hour NAAQS prior to being redesignated to attainment the requirements would once again apply.

We are adopting this option because, as noted in the June 2, 2003 proposal, the 8-hour NAAQS is the NAAQS that we have determined will protect public health and the environment. Only once an area demonstrates it has met and can maintain the health protective NAAQS do we believe it will be appropriate to shift these obligations to the contingency measures portion of the SIP. This scheme is consistent with what Congress intended. The CAA contemplates under subpart 2 that States must implement certain mandated requirements. Under the maintenance plan provision of the CAA (section 175A), such requirements may be shifted to the contingency measure portion of the SIP upon or after redesignation to attainment. Since the relevant NAAQS is now the 8-hour NAAQS, we believe it is appropriate to require these mandated controls to remain as part of the implemented SIP until an area attains the 8-hour NAAQS and is redesignated to attainment. On or after that date, a State may move such obligation to the contingency measures portion of the SIP consistent with sections 175A and 110(l). Moreover, we believe it is appropriate to use attainment of the 8-hour NAAQS rather than attainment of the 1-hour NAAQS because, as provided elsewhere in this rulemaking, EPA will no longer be making determinations of whether an area has attained the 1-hour NAAQS and areas will not be required to demonstrate attainment or maintenance of the 1-hour NAAQS. Some areas may never attain the 1-hour NAAQS, as there will be no obligation to do so once it is revoked.

The final rule covers the continued applicability of the NO_X transport rules under section 51.905(f), rather than as an "applicable requirement" for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.

c. *Comments and responses*

Comment: Of the few commenters who addressed this issue in response to the June 2, 2003 proposal, several favored Option 1, and several favored Option 2. Of those who commented on the draft regulatory text, one commenter opposed the provision, and one comment was unclear as to the commenter's concerns. One other commenter supported the provision. Several commenters had clarifying questions.

Response: Our rationale for the choice of Option 2 is presented above. A more detailed response to these and other comments appears in the RTC document.

4. Which Portions of an Area Designated for the 8-Hour NAAQS Remain Subject to the 1-Hour NAAQS Obligations? (Section VI.C.2 and 3 of Proposal; *See* 68 FR 32820–32821; 51.905(c) of the Draft and Final Rules)

a. *Background.* In the June 2, 2003 notice, we proposed that the obligation to retain or to adopt and retain a mandatory control obligation applies only to the part of the 8-hour ozone nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS. The proposal also provided an example of how this would work.

The draft regulatory text provided additional specificity concerning geographic applicability of the anti-backsliding provisions. The draft text provided that with two exceptions only the portion of the designated area for the 8-hour NAAQS that was required to adopt the applicable requirements in 51.900(f) for purposes of the 1-hour NAAQS is subject to the obligations identified in paragraph (a) of this section with several exceptions. The first exception is an area that is designated nonattainment for the 8-hour NAAQS but that was nonattainment for the 1-hour NAAQS with an unmet obligation to submit an attainment demonstration; for these areas, the draft regulatory text provided that the entire area designated nonattainment for the 8-hour ozone NAAQS would be subject to the 10 percent advance increment of reduction. The second exception is an area that is attainment for the 8-hour NAAQS but that was nonattainment under the 1-hour NAAQS with an unmet obligation to submit an attainment demonstration; for these areas, the 110(l) maintenance plan would have to demonstrate maintenance for the entire 8-hour ozone attainment area.

b. *Summary of final rule.* The final rule incorporates most aspects of the approach as that contained in the proposal and in the draft regulatory text. The final rule provides that only the portion of the designated area for the 8-hour NAAQS that was designated nonattainment for the 1-hour NAAQS is required to comply with the obligations in subparagraph 51.905(a), except if the State elects to provide an early increment of progress or an early 8-hour attainment demonstration in lieu of an outstanding 1-hour attainment demonstration (for an 8-hour NAAQS nonattainment area/1-hour NAAQS nonattainment area under 51.905(a)(1)(ii)(B) and (C)), the increment of progress or early 8-hour attainment plan must apply for purposes of the entire 8-hour nonattainment area.

The final rule does not follow the approach in the proposal for the maintenance plan requirement for 8-hour attainment areas. The maintenance plans required under section 51.905(a)(3)(iii) and (4)(ii) must demonstrate maintenance only for the area designated nonattainment for the 1-hour NAAQS at the time of designation of the 8-hour NAAQS. We received comment that recommended this obligation apply only to the area that was originally designated nonattainment for the 1-hour NAAQS. After considering this comment and our discussion in the preamble to the proposed rule, we agree with the commenter. In many States, attainment areas are identified county by county rather than identifying a group of counties as an attainment area. Thus, a State may have one or more groups of counties listed as a nonattainment area and then the remaining counties in the State are each identified individually as "attainment." See *e.g.*, 40 CFR 81.311 (Georgia); 81.329 (Nevada). Because the area that historically had a problem attaining the ozone NAAQS is the area

that was previously designated nonattainment for the 1-hour NAAQS, we believe it makes the most sense to require the maintenance plan for the area previously designated nonattainment for the 1-hour NAAQS. We will set forth in 40 CFR Part 81, Subpart E, an identification of the boundaries of areas and the area designations and classifications for the 1-hour NAAQS at the time of the 8-hour designations.

c. *Comments and responses.*

Comments on June 2, 2003 Proposal: With regard to limiting the applicability of 1-hour obligations to that portion of the 8-hour nonattainment area that was also part of the 1-hour nonattainment area, one commenter supports this policy, especially for the enhanced I/M program. The commenter believes that the environmental benefit of requiring an extension of the enhanced I/M program to areas recently added to the CMSA and designated nonattainment for the 8-hour NAAQS to be minimal, costly, and disruptive of the continued implementation of the enhanced I/M program in the current 1-hour nonattainment area.

One commenter objected to requiring the substitute planning requirement (10 percent advance increment of emission reductions) that applies to areas with an outstanding attainment demonstration for the entire 8-hour ozone nonattainment area. Instead, the commenter recommended it should only apply to the 1-hour nonattainment area.

Response: The final rule provides for retaining applicable emission control requirements for an area's 1-hour classification in only the original 1-hour nonattainment area.

As noted in the final rulemaking notice, we are now allowing the State to meet its unmet 1-hour attainment demonstration obligation by submitting the outstanding attainment demonstration or by taking one of two early actions for 8-hour planning: achieve a 5 percent advance increment of emission reductions or submit an early 8-hour attainment demonstration. The advance increment of emission reductions is applied throughout the entire 8-hour nonattainment area because, although it is being submitted in lieu of the 1-hour requirement, it is intended to address the 8-hour nonattainment problem. Similarly, the 8-hour attainment demonstration is intended to address attainment for the full 8-hour area. Because these alternatives to the 1-hour attainment demonstration are intended to address attainment and progress toward the 8-hour NAAQS, the State would need to apply these requirements, if selected, to the entire 8-hour nonattainment area. We developed these alternatives in response to concerns that areas focus on the 8-hour NAAQS rather than on the 1-hour NAAQS and that continued planning obligations for the 1-hour NAAQS would burden State resources. States still have the flexibility to choose to develop the 1-hour attainment demonstrations for the 1-hour area if they would like to restrict the unmet planning obligation to the old area.

5. What Obligations That Applied for the 1-Hour NAAQS Will No Longer Apply After Revocation of the 1-Hour NAAQS for an Area? (Section VI.C.3.d. of Proposal; *See* 68 FR 32824; Section 51.905(e) of Proposed and Final Rules)

a. *Background.* In the June 2, 2003 proposed rule (68 FR 328224), we proposed that once the 1-hour NAAQS is revoked, EPA would no longer make findings of failure to attain that NAAQS and, therefore, we would not reclassify areas based upon a finding that the area failed to attain the 1-hour NAAQS. We indicated areas should focus their resources on attainment of the 8-hour NAAQS and stated that we believed it would be counterproductive to establish new obligations for States with respect to the 1-hour NAAQS after they have begun planning for the 8-hour NAAQS. In addition, we noted that the attainment dates for areas classified as marginal, moderate and serious had passed and that the CAA does not provide for reclassification of severe areas. We also noted other mechanisms that are available to make sure that States continue to make progress toward attaining the 8-hour NAAQS.

In addition, we indicated that conformity requirements would no longer apply for the 1-hour NAAQS once the NAAQS is revoked. The June 2, 2003 proposal explains that, under section 176(c) of the CAA, conformity applies to areas designated nonattainment or subject to the requirement to develop a maintenance plan pursuant to section 175A. Once the 1-hour NAAQS is revoked, areas would no longer be designated nonattainment for the 1-hour NAAQS or subject to the obligation to develop a maintenance plan under section 175A for the 1-hour NAAQS and thus would no longer be subject to the obligation to demonstrate conformity (either transportation conformity or general conformity) for that NAAQS.

The draft regulatory text incorporated these concepts and also provided that, at the time of revocation of the 1-hour NAAQS, any provisions of applicable SIPs that require conformity determinations in such areas for the 1-hour NAAQS will no longer be enforceable as a matter of law pursuant to section 176(c)(5) of the CAA.

Additionally, the draft regulatory text reflected the discussion in the preamble to the proposed rule regarding what portions of a 1-hour maintenance plan could be revised or removed once the 1-hour NAAQS was revoked (68 FR 32823). The draft regulatory text provided that areas with approved 1-hour maintenance plans could modify those plans to remove the obligation to submit a maintenance plan for the 1-hour NAAQS eight years after approval of the initial 1-hour maintenance plan and to remove the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. The draft regulatory text provided, however, that these requirements would remain enforceable until EPA approved a SIP removing or revising them and also provided that EPA would not approve such revisions until EPA approves an 8-hour attainment demonstration for an area designated nonattainment for the 8-hour NAAQS or an 8-hour maintenance plan for an area designated attainment for the 8-hour NAAQS. Finally, EPA noted that such a SIP revision must also be consistent with sections 110(l) and 193 of the CAA.

b. *Summary of final rule.*

We are adopting the approach we set forth in our proposed rule and providing clarification regarding the penalty obligations under sections 181(b)(4) and 185 of the CAA that apply in severe areas that do not attain the 1-hour NAAQS by the applicable attainment date. The final rule provides that as of the effective date of revocation of the 1-hour NAAQS:

- We will no longer make findings of failure to attain the 1-hour NAAQS and, therefore, (a) we will not reclassify areas to a higher classification for the 1-hour NAAQS based on such a finding, and (b) areas that were classified as severe for the 1-hour NAAQS are not obligated to impose fees as provided under sections 181(b)(4) and 185 of the CAA.
- Areas will not be obligated to continue to demonstrate conformity for the 1-hour NAAQS as of the effective date of the revocation of the 1-hour NAAQS.
- An area with an approved 1-hour maintenance plan under section 175A of the CAA may modify its maintenance plan to: (1) Remove the planning obligation to develop the second 10-year maintenance plan for the 1-hour NAAQS; and, (2) replace the existing 1-hour contingency measure trigger with an 8-hour value. However, before the EPA can consider approving such a

revision, certain conditions must be met. If the area is designated nonattainment for the 8-hour ozone NAAQS, it must first have an approved 8-hour attainment demonstration in place. If the area has been designated as attainment for the 8-hour ozone NAAQS, it must first have an approved section 110(a)(1) maintenance plan in place for the 8-hour NAAQS.

• NSR under the 1-hour NAAQS will no longer apply in areas that are 8-Hour NAAQS nonattainment/1-Hour NAAQS nonattainment.

Each of these provisions is discussed further below.

(i) *Findings of Failure to Attain the 1-hour NAAQS.* We continue to believe, as stated in the preamble to the proposed rule, that areas should focus their resources on attainment of the 8-hour NAAQS and that it would be counterproductive to establish new obligations for States with respect to the 1-hour NAAQS after they have begun planning for the 8-hour NAAQS. Moreover, we do not believe there is a basis to determine whether an area has met the 1-hour NAAQS once that NAAQS no longer applies; once the 1-hour NAAQS is revoked, there will not be an applicable attainment date with which to make a determination as to whether an area has met its attainment date or not. Since the obligations to reclassify areas and impose fees are based on a determination that an area has failed to meet the NAAQS by the appropriate attainment date, those obligations also would no longer apply for the 1-hour NAAQS once the 1-hour NAAQS has been revoked.

While we did not specifically state in our proposal that severe areas would no longer be obligated to impose fees under sections 181(b)(4) and 185 based on a failure to attain the 1-hour NAAQS after the effective date of the revocation of the 1-hour NAAQS, it is a logical extension of our proposal as that obligation is triggered by a finding of failure to attain. In addition, this is consistent with Appendix B of the June 2, 2003 proposal, which did not identify the section 185 fee provision as an applicable requirement.

(ii) *Conformity under the 1-hour NAAQS.* Regarding conformity, we are adopting the approach we set forth in our proposed rule (68 FR 32823). The final rule provides that, upon revocation of the 1-hour NAAQS for an area, conformity determinations will no longer be required for the 1-hour NAAQS. At that time, any provisions of applicable SIPs that require conformity determinations for the 1-hour NAAQS in such areas will no longer be enforceable pursuant to section 176(c)(5) of the CAA.

Under section 176(c) of the CAA, conformity applies to areas designated nonattainment or subject to the requirement to develop a maintenance plan pursuant to section 175A for a specific NAAQS. Once the 1-hour NAAQS is revoked, areas designated attainment for the 8-hour NAAQS would no longer be subject to the obligation to demonstrate conformity for the 1-hour NAAQS and would have no conformity obligation for the 8-hour NAAQS. Likewise, even areas designated nonattainment for the 8-hour NAAQS would no longer have an obligation to demonstrate conformity under the 1-hour NAAQS. The reason for this is that these areas would no longer be designated nonattainment for the 1-hour NAAQS and would no longer be required to develop a maintenance plan under section 175A for purposes of the 1-hour NAAQS.

(iii) *1-hour maintenance plans.* Regarding the revisions to 1-hour maintenance plans, as noted above, upon revocation of the 1-hour NAAQS, an area with an approved 1-hour maintenance plan under section 175A of the CAA may modify the maintenance plan to remove both the obligation to submit a second maintenance plan for the 1-hour NAAQS 8 years after approval of the initial 1-hour maintenance plan and the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. The maintenance plan requirements will remain enforceable as part of the approved SIP until such time as EPA approves a SIP revision removing such obligations. We will not approve a SIP revision requesting these modifications until the State submits and EPA approves an attainment demonstration for the 8-hour NAAQS for an area designated nonattainment for the 8-hour ozone NAAQS or a maintenance SIP for the 8-hour NAAQS for an area designated attainment for the 8-hour NAAQS. Any revision to such SIP must meet the requirements of section 110(l) and 193 of the CAA.

(iv) *New Source Review under the 1-hour NAAQS.* As noted above concerning anti-backsliding-provisions related to growth measures, our June 2, 2003 proposal indicated that 1-hour NSR requirements would continue to apply in a nonattainment area if that area's classification under the 1-hour ozone standard (at the time of designation for the 8-hour standard) is higher than its classification under the 8-hour standard (68 FR 32821). We indicated at proposal that Congress intended each area that was classified for the 1-hour ozone NAAQS under subpart 2 to adopt the specified control obligations in subpart 2 for the area's 1-hour classification. Accordingly, we proposed that the 1-hour NSR obligations continue to apply after revocation.

We have now determined that it is inappropriate to mandate that a State continue to apply 1-hour nonattainment NSR requirements to such areas. Therefore, today's final rule specifies that, at the time that the 1-hour NAAQS is revoked, a state is no longer required to retain a nonattainment NSR program in its SIP based on the requirements that applied by virtue of the area's previous classification under the 1-hour standard. Instead, State implementation plans will be required to include an NSR program based on the area's designation and classification under the 8-hour standard.

Accordingly, a State may request approval of a SIP revision to remove its 1-hour nonattainment NSR program from its SIP. We will approve such changes to a State's SIP because we have determined based on section 110(l) of the Act that such changes will not interfere with any State's ability to reach attainment of the 8-hour standard and will be consistent with reasonable further progress.

For example, upon approval of a SIP revision for a nonattainment area that we classify as marginal for the 8-hour standard, the major source threshold would be 100 tpy and the offset ratio would be at least 1.1:1. Any lower major stationary source threshold and higher offset ratio that applied by virtue of the area's previous 1-hour classification would no longer apply. For areas that must comply with nonattainment NSR requirements solely based on the area's location within the Ozone Transport Region under Section 184 of the Act, there will be no change in the major stationary source threshold or offset ratio as these requirements remain the same for the 8-hour standard.

Although the proposal identified nonattainment NSR as a measure to address growth and not a control obligation, we proposed to treat NSR in the same manner as control obligations. We stated that such requirements should continue to apply based on Congressional intent to prohibit States from altering or removing provisions from SIPs if the SIP revision would jeopardize the air quality protection provided in the approved plan. 68 FR at 32819. We further concluded that Congress intended the specified control obligations in subpart 2 to continue to apply after revocation by virtue of the 1-hour classifications.

Upon further reflection, and consideration of public comments, we have revised our approach concerning NSR in areas that were non-attainment for the 1-hour NAAQS and continue to be nonattainment under the 8-hour NAAQS. While some commenters believed that NSR requirements that are part of SIPs submitted to meet 1-hour NAAQS requirements should be retained, several preferred that the 1-hour NSR program be replaced by an NSR program under the 8-hour standard when the 1-hour standard is revoked. Other commenters supported removing the 1-hour NSR requirements based on a showing that removing the requirements would not interfere with attainment or maintenance of the 8-hour standard. We agree with these commenters that there is no need to retain 1-hour NSR programs upon a finding under section 110(l) that 8-hour NSR will not interfere with the State's ability to reach attainment of the 8-hour standard. Moreover, we note major NSR only applies to new sources and to existing sources that have a physical change or change in the method of operation. Therefore, emission limitations and other requirements in NSR permits issued under 1-hour NSR programs will continue to be in force when the 1-hour NAAQS is revoked.

Also, our revised approach is more consistent with our longstanding treatment of NSR as a growth measure. We have historically treated control measures differently from measures to control growth. We provided no rationale in our proposal for treating control measures and growth measures in the same manner for purposes of the 8-hour standard, in contrast with our historical approach.

Unlike control requirements such as RACT and I/M, the NSR program is a growth measure and is not specifically designed to produce emissions reductions. Instead, its purpose is to allow new source growth to occur without interfering with an area's ability to attain. The statute and regulatory history identify nonattainment NSR as a growth measure. Thus, we have previously concluded that NSR is not a "control" measure in the context of Section 175A maintenance plans. See 68 FR 25418, 25436 (May 12, 2003). Specifically, we explained that the requirement that contingency provisions include "control" measures does not include nonattainment NSR. We reasoned that the LAER and offset requirements included in existing NSR permits would remain in effect for those sources. Thus, the LAER and offset measures that were relied upon to attain the NAAQS would remain in effect after the nonattainment NSR program was replaced. We also noted that another preconstruction review program (in that context, PSD) would be triggered to limit growth consistent with attainment in the future. Those considerations apply with equal force here, as discussed in more detail below.

The role of the NSR permitting program as a growth measure, rather than a control measure, is evident in the structure of the Act, which delineates nonattainment NSR and control measures as separate SIP requirements. In the general requirements for nonattainment plan provisions, NSR permits are listed in CAA 172(c)(5), while control measures are listed in CAA 172(c)(6). Similarly, in defining implementation plan requirements, CAA 110(a)(2)(C) sets forth the requirement for permit programs and CAA 110(a)(2)(A) the control measures. As we explained in our 1994 policy memo,[42] if the term "measures," as used in sections 110(a)(2)(A) and 110(a)(2)(C), had been intended to include PSD and part D NSR, there would have been no point to requiring that SIPs include both measures and preconstruction review. Section 172(e), which applies when EPA relaxes a NAAQS, only requires EPA to ensure that "controls" are no less stringent than they were for the more stringent NAAQS that has been replaced. It contains no specific requirements concerning growth measures.

Moreover, the statute is clear regarding the roles of the NSR program and control measures in nonattainment areas. CAA 172(a)(2) requires attainment as expeditiously as practicable considering control measures and CAA 172(c)(1) and (c)(6) require implementation of all control measures as expeditiously as practical to provide for attainment of the NAAQS by the area's attainment date. Conversely, CAA 173(a)(1)(A) requires only that growth due to proposed sources, when considered together with the other plan provisions required under section 172, be sufficient to ensure RFP. Thus, unlike the control measures required by section 172(c)(1) and (c)(6), NSR is not a measure in and of itself to assure attainment of the NAAQS. Rather, NSR should be considered in conjunction with a State's control measures to assure, consistent with the requirements in Section 172(c)(4), that the emissions from new sources will be consistent with RFP and not interfere with attainment of the applicable NAAQS.

In light of these different statutory goals, we believe the appropriate review of NSR SIP revisions under the 8-hour standard is whether: (1) The SIP revision is consistent with reasonable further progress; and whether (2) the SIP revision will not interfere with the ability to attain.

With regard to the specific requirements of 110(l), we do not believe that States need to make any case-specific demonstration that replacing the 1-hour NSR program with an NSR program based on the area's 8-hour classification satisfies the Section 110(l) requirements. As one commenter noted, NSR is a prospective permitting program that only applies to future emissions from new and modified sources. Any source that is subject to the 1-hour NSR requirements is required to continue to comply with those requirements. In this respect, there will be no degradation of air quality by virtue of this SIP change. Moreover, unlike control measures, States do not rely on the NSR program to generate emissions reductions to move an area further toward attainment. The essential question is whether the NSR program changes will hinder future air quality improvements based on future growth projections. Such a question inherently involves a look at the present day air quality, which is best reflected by the current 8-hour classifications. As long as the State plans to manage growth within the emissions inventory and include growth in their attainment plans, new source growth will be consistent with RFP and not interfere with the State's ability to attain. Therefore, we believe that the 8-hour NSR program requirements, based on an area's present air quality needs, will assure that progress continues toward attainment despite future economic growth.

c. *Comments and responses.*

(i) *Comments on June 2, 2003 proposal:*

Comment: Several commenters addressed this issue. Most agreed with the proposal, but recommended that we clarify that the section 185 penalty fees would not be imposed after the 1-hour NAAQS is revoked. A few of the commenters disagreed on the basis that EPA should not revoke the 1-hour NAAQS and that all requirements that apply for purposes of the 1-hour NAAQS remain applicable.

Regarding conformity, the majority of commenters that addressed this issue objected to EPA's proposal. Most of these commenters believed the 1-hour NAAQS and any 1-hour SIP budgets

[42] Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment, October 14, 1994, from Mary D. Nichols.

should remain in effect, such that for an area that was designated nonattainment under the 1-hour NAAQS, or was redesignated to attainment and had an approved maintenance plan under the 1-hour NAAQS, conformity requirements would still apply. Given the variety of comments we received about how conformity will be implemented, in this section we provide a response following each type of comment.

Several commenters indicated that revoking the 1-hour NAAQS for conformity is backsliding, and offered several arguments for why the 1-hour budgets should be retained in 1-hour nonattainment and maintenance areas.

Some commenters indicated that once approved, the motor vehicle emissions budget is part of the applicable implementation plan, and EPA may not render them nugatory for conformity purposes. Commenters also asserted that EPA may not unilaterally revise a state's SIP or suspend it, and in order to require states to revoke the budgets in their SIPs, EPA would have to find the budgets inadequate. Further, commenters argued that EPA may not lawfully allow states to discontinue implementation of the budgets in their current SIPs, and if states were to decide on their own that budgets no longer apply for conformity purposes, commenters said that EPA would be obligated to impose sanctions pursuant to section 179(a)(3). Commenters asserted that states may not revise their SIPs to remove budgets without complying with section 110(l), which states that EPA cannot approve revisions "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

Response: The CAA specifically states that conformity applies only in "a nonattainment area* * *" and "an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title* * *" (42 U.S.C. 7506(5)). Therefore, CAA section 176(c)(5) restricts conformity to nonattainment areas and areas that are required to submit maintenance plans under section 175A; in these areas, the Federal government's sovereign immunity is waived so that states can require conformity to be determined by the U.S. Department of Transportation. However, after revocation of the 1-hour NAAQS, the areas previously nonattainment for the 1-hour NAAQS are no longer nonattainment for that NAAQS. Similarly, after revocation of the 1-hour NAAQS, the areas previously required to submit section 175A maintenance plans under the statute for the 1-hour NAAQS will no longer be required to do so. Therefore, after revocation the statute will no longer waive sovereign immunity to allow States to require the U.S. Department of Transportation to perform conformity determinations.

States are not taking any action to remove the budgets for the 1-hour ozone NAAQS in their SIPs, nor are they required to do so. In fact, EPA has proposed that 8-hour nonattainment areas would be able to use the 1-hour budgets for conformity for the 8-hour NAAQS, if they exist in an area (November 5, 2003, proposed rule, 68 FR 62690). Thus, although the 1-hour budgets would remain in the SIP, areas previously designated nonattainment or maintenance for the 1-hour NAAQS would no longer be required or even authorized to show conformity under CAA section 176(c)(5) for that NAAQS. Similarly, EPA would have no grounds for imposing sanctions where conformity is not conducted in these areas because there would be no SIP planning or implementation failure, since any SIP provisions requiring conformity would become unenforceable under section 176(c)(5) after revocation. EPA also disagrees that States cannot revise their SIPs to remove budgets without a demonstration that 110(l) is met, because states will not be revising their SIPs to remove budgets.

As we acknowledged in our June 2, 2003, proposal, EPA's conclusion that conformity cannot apply in 1-hour maintenance areas once the 1-hour NAAQS is revoked differs from the approach we planned to take in 1997. In 1997, we interpreted revoking the 1-hour ozone NAAQS to mean that conformity would not apply for the 1-hour ozone NAAQS in areas that were nonattainment for the 1-hour ozone NAAQS, but that conformity would continue to apply for the 1-hour ozone NAAQS in areas with a maintenance plan. However, the 1997 interpretation would lead to an unfair and counter-intuitive result: areas that had attained the NAAQS and had made the effort to establish a maintenance plan would have to continue a required program, but areas that had not attained would not. We reconsidered this result and found it to be unfair and inappropriate. Further, upon reanalyzing CAA section 176(c)(5), we concluded that this interpretation did not fit with the text of the statute.

Although section 110(l) would normally require areas to demonstrate that removing prior SIP requirements would not interfere with any applicable requirements of the CAA, where the CAA itself now forbids application of a prior requirement such a demonstration would be unnecessary. Further, it would interfere with the statutory limitation on the applicability of conformity to require conformity determinations in areas that are no longer required by the CAA to submit section 175A maintenance plans.

Comment: Commenters remarked that revoking the 1-hour ozone NAAQS is of particular concern in areas that are currently nonattainment or maintenance for the 1-hour ozone NAAQS that will be designated attainment for the 8-hour ozone NAAQS, because once the NAAQS is revoked, these areas will no longer be subject to conformity. A couple of commenters made the point that revoking the 1-hour NAAQS would have economic implications for their area because without transportation conformity, the emissions from the transportation sector could grow without restraint and therefore, emissions from the industrial sector would have to be limited further. Commenters were also concerned that their region would lose the ability to forecast whether a violation could occur.

Response: We promulgated the 8-hour ozone NAAQS in response to the latest data and science regarding ozone; we believe the 8-hour ozone NAAQS is more protective of public health. In 1997, EPA made the decision to replace the 1-hour ozone NAAQS with the 8-hour ozone NAAQS, because EPA concluded that the 1-hour NAAQS is not needed to protect health and welfare.

It is our conclusion that areas that are in attainment for the 8-hour NAAQS would not be subject to conformity because the statute explicitly limits the applicability of conformity to designated nonattainment and maintenance areas. These areas still have an incentive to monitor the growth of emissions from the transportation sector; if these areas violate the 8-hour NAAQS, EPA could redesignate them as nonattainment for the 8-hour NAAQS and conformity would then apply.

The EPA notes that although States could not implement conformity for attainment areas as a matter of federal law, they could still work with their MPOs to estimate regional emissions that would be generated by the planned transportation system to see whether a violation could occur and to address motor vehicle emissions growth. These type of State activities may be done

under State law, when possible, or on a voluntary basis.

Comment: One commenter supports, in part, our proposal to allow amendment of maintenance plans, but takes issue with the fact that States would face a continuing obligation to implement contingency measures after revocation of the 1-hour NAAQS and the criteria for approval of such amendments. After the 1-hour NAAQS is revoked, a State's obligation to implement contingency measures should automatically be lifted. The Illinois EPA recommends that amendments to the maintenance plans for these areas be approved after the 1-hour NAAQS has been revoked.

Response: Once we revoke the 1-hour NAAQS, the requirement for submission or subsequent revision of a section 175A maintenance plan under the 1-hour NAAQS no longer apply. The State still has an obligation to ensure that air quality remains clean and to invoke contingency measures in accordance with the terms of the approved SIP. The final rule provides that, upon revocation of the 1-hour NAAQS, an area with an approved 1-hour maintenance plan under section 175A of the CAA may modify the maintenance plan to remove the obligation to submit a maintenance plan for the 1-hour NAAQS 8 years after approval of the initial 1-hour maintenance plan and to remove the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. The final rule provides that EPA would not approve a SIP revision requesting these modifications until the State submits and EPA approves an attainment demonstration for the 8-hour NAAQS for an area initially designated nonattainment for the 8-hour ozone NAAQS or a maintenance SIP for the 8-hour NAAQS for an area initially designated attainment for the 8-hour NAAQS. Any revision to such SIP must meet the requirements of section 110(l) and 193 of the CAA. For areas that are not required to submit attainment demonstrations (*e.g.*, marginal areas), the SIP revisions that affect prior maintenance plans under the 1-hour NAAQS may be made when other portions of the 8-hour SIP are due (*e.g*, the NSR provisions). The EPA disagrees with the comments that certain obligations in the maintenance plan should no longer apply upon revocation of the 1-hour NAAQS. The EPA believes that in order to ensure that these revisions will not interfere with attainment or maintenance of the 8-hour NAAQS, these areas should first have an approved 8-hour attainment or maintenance SIP in place.

Comment: A commenter recommended that, in general, the rule should make it clear that any SIP revisions must comply with Sections 110(l) and 193.

Response: The proposed rule—as well as the final rule—provides that EPA will not approve revisions to the maintenance plan until EPA approves the area's 8-hour SIP for either attainment or maintenance, which will ensure non-interference with the 8-hour NAAQS. However, the final rule also includes a requirement that the changes must be in accordance with sections 110(l) and 193. Several commenters supported the proposed rule. Other commenters believed the 1-hour NAAQS should not be revoked at all, and therefore there would not be a need for the anti-backsliding provision regarding NSR.

Response: We address the issue of the revocation of the 1-hour NAAQS elsewhere in this notice and do not repeat it here.

(ii) *Comments on draft regulatory text* (sect. 51.905(e) of the draft):

Comment: One commenter believes that proposed 40 CFR 51.905(e)(1) contains an apparent misstatement that EPA should correct. That provision states that upon revocation of the 1-hour NAAQS, an area with an approved maintenance plan for that NAAQS may modify that plan to remove the obligation under CAA § 175A(b) to submit a "second round" maintenance plan eight years after redesignation to attainment and to remove the obligation to implement contingency measures upon a 1-hour NAAQS violation. The provision goes on to say that EPA will not approve a SIP revision making these modifications until the state submits and EPA approves: (1) An 8-hour attainment demonstration, if the area is designated nonattainment for the 8-hour NAAQS; or (2) an 8-hour maintenance SIP under proposed 40 CFR 51.905(a)(3)(iii), if the area is designated attainment for the 8-hour NAAQS. Option (2) does not make sense, however. Proposed 40 CFR 51.905(e) by its terms applies to areas with approved 1-hour maintenance plans. Thus, these areas by definition have been redesignated to attainment—*i.e.*, are no longer nonattainment—for the 1-hour NAAQS. Yet proposed 40 CFR 51.905(a)(3)(iii) applies only to areas that are "designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS." Thus, contrary to the last clause of § 51.905(e)(l), areas that are maintenance for the 1-hour NAAQS and attainment for the 8-hour NAAQS cannot be subject to § 51.905(a)(3)(iii).

Response: The commenter has pointed out a flaw in the proposal. The final rule has been modified from the proposal to account for this situation. A separate parallel provision has been established in section 51.905(a)(4) requiring 1-hour maintenance plan areas to submit a maintenance plan under section 110(a)(1). As provided earlier, EPA has also changed the proposed regulatory text—consistent with the June proposal—to indicate that 51.905(a)(3) and (4) apply, respectively to areas that are nonattainment or maintenance of the 1-hour NAAQS at the time of designation for the 8-hour NAAQS. Section 51.905(e)(1) has been modified to provide that the State would not be able to modify an existing 1-hour maintenance plan until EPA approves the new 8-hour maintenance plan.

Comment: One commenter provided suggested language changes to section 51.905(e) that would retain the section 175A maintenance plan and the conformity requirement.

Response: As noted above, once EPA revokes the 1-hour NAAQS, and the area is an 8-hour attainment area, section 175A maintenance provisions do not apply and conformity for the 1-hour NAAQS no longer applies.

6. What Is the Continued Applicability of the NO_X SIP Call After Revocation of the 1-Hour NAAQS? (Section VI.C.3.c. of Proposal; See 68 FR 32824; Section 51.905(f) of the Proposed and Final Rules)

a. *Background.* In the June 2, 2003 proposal (68 FR 32824), we noted that it is important to ensure that the transition to the 8-hour NAAQS does not jeopardize the controls required to be in place under the NO_X SIP Call rule and the section 126 rule (*i.e.*, the rules for addressing the long-range transport of ozone and its precursor, NO_X). We jointly referred to these rules in the proposal as the NO_X transport rules. We indicated that we plan to lift the stay of the 8-hour basis for the NO_X transport rules.[43] Regardless of whether we lift

[43] When EPA promulgated the NO_X SIP Call, we required the same level of reductions for both the 1-hour and 8-hour ozone NAAQS (63 FR 57356, October 27, 1998). In response to the Court of Appeals remand of the 8-hour NAAQS, EPA stayed the 8-hour basis of the NO_X SIP Call (65 FR 2674, January 18, 2000). However, since the same level of reductions was required for both the 8-hour and 1-hour NAAQS, the stay had no practical effect on States' compliance with the rule. Because EPA also stayed the 8-hour portion of the Section 126 Rule, we did not move forward to make the section 126 findings under the 8-hour NAAQS which would trigger the 8-hour control requirements (65 FR 2674, January 18, 2000). We plan to complete rulemaking action on the 8-hour petitions at the time we lift the 8-hour stay. All of the States affected by the 1-hour

that stay, the controls required have substantial benefits for reductions of both 1-hour and 8-hour ozone levels. We indicated that we believe that relaxing such controls would be contrary to the principles we identified in the proposal for an effective transition. Thus, we proposed that States must continue to adhere to the emission budgets established by the NOX transport rules after the 1-hour NAAQS is revoked in whole or in part.

The draft regulatory text reflected the discussion in the June proposal.

b. *Summary of final rule.* We are adopting the approach we set forth in our proposed rule and draft regulatory text. States must continue to adhere to the emission budgets established by the NO_X transport rules after the 1-hour NAAQS is revoked. States retain the authority to revise control obligations they have established for specific sources or source categories under the NO_X SIP Call rule so long as the State demonstrates consistent with section 110(l) that such modification will not interfere with attainment of or progress toward meeting the 8-hour NAAQS or any other applicable requirement of the CAA. We continue to believe that the reductions required by the NO_X transport rules are necessary to address transported emissions for the 8-hour ozone NAAQS as well as the 1-hour ozone NAAQS.

c. *Comments and responses.*

(i) *Comments on the June 2, 2003 proposal:*

Only a handful of commenters addressed this issue, all of whom supported the proposal. Several of these commenters recommended that we lift the stay of the NO_X transport rules with respect to the 8-hour NAAQS.

D. What Is the Required Timeframe for Obtaining Emissions Reductions To Ensure Attainment by the Attainment Date (Section VI.E of the Proposed Rule (68 FR 32826); Section 51.908 of the Draft and Final Rules)

1. Background

In the June 2003 proposal, we proposed that emissions reductions needed for attainment must be implemented by an area's attainment date. We noted this meant that emissions reductions must be implemented by the beginning of the final ozone season prior to the attainment date. For example, for areas with an attainment date in May 2010, the emissions reductions need to be implemented by the beginning of the 2009 ozone season because a determination of attainment will be based on air quality monitoring data from 2007, 2008 and 2009. The proposal cautioned that States should be aware of the consequences of failing to implement the control measures necessary for attainment sufficiently far in advance of their attainment date. As noted above, areas covered under subpart 2 can receive up to two 1-year attainment date extensions if certain criteria are met. However, if an area does not meet the eligibility requirements for the 1-year extension, it would be subject to a reclassification to a higher classification (bump up). While areas covered under subpart 1 are able to obtain up to two 1-year attainment date extensions, there is no provision for a bump up in subpart 1. If an area covered under subpart 1 fails to attain, section 179 of the CAA provides that EPA publish a finding of failure to attain which starts a 1-year time frame for States to submit a SIP revision that provides for attainment within a specified time frame.

2. Summary of Final Rule

In section 51.908, we are adopting the approach we set forth in our proposed rule, namely that emissions reductions needed for attainment must be implemented by the beginning of the ozone season immediately preceding the area's attainment date. We believe that Congress contemplated that control measures would continue to be implemented up to the attainment year. For example, section 182(c)(2)(B) requires areas classified as serious or higher to achieve an average of 3 percent reduction in emissions per year over each 3-year period until the area's attainment date. If Congress intended areas to achieve all reductions needed for attainment 3 years prior to attainment, then the last 9 percent reductions required for serious and above areas would be reductions beyond those needed for attainment. We do not believe that Congress mandated these reductions in addition to the reductions needed to attain the NAAQS. In fact, this requirement is included in the statute as a part of the subparagraph addressing attainment and reasonable further progress, which indicates that Congress intended it to address progress toward attainment. This is further supported by the definition of reasonable further progress in section 171(1) as "annual incremental reductions in emissions * * * for the purpose of ensuring attainment * * *."

Other provisions in the CAA also support the concept that areas do not need to achieve 3 years in advance of the attainment date the full complement of reductions needed for attainment. For example, Congress only provided marginal areas with 3 years to attain the NAAQS and did require at least minimal additional controls be implemented in such areas. In addition, the fact that Congress provided for two 1-year extensions of the attainment date also indicated that Congress believed that some areas might not be fully implementing all measures needed for attainment 3 years in advance of the attainment date. Rather, Congress contemplated that areas would have air quality healthy enough to make it substantially likely the area would attain within the next 1 or 2 years.[44]

Finally, we note that the NAAQS itself does not contemplate that air quality must be at "attainment levels" for each of the 3 years on which attainment is based. Rather, attainment is determined based on an average of the 4th high reading at a monitor over a 3 year period. Thus, the 4th high reading for an area could be above the NAAQS for one or both of the years preceding the attainment year, but so long as the 4th high level for the other year(s) was low enough to produce an average at or below 0.084 ppm, the area would be attaining the NAAQS.

As noted in the June 2003 preamble, despite the fact that we believe an area need not have all controls implemented until the beginning of the final attainment season, the State needs to consider that attainment is based on a 3-year average. Thus, the State will need to ensure that implementation of controls is not unduly delayed. A State that plans to achieve reductions by the beginning of the ozone season prior to the attainment date may still experience meteorology conducive to very high ozone formation in that last ozone season that may result in the area having a 4th highest daily ozone concentration above the level of the 8-hour NAAQS, making it ineligible for the first of the 1-year extensions. Such an area—if classified under subpart 2—

and/or 8-hour Section 126 Rule are also covered by the NO_X SIP Call. The Section 126 Rule contains a provision under which the Section 126 findings and control requirements would be withdrawn if States have approved SIPs meeting the NO_X SIP Call. The EPA has already withdrawn the 1-hour Section 126 Rule in three States and the District of Columbia and proposed to withdraw the 1-hour rule in all other affected States except one. (We expect to propose action with respect to the rule in the remaining State shortly.)

[44] As discussed in the section regarding the two 1-year attainment date extensions, section 172(a)(2)(C), which applies to all pollutants, allows for a 1-year attainment date extension if the area has had "minimal exceedances" in the attainment year and section 181(a)(5), which applies to ozone nonattainment areas classified under subpart 2, allows for a 1-year extension if the area has had no more than 1 exceedance in the attainment year.

would then be reclassified (bumped up) to a higher classification and be subject to additional planning requirements and mandatory control measures. Thus, a State should be aware of the consequences of delaying too long to implement control measures needed for attainment. Additionally, in reviewing implementation timeframes in SIPs, EPA will consider whether those timeframes are as expeditious as practicable. A guidance memorandum from John Seitz of November 30, 1999[45] reiterates the need to implement measures as expeditiously as practicable:

> In order for EPA to determine whether an area has provided for implementation as expeditiously as practicable, the State must explain why the selected implementation schedule is the earliest schedule based on the specific circumstances of that area. Such claims cannot be general claims that more time is needed but rather should be specifically grounded in evidence of economic or technologic infeasibility. While it may be appropriate for some control measures to be implemented shortly after adoption, the EPA recognizes that other measures may need a longer period. The EPA will review the State's submission to ensure that sufficient information is provided for the EPA to determine whether the State has adopted all RACM necessary for attainment as expeditiously as practicable and provided for implementation of those measures as expeditiously as practicable. The EPA will make those determinations based on the information provided by the State and any other information available to the EPA at the time the Agency approves or disapproves the attainment demonstration.

3. Comments and Responses

Comment: Some commenters agreed with our proposal as written, *i.e.*, to require that emission reductions needed for attainment be implemented by the beginning of the ozone season prior to the attainment year.

However, several commenters disagreed with the timeframe that was included in our proposal because it precludes areas from realizing the benefit of Federal measures prior to developing additional local controls.

Another commenter stated that the attainment deadlines place an extraordinary burden on metropolitan areas to achieve the level of emissions reductions necessary to demonstrate attainment. The commenter felt that requiring emissions reductions to be implemented at the beginning of the ozone season prior to the attainment date is 1 year earlier than is required. The commenter stated that so long as there are no exceedances in the attainment year, *i.e.*, having controls in place by the beginning of the ozone season of the attainment year, the area has met the statutory requirement and could qualify for the first of two 1-year attainment date extensions allowed under the CAA. The commenter further stated that controls for moderate areas would need to be in place by about the same time the area's SIP must be submitted to EPA in order to provide 3 years of clean data for the demonstration of attainment.

Other commenters stated that all emissions reductions needed for attainment must be implemented in sufficient time to ensure attainment by the attainment date without relying on the CAA provisions for the 1-year extensions.

Response: Section 172(c)(2) of the CAA requires that emissions reductions needed for attainment be phased in such that RFP toward attainment is achieved. For areas classified as moderate under subpart 2, their attainment date would be as expeditiously as practicable but no later than 6 years after the date of classification. Their ROP requirement would be at least a 15 percent VOC emissions reduction from the base year to be achieved no later than 6 years after the base year. However, if the area needed more than 15 percent VOC reductions in order to demonstrate attainment, then any additional reductions would also have to be achieved by the beginning of the ozone season prior to the area's attainment date.

The CAA requires each area to demonstrate attainment as expeditiously as practicable but no later than the maximum timeframe specified in the CAA for the area. In addition, each area is required to adopt RACM. In determining whether measures are reasonably available, we consider cost, technical feasibility and whether implementation will advance the attainment date. An area cannot reject local control measures that are technically and economically feasible in favor of awaiting the implementation of national or regional controls, if to do so would delay attainment of the NAAQS. The consequences of failing to implement the control measures necessary for attainment sufficiently far in advance of the attainment date are discussed above and in the proposed rule.

Areas covered under subpart 1 are also able to obtain up to two 1-year extensions of the attainment date (see section 172(a)(2)(C)). There is no provision for bump-up in classification similar to that under subpart 2. However, if an area fails to attain, section 179 of the CAA provides that EPA publish a finding that the area failed to attain. The State then must submit within 1 year after that publication a revision to the SIP that provides for attainment within the time provided under section 179. Section 179 also provides that the SIP revision must also include any additional measures that EPA may prescribe.

Comment: Several commenters suggested that nonattainment areas should be afforded the opportunity to install controls in time to monitor for attainment before the attainment deadline. The commenters believes that for many industrialized and metropolitan areas classified under Subpart 2 as marginal, moderate or serious, it will not be feasible to have stationary and mobile source controls in place 3 years before the attainment deadlines for the purposes of attainment monitoring. Pragmatically, state SIPS will not be finalized until mid-2007, at which time industrial facilities can begin the 18–24 month period for detailed engineering, permitting and procurement of NO_X control equipment. The installation of controls would occur over a 5-year average facility turnaround period. Furthermore, Tier II fuels and engines will just be entering the market as will cleaner diesel fuel and engines. It is virtually certain that many of these areas will not have the necessary emission reductions in place 3 years before the attainment deadline and will be required to rely on the case-by-case extensions to the designated attainment deadlines. The commenters believe that Congress did not intend for EPA to establish attainment deadlines that would in a large number of cases automatically require areas to use deadline extensions; such areas have probably been misclassified. All nonattainment areas should be afforded the opportunity to install controls in time to monitor for attainment by the attainment deadline, but not three years prior to the attainment year. This would also eliminate the need for case-by-case extensions.

Response: The final rule does not require emission reductions to be in place three ozone seasons prior to the attainment date. However, the after-the-fact determination of whether an area actually attains the NAAQS by its attainment date must be done by looking back at the previous 3 years of ambient air quality data. As noted elsewhere in this preamble, the CAA

[45] Memorandum, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

provides for up to two 1-year extensions of the attainment date.

Comment: Marginal areas may not be able to demonstrate compliance in 3 years and the final rule should provide for automatic extensions for such areas. Additional time to implement all of these reductions may be required in order for marginal areas to comply. By creating an automatic extension, EPA will avoid the inevitable cost of SIP nonattainment planning problems that communities will face if these measures are fully implemented.

Response: The general assumption for marginal areas is that they will be able to attain without significant additional emissions controls. As such, section 182(a) specifies very little in terms of mandatory obligations for marginal areas. If an area needs additional controls and time to implement such controls, it may need to be reclassified to a higher classification. The CAA does not allow EPA to extend attainment dates for a classification.

Comment: One commenter noted that EPA's proposal provides: "For each nonattainment area, the State must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season." CAA § 51.908(e). Attainment of the 8-hour NAAQS is based on analysis of 3 years of data. Part 51, App. I ¶ 2.3(a) ("The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm."). Thus, to meet the statutory requirement that SIPs provide for attainment, the rule must require SIPs to provide for implementation of all control measures needed for attainment no later than 3 years before the attainment date.

Response: We disagree with the comment. In section 51.908, we are adopting the approach we set forth in our proposed rule, namely that emissions reductions needed for attainment must be implemented by the beginning of the ozone season immediately preceding the area's attainment date. Our rationale is presented above.

Comment: In addition, a commenter stated that this timing was inconsistent with the draft modeling guidance which essentially requires areas with an attainment date of 2013 to have their controls in place by 2011 to perform an attainment demonstration. The 2011 date is inconsistent with the proposal which would require that the emissions reductions be in place in 2012. The commenter further stated that it seems inappropriate that the draft modeling guidance would be driving the schedule for implementation of control measures as opposed to the 8-hour implementation rule.

Response: Comments on the modeling requirements will be addressed in Phase 2 of this rulemaking. The approach on when emission reductions needed for attainment must be in place was not based on the modeling requirements, but on the rationale stated in the preamble to the final rule. The modeling guidance will be revised for consistency with the final rule.

E. Conformity Under the 8-Hour Ozone Standard

The June 2, 2003 proposal provided background discussion on issues related to transportation conformity and general conformity under the 8-hour ozone standard. See sections VI.M (68 FR 32841) and VI.N. (68 FR 32842). However, we did not propose any rules related to either. We did receive a number of comments on this topic, however. Responses to those comments are included in the response to comments document.

F. Comments on Other Issues

We received comments on other issues associated with elements of this final rulemaking. We address those comments here. Comments on any other issues not discussed in this preamble or the RTC accompanying this final rule will be addressed in the second phase of this final rulemaking.

1. Designation of Nonattainment and Attainment Areas

We received a number of comments on the designation process.

Response: As we noted in the June 2, 2003 proposal, we did not propose to establish attainment/nonattainment designations nor did we address the principles that will be considered in the designation process; we issued guidance on the principles that States should consider in making designation recommendations in March 2000.[46] The designation process is being conducted separately.

[46] EPA issued the memorandum "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS or Standard)" on March 28, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Air Directors, Regions I–X, to provide guidance to State and local agencies and Tribes on designating areas and EPA's views on boundaries for nonattainment areas for the 8-hour NAAQS.

2. Early Action Compacts (EACs). (Section VIII.A.2. and 3 of the Proposal; See 68 FR 32859)

We received a number of comments that addressed EACs. The June 2, 2003 proposal included a description and background information concerning EACs, but the proposal made clear that we were not proposing any rulemaking on EACs in that notice.

Response: The comments we received will be addressed in the rule that takes final action on the proposed rule to defer the effective date for EAC areas and therefore those comments are not addressed in this current rulemaking. We note that existing 1-hour maintenance areas will remain subject to all the requirements of that maintenance plan and transportation conformity, until the 1-hour standard is revoked 1 year following the effective date of the area's 8-hour designation. If EPA takes final action deferring the effective date of the 8-hour designation for an EAC area, revocation of the 1-hour standard will also be effectively deferred for such area. Therefore, for such an EAC area that is a 1-hour maintenance area, the 1-hour maintenance plan, and 1-hour conformity, will continue to apply until 1 year after the 8-hour designation takes effect.

3. Health and Environmental Concerns

We received a number of general comments related to health and environmental concerns. Some of these cited national health statistics or provided information concerning the levels of ozone in their communities or information concerning the adverse health symptoms of themselves or friends, relatives, or patients. These commenters generally cited this information as a way of encouraging EPA to ensure expeditious attainment of the 8-hour ozone NAAQS and in some cases to support leaving the 1-hour NAAQS and its implementation process in place.

Response: We have addressed these latter concerns above in discussion of the classification system, revocation of the 1-hour NAAQS and the anti-backsliding provisions that serve to ensure that the 8-hour NAAQS is attained as expeditiously as practicable with little or no delay in emission reductions as a result of revoking the 1-hour NAAQS.

4. Clarity and Understandability of Proposed Rule

A number of commenters expressed concern about the complexity of the proposed rule, and the lack of apparent

clarity and transparency. A number of these commenters complained that due to the large number of combinations of options that were possible from the proposal, it was difficult or impossible to determine exactly what the effect of the rule would be.

Response: One of our principles in drafting the proposal was to make the rule as understandable as possible. However, the Supreme Court's ruling on our previous implementation approach left it to EPA to develop an implementation scheme with only general guidance as to how to proceed. Because the consequences of implementation under a particular approach might be fairly large, we felt obligated to place as many practicable options in our proposal as possible to assess public reaction by providing an opportunity for comment. This approach obviously added complexity to the proposal. We tried to minimize the complexity by setting forth two example frameworks for how some options could work in conjunction with each other. We also attempted in the draft regulatory text to focus on one set of options to illustrate how one set of options would work together. We attempted to simplify where we could and to provide other materials in the docket and on our web site for this rulemaking (*e.g.*, the "roadmap" and the crosswalks between the June 2, 2003 proposal and the draft regulatory text) to enable the reader to more easily see relations between various sections of the proposal and to provide a synopsis of the options being proposed. Although the very nature of the proposal was complex, we believe that the public had sufficient opportunity to comment on the rule.

5. Regulatory Text

A number of commenters chastised us for not providing regulatory text with the proposal.

Response: As noted above, we did provide for public comment draft regulatory text, which reflected one set of proposed options. On August 6, 2002 (68 FR 46536), we published a notice of availability of the draft regulatory text for the proposed rule to implement the 8-hour ozone NAAQS. This notice started a 30-day public comment period on the draft regulatory text.

6. Requests for Extension of Comment Periods

We received a number of requests for extension of the comment periods on the three notices related to our proposal (the June 2, 2003 proposal,[47] the notice of availability of the draft regulatory text,[48] and the notice reopening the comment period on the classification approach.[49]) We did not grant any of these requests.[50] We provided a 60-day comment period on our full implementation proposal, which was published on June 2, 2003. We also provided a separate 30-day comment period on draft regulatory text (notice of availability was published on August 6, 2003). The October 21, 2003 notice was very narrow, supplementing just one aspect of the June 2, 2003 proposal. We believe that a 15-day comment period was sufficient to address this limited issue. That notice was based on several comments which were submitted during the public comment period. Those comments have been available to the public since early August.

We are committed by a consent decree to designate areas for the 8-hour ozone NAAQS by April 15, 2004. We believe it was essential to move forward to provide the public health protection that implementation of the 8-hour NAAQS will yield. We have recognized the strong interest from many stakeholders in our issuance of a final implementation rule prior to the April 2004 designation deadline. These interests, in conjunction with the reasons set forth above, support our denial of requests for an extension of the comment period. However, as is normally the case, we considered comments received after the close of the comment period to the extent we were able to do so without impeding the process for issuing the final rule.

[47] OAR–2003–0079–0081, 0085 American Petroleum Institute (API) requests for extension to the August 1st, 2003 comment deadline.

[48] OAR–2003–0079–0405 Request for Extension of Time for Filing Comments on Draft Regulatory Text for Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) submitted by Howard J. Feldman, Director, American Petroleum Institute.

[49] OAR–2003–0079–0542, 0589, 0590 Request for Extension of time for 15-day comment period on approaches to implement the 8-hour ozone NAAQS, submitted by Gregory Dana, Vice President Environmental Affairs, Alliance of Automobile Manufacturers.

OAR–2003–0079–0555 Request for extension of time for 15-day comment period on alternative approaches to implement the 8-hour ozone NAAQS submitted by Howard Feldman, Director Regulatory Analysis and Scientific Affairs, American Petroleum Institute (API).

OAR–2003–0079–0572 Request for Extension of Public Comment Period submitted by Leslie S. Ritts, Counsel to The National Environmental Development Associations Clean Air Regulatory Project (NEDA/CARP).

[50] *See*, for instance, OAR–2003–0079–0165 Letter from S. Page, Director, OAQPS to H.J. Feldman, Director, API, denying extension of comment period.

G. Other Considerations

Although Phase 2 of the final rule will address aspects of implementation of the 8-hour ozone NAAQS that are not addressed in this rulemaking, additional information is provided below regarding new source review for the 8-hour ozone NAAQS.

1. What Happens If a Source Is in the Process of PSD Permitting at the Time That the Area in Which It Is Located Is Designated as Nonattainment for the 8-Hour Ozone NAAQS?

An area's designation at the time the final permit is issued determines which major New Source Review (NSR) requirements apply to the construction activity.

Accordingly, if a source has received its PSD permit before the area is designated nonattainment, it may construct under the terms of that permit if it commences an ongoing program of construction within the required time period and completes the project within a reasonable time. However, if the area is designated nonattainment before the permit is issued (even if the reviewing authority deemed the PSD application complete), the PSD permit may not be issued. The source would be required to submit a new application to comply with the requirements of the applicable nonattainment major NSR program before receiving a final permit and beginning construction. 40 CFR 52.24(k) and 40 CFR part 51, appendix S. We have consistently applied this approach in past designation and redesignation situations.

This approach is consistent with CAA section 165, which states that PSD permitting requirements apply only in attainment and unclassifiable areas. The DC District Court of Appeals affirmed this plain reading of the statute in the *Alabama Power* decision (636 F.2d 323). In response to EPA's attempt to apply PSD permitting requirements in some nonattainment areas, the court stated, "After careful consideration of the statute and the legislative history, we must accept the contention of the industry petitioners that the phrase 'constructed in any area to which this part applies' limits the application of section 165 to major emitting facilities to be constructed in [attainment and unclassifiable areas]." The court went on to say, "The plain meaning of the inclusion in section 165 of the words 'any area to which this part applies' is that Congress intended location to be the key determinant of the applicability of the PSD review requirements."

This approach is also consistent with the regulatory text in the Federal PSD

regulations. These regulations limit the applicability of PSD requirements to "an area designated as attainment or unclassifiable." 40 CFR 51.166(a)(7)(i); 52.21(a)(2)(i).

H. EPA's Final Action

We are taking final action on key elements of the program to implement the 8-hour ozone NAAQS. This final rule addresses the following topics: Classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS (*i.e.*, when the 1-hour NAAQS will no longer apply); how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS; attainment dates; and the timing of emission reductions needed for attainment. A summary of the rule appears in section IV of this preamble.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule merely interprets the requirement to develop State implementation plans to achieve a new or revised NAAQS. This requirement is prescribed in the CAA sections 110 and part D, subparts 1 and 2 of Title 1. The present final rule does not establish any new information collection burden apart from any that required by law. A SIP contains rules and other requirements designed to achieve the NAAQS by the deadlines established under the CAA, and also contains a demonstration that the State's requirements will in fact result in attainment. Such a document is not considered information collection. 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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR 121.); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. Rather, this rule interprets the obligations established in the CAA for States to submit implementation plans in order to attain the 8-hour ozone NAAQS. We are issuing this rule so that States and Tribes will know how we plan to classify areas and transition from implementation of the 1-hour NAAQS to implementation of the 8-hour NAAQS.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The estimated administrative burden hour and costs associated with implementing the 8-hour, 0.08 ppm NAAQS were developed upon promulgation of the NAAQS and presented in Chapter 10 of U.S. EPA 1997, *Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards,* Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 16, 1997. The estimated costs presented there for States in 1990 dollars totaled $0.9 million. The corresponding estimate in 1997 dollars is $1.1 million. Should the more traditional classification option be adopted as the implementation framework, these costs may increase modestly, but would not reach $100 million. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

The CAA imposes the obligation for States to submit SIPs to implement the 8-hour ozone NAAQS; in this rule, EPA is merely fleshing out those requirements. However, even if this rule did establish a requirement for States to submit SIPs, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and part D of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In this rule, EPA has determined that this rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule.

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 rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described in section D, above (on UMRA), EPA previously determined the costs to States to implement the 8-hour ozone NAAQS to be approximately $1 million. While this rule considers options not addressed at the time the NAAQS were promulgated, the costs for implementation under these options would may rise modestly. This rule fleshes out the statutory obligations of States in implementing the 8-hour ozone NAAQS. Finally, the CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA actively engaged the States in the development of this rule. EPA held regular calls with representatives of State and local air pollution control agencies. EPA also held three public meetings at which it described the approaches it was considering and provided an opportunity for States and various other governmental officials to comment on the options being considered. Finally, EPA held three public hearings after the proposed rule was published to obtain public comments.

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 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This determination is stated below.

This rule concerns the implementation of the 8-hour ozone NAAQS in areas designated nonattainment for that NAAQS. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The regulations flesh out the statutory obligations of States and Tribes that develop plans to implement the 8-hour ozone NAAQS. The TAR gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

The EPA also notes that even if Tribes choose to develop plans to implement the 8-hour ozone NAAQS in the future, these regulations would not impose substantial direct compliance costs on such Tribes, nor would they preempt Tribal law. As provided above, EPA has determined that the total costs for implementing the 8-hour ozone NAAQS by State, local, and Tribal governments is approximately $1 million in all areas designated nonattainment for the NAAQS. The percentage of Indian country that will be designated nonattainment for the 8-hour ozone NAAQS is very small. For Tribes that choose to regulate sources under their jurisdiction, the costs would be attributed to inspecting regulated facilities and enforcing adopted regulations.

Although Executive Order 13175 does not apply to this rule, EPA did consult with Tribal officials in developing this rule and encouraged Tribal input at an

early stage. The EPA supports a national "Tribal Designations and Implementation Work Group" which provided an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone NAAQS. These discussions have given EPA valuable information about Tribal concerns regarding implementation of the 8-hour ozone NAAQS. The work group sent issue summaries and suggestions for addressing them to the newly formed National Tribal Air Association (NTAA), who in turn sent them to Tribal leaders. EPA encouraged Tribes to participate in the national public meetings held to take comment on early approaches to the rule. Several Tribes made public comments at the April 2002 public meeting in Tempe, Arizona.

Furthermore, EPA sent individualized letters to all federally recognized Tribes about the proposal and gave Tribal leaders the opportunity for consultation. EPA received comment from the NTAA raising several questions: (1) NTAA asked for clarification on the nature of EPA's support for Tribes without Treatment in the same manner as a State (TAS) status and asked if EPA would provide technical assistance in interpreting SIP documentation to a Tribe without TAS approval; (2) NTAA asked EPA to explain how it envisions its role in continuing consultation with Tribes throughout the execution of SIPs. These comments will be addressed in the technical support document. The NTAA's final comment cited concerns with the impact of NSR requirements on the Tribes. The EPA intends to address these NSR comments in the Tribal NSR Rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

The rule is not subject to Executive Order 13045 because it implements a previously promulgated health based Federal standard (this rule implements the 8-hour ozone NAAQS). Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38855, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2003, *Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard*, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs 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, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of the implementation plans.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety. The rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 15, 2004.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

M. Determination Under Section 307(d)

Pursuant to section 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine." While the Administrator did not make this determination earlier, the Administrator believes that all of the procedural requirements, *e.g.*, docketing, hearing and comment periods, of section 307(d) have been complied with during the course of this rulemaking.

Appendix A to Preamble—Example for 8-Hr Ozone Preamble Portion Dealing with Anti-Backsliding and Outstanding 1-Hr ROP Obligation

Consider a 1-hour nonattainment area classified as Severe-15. For simplicity, only one precursor is assumed here, and this example does not account for issues of creditability established by the CAA. The 1-hour Severe-15 areas are required to reach attainment no later than 15 years after the 1990 base year, *i.e.*, in year 2005. The ROP requirement over this 15-year period would be accomplished by an initial 15 percent reduction in emissions in the first six years, followed by additional 3 percent per year reductions (9 percent averaged over three years) until attainment is reached but no later than the attainment date (with any additional reductions needed for attainment). Suppose an area started with a base year emissions inventory of 1000 tons/day (t/d); after an initial 15 percent reduction, the area's emissions in 1996 would be 850 t/d. Subsequent additive linear 9 percent reductions would net 24 percent, 33 percent, and 42 percent reductions, leaving emissions of 760 t/d in 1999, 670 t/d in 2002, and 580 t/d in 2005. (Since each subsequent 9 year incremental reduction toward attainment would have to account for adjustments in the base year inventory because of noncreditable reductions, actual reductions would vary somewhat from those shown here.)

Assume that the same area is classified Serious for the 8-hour NAAQS. Under one of our proposed options for such an area, the area would be required to submit an RFP plan in 2006 that shows (for the 6-year period from the end of 2002 to the end of 2008) an 18 percent reduction from a 2002 base year. The 1-hour NAAQS ROP schedule thus overlaps the 8-hour one, which begins in base year 2002 and continues to year 2013. As the same 1-hour Severe-15 area transitions to an 8-hour serious nonattainment area, overlap occurs during years 2002 through 2005. During this interval, the area will complete its last 9 percent incremental reduction in year 2005 for its 1-hour obligation while at the same time beginning to meet the 8-hour obligation of 18 percent by 2008. Therefore, between 2002–2005, the area will need to get (670 t/d − 580 t/d =) 90 t/d reductions to meet its 1-hour obligation. The area would also be required to get between 2002—2008 an 18 percent reduction from the 2002 base inventory of 670 t/d which equals a 121 t/d in reductions. However, since the 90 t/d is already obtained for the 2002–2005 period, the area need only get an additional (121 t/d − 90 t/d =) 31 t/d reductions to meet the 8-hour obligation from 2005 out to 2008. Therefore, if this area had not actually submitted a 1-hour ROP plan that covered the 2002–2005 period, and it submitted its 8-hour RFP plan that achieves the 121 t/d reduction, it would be deemed to have met its 1-hour ROP obligation, provided that the RFP plan insured that 90 t/d would be achieved by 2005.

Appendix B to Preamble—Glossary of Terms and Acronyms

bump-up Reclassify to higher classification
CAA Clean Air Act
CAAA 1990 Clean Air Act Amendments
CFR Code of Federal Regulations
CMSA Consolidated Metropolitan Statistical Area
EAC Early Action Compacts
EPA Environmental Protection Agency
I/M Inspection and Maintenance Area
LAER Lowest achievable emission rate
LNB Low NO_X Burner
MCR Mid-course review
MPO Metropolitan Planning Organization
NAAQS National Ambient Air Quality Standards
NO_X Nitrogen oxides
NSR New source review
NTAA National Tribal Air Association
NTTAA National Technology Transfer Advancement Act of 1995
OMB Office of Management and Budget
OTR Ozone Transport Region
PAMS Photochemical Assessment Monitoring Stations
ppm Parts per million
PSD Prevention of significant deterioration
RACM Reasonably available control measures
RACT Reasonably available control technology
RFG Reformulated gasoline
RFP Reasonable further progress
ROP Rate of progress
SBA Small Business Administration
SCR Selective Catalytic Reduction
SIPs State implementation plans
TAR Tribal Authority Rule
TAS Treatment in the same manner as a State
t/d Tons per day
TEA–21 Transportation Equity Act for the Twenty-first Century
UMRA Unfunded Mandates Reform Act of 1995
VCS Voluntary consensus standards
VOC Volatile organic compound

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 51

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

40 CFR Part 81

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

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7401.

Dated: April 15, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for Part 50 continues to read as follows:

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

■ 2. Section 50.9 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.

* * * * *

(b) * * * The 1-hour NAAQS set forth in paragraph (a) of this section will no longer apply to an area one year after the effective date of the designation of that area for the 8-hour ozone NAAQS pursuant to section 107 of the Clean Air Act. * * *

* * * * * *

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 4. Part 51 is amended by adding a new subpart X to read as follows:

Subpart X—Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard

Sec.

Subpart X—Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard

§ 51.900 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) *1-hour NAAQS* means the 1-hour ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) *8-hour NAAQS* means the 8-hour ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) *1-hour ozone design value* is the 1-hour ozone concentration calculated according to 40 CFR part 50, Appendix H and the interpretation methodology issued by the Administrator most recently before the date of the enactment of the CAA Amendments of 1990.

(d) *8-Hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, appendix I.

(e) *CAA* means the Clean Air Act as codified at 42 U.S.C. 7401—7671q (2003).

(f) *Applicable requirements* means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment or unclassifiable:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation controls under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled provisions of section 182(d)(1) of the CAA.

(12) NO_X requirements under section 182(f) of the CAA.

(g) *Attainment year ozone season* shall mean the ozone season immediately preceding a nonattainment area's attainment date.

(h) *Designation for the 8-hour NAAQS* shall mean the effective date of the 8-hour designation for an area.

(i) *Higher classification/lower classification.* For purposes of determining whether a classification is higher or lower, classifications are ranked from lowest to highest as follows: classification under subpart 1 of the CAA; marginal; moderate; serious; severe-15; severe-17; and extreme.

(j) *Initially designated* means the first designation that becomes effective for an area for the 8-hour NAAQS and does not include a redesignation to attainment or nonattainment for that standard.

(k) *Maintenance area for the 1-hour NAAQS* means an area that was designated nonattainment for the 1-hour NAAQS on or after November 15, 1990 and was redesignated to attainment for the 1-hour NAAQS subject to a maintenance plan as required by section 175A of the CAA.

(l) *Nitrogen Oxides (NO_X)* means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(m) *NO_X SIP Call* means the rules codified at 40 CFR 51.121 and 51.122.

(n) *Ozone season* means for each State, the ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 2.5 for that State.

(o) *Ozone transport region* means the area established by section 184(a) of the CAA or any other area established by the Administrator pursuant to section 176A of the CAA for purposes of ozone.

(p) *Reasonable further progress (RFP)* means for the purposes of the 8-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA.

(q) *Rate of progress (ROP)* means for purposes of the 1-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA.

(r) *Revocation of the 1-hour NAAQS* means the time at which the 1-hour NAAQS no longer apply to an area pursuant to 40 CFR 50.9(b).

(s) *Subpart 1* (CAA) means subpart 1 of part D of title I of the CAA.

(t) *Subpart 2* (CAA) means subpart 2 of part D of title I of the CAA.

(u) *Attainment Area* means, unless otherwise indicated, an area designated as either attainment, unclassifiable, or attainment/unclassifiable.

§ 51.901 Applicability of part 51.

The provisions in subparts A through W of part 51 apply to areas for purposes of the 8-hour NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§ 51.902 Which classification and nonattainment area planning provisions of the CAA shall apply to areas designated nonattainment for the 8-hour NAAQS?

(a) *Classification under subpart 2 (CAA).* An area designated nonattainment for the 8-hour NAAQS with a 1-hour ozone design value equal to or greater than 0.121 ppm at the time the Administrator signs a final rule designating or redesignating the area as nonattainment for the 8-hour NAAQS will be classified in accordance with section 181 of the CAA, as interpreted in § 51.903(a), for purposes of the 8-hour NAAQS, and will be subject to the requirements of subpart 2 that apply for that classification.

(b) *Covered under subpart 1 (CAA).* An area designated nonattainment for the 8-hour ozone NAAQS with a 1-hour design value less than 0.121 ppm at the time the Administrator signs a final rule designating or redesignating the area as nonattainment for the 8-hour NAAQS will be covered under section 172(a)(1) of the CAA and will be subject to the requirements of subpart 1.

§ 51.903 How do the classification and attainment date provisions in section 181 of subpart 2 of the CAA apply to areas subject to §51.902(a)?

(a) In accordance with section 181(a)(1) of the CAA, each area subject to § 51.902(a) shall be classified by operation of law at the time of designation. However, the classification shall be based on the 8-hour design value for the area, in accordance with Table 1 below, or such higher or lower classification as the State may request as provided in paragraphs (b) and (c) of this section. The 8-hour design value for the area shall be calculated using the three most recent years of air quality data. For each area classified under this section, the primary NAAQS attainment date for the 8-hour NAAQS shall be as expeditious as practicable but not later than the date provided in the following Table 1.

TABLE 1.—CLASSIFICATION FOR 8-HOUR OZONE NAAQS FOR AREAS SUBJECT TO § 51.902(A)

Area class		8-hour design value (ppm ozone)	Maximum period for attainment dates in state plans (years after effective date of nonattainment designation for 8-hour NAAQS)
Marginal	from	0.085	3
	up to [1]	0.092	
Moderate	from	0.092	6
	up to [1]	0.107	
Serious	from	0.107	9
	up to [1]	0.120	
Severe-15	from	0.120	15
	up to [1]	0.127	
Severe-17	from	0.127	17
	up to [1]	0.187	
Extreme	equal to or above	0.187	20

[1] but not including.

(b) A State may request a higher classification for any reason in accordance with section 181(b)(3) of the CAA.

(c) A State may request a lower classification in accordance with section 181(a)(4) of the CAA.

§ 51.904 How do the classification and attainment date provisions in section 172(a) of subpart 1 of the CAA apply to areas subject to § 51.902(b)?

(a) *Classification.* The Administrator may classify an area subject to § 51.902(b) as an overwhelming transport area if:

(1) The area meets the criteria as specified for rural transport areas under section 182(h) of the CAA;

(2) Transport of ozone and/or precursors into the area is so overwhelming that the contribution of local emissions to observed 8-hour ozone concentration above the level of the NAAQS is relatively minor; and

(3) The Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_X) emissions within the area do not make a significant contribution to the ozone concentrations measured in other areas.

(b) *Attainment dates.* For an area subject to § 51.902(b), the Administrator will approve an attainment date consistent with the attainment date timing provision of section 172(a)(2)(A) of the CAA at the time the Administrator approves an attainment demonstration for the area.

§ 51.905 How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?

(a) *What requirements that applied in an area for the 1-hour NAAQS continue to apply after revocation of the 1-hour NAAQS for that area?* (1) *8-Hour NAAQS Nonattainment/1-Hour NAAQS Nonattainment.* The following requirements apply to an area designated nonattainment for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS for that area.

(i) The area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section.

(ii) If the area has not met its obligation to have a fully-approved attainment demonstration SIP for the 1-hour NAAQS, the State must comply with one of the following:

(A) Submit a 1-hour attainment demonstration no later than 1 year after designation;

(B) Submit a RFP plan for the 8-hour NAAQS no later than 1-year following designations for the 8-hour NAAQS providing a 5 percent increment of emissions reduction from the area's 2002 emissions baseline, which must be in addition to measures (or enforceable commitments to measures) in the SIP at the time of the effective date of designation and in addition to national or regional measures and must be achieved no later than 2 years after the required date for submission (3 years after designation).

(C) Submit an 8-hour ozone attainment demonstration no later than 1 year following designations that demonstrates attainment of the 8-hour NAAQS by the area's attainment date; provides for 8-hour RFP for the area out to the attainment date; and for the initial period of RFP for the area (between 2003–2008), achieve the emission reductions by December 31, 2007.

(iii) If the area has an outstanding obligation for an approved 1-hour ROP SIP, it must develop and submit to EPA all outstanding 1-hour ROP plans; where a 1-hour obligation overlaps with an 8-hour RFP requirement, the State's 8-hour RFP plan can be used to satisfy the 1-hour ROP obligation if the 8-hour RFP plan has an emission target at least as stringent as the 1-hour ROP emission target in each of the 1-hour ROP target years for which the 1-hour ROP obligation exists.

(2) *8–Hour NAAQS Nonattainment/1–Hour NAAQS Maintenance.* An area designated nonattainment for the 8-hour NAAQS that is a maintenance area for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS for that area remains subject to the obligation to implement the applicable requirements as defined in § 51.900 (f) to the extent such obligations are required by the approved SIP, except as provided in paragraph (b) of this section. Applicable measures in the SIP must continue to be implemented; however, if these measures were shifted to contingency measures prior to designation for the 8-hour NAAQS for the area, they may remain as contingency measures, unless the measures are required to be implemented by the CAA by virtue of the area's requirements under the 8-hour NAAQS. The State may not remove such measures from the SIP.

(3) *8–Hour NAAQS Attainment/1–Hour NAAQS Nonattainment*—(i) *Obligations in an approved SIP.* For an area that is 8-hour NAAQS attainment/1-hour NAAQS nonattainment, the State may request that obligations under the applicable requirements of § 51.900(f) be shifted to contingency measures, consistent with sections 110(l) and 193

of the CAA, after revocation of the 1-hour NAAQS; however, the State cannot remove the obligations from the SIP. For such areas, the State may request that the nonattainment NSR provisions be removed from the SIP on or after the date of revocation of the 1-hour NAAQS and need not be shifted to contingency measures subject to paragraph (e)(4) of this section.

(ii) *Attainment demonstration and ROP plans.* (A) To the extent an 8-hour NAAQS attainment/1-hour NAAQS nonattainment area does not have an approved attainment demonstration or ROP plan that was required for the 1-hour NAAQS under the CAA, the obligation to submit such an attainment demonstration or ROP plan

(*1*) Is deferred for so long as the area continues to maintain the 8-hour NAAQS; and

(*2*) No longer applies once the area has an approved maintenance plan pursuant to paragraph (a)(3)(iii) of this section.

(B) For an 8-hour NAAQS attainment/1-hour NAAQS nonattainment area that violates the 8-hour NAAQS, prior to having an approved maintenance plan for the 8-hour NAAQS as provided under paragraph (a)(3)(iii) of this section, paragraphs (a)(3)(ii)(B)(*1*), (*2*), and (*3*) of this section shall apply.

(*1*) In lieu of any outstanding obligation to submit an attainment demonstration, within 1 year after the date on which EPA publishes a determination that a violation of the 8-hour NAAQS has occurred, the State must submit (or revise a submitted) maintenance plan for the 8-hour NAAQS, as provided under paragraph (a)(3)(iii) of this section, to—

(*i*) Address the violation by relying on modeling that meets EPA guidance for purposes of demonstrating maintenance of the NAAQS; or

(*ii*) Submit a SIP providing for a 3 percent increment of emissions reductions from the area's 2002 emissions baseline; these reductions must be in addition to measures (or enforceable commitments to measures) in the SIP at the time of the effective date of designation and in addition to national or regional measures.

(*2*) The plan required under paragraph (a)(3)(ii)(B)(*1*) of this section must provide for the emission reductions required within 3 years after the date on which EPA publishes a determination that a violation of the 8-hour NAAQS has occurred.

(*3*) The State shall submit an ROP plan to achieve any outstanding ROP reductions that were required for the area for the 1-hour NAAQS, and the 3-year period or periods for achieving the ROP reductions will begin January 1 of the year following the 3-year period on which EPA bases its determination that a violation of the 8-hour NAAQS occurred.

(iii) *Maintenance plans for the 8-hour NAAQS.* For areas initially designated attainment for the 8-hour NAAQS, and designated nonattainment for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS, the State shall submit no later than 3 years after the area's designation for the 8-hour NAAQS, a maintenance plan for the 8-hour NAAQS in accordance with section 110(a)(1) of the CAA. The maintenance plan must provide for continued maintenance of the 8-hour NAAQS for 10 years following designation and must include contingency measures. This provision does not apply to areas redesignated from nonattainment to attainment for the 8-hour NAAQS pursuant to CAA section 107(d)(3); such areas are subject to the maintenance plan requirement in section 175A of the CAA.

(4) *8-Hour NAAQS Attainment/1–Hour NAAQS Maintenance*—(i) *Obligations in an approved SIP.* For an 8-hour NAAQS attainment/1-hour NAAQS maintenance area, the State may request that obligations under the applicable requirements of § 51.900(f) be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA, after revocation of the 1-hour NAAQS; however, the State cannot remove the obligations from the SIP.

(ii) *Maintenance Plans for the 8-hour NAAQS.* For areas initially designated attainment for the 8-hour NAAQS and subject to the maintenance plan for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS, the State shall submit no later than 3 years after the area's designation for the 8-hour NAAQS, a maintenance plan for the 8-hour NAAQS in accordance with section 110(a)(1) of the CAA. The maintenance plan must provide for continued maintenance of the 8-hour NAAQS for 10 years following designation and must include contingency measures. This provision does not apply to areas redesignated from nonattainment to attainment for the 8-hour NAAQS pursuant to section 107(d)(3); such areas are subject to the maintenance plan requirement in section 175A of the CAA.

(b) *Does attainment of the ozone NAAQS affect the obligations under paragraph (a) of this section?* A State remains subject to the obligations under paragraphs (a)(1)(i) and (a)(2) of this section until the area attains the 8-hour NAAQS. After the area attains the 8-hour NAAQS, the State may request such obligations be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA; however, the State cannot remove the obligations from the SIP.

(c) *Which portions of an area designated for the 8-hour NAAQS remain subject to the obligations identified in paragraph (a) of this section?* (1) Except as provided in paragraph (c)(2) of this section, only the portion of the designated area for the 8-hour NAAQS that was required to adopt the applicable requirements in § 51.900(f) for purposes of the 1-hour NAAQS is subject to the obligations identified in paragraph (a) of this section, including the requirement to submit a maintenance plan for purposes of paragraph (a)(3)(iii) of this section. 40 CFR Part 81, Subpart E identifies the boundaries of areas and the area designations and classifications for the 1-hour NAAQS at the time the 1-hour NAAQS no longer applied to each area.

(2) For purposes of paragraph (a)(1)(ii)(B) and (C) of this section, the requirement to achieve emission reductions applies to the entire area designated nonattainment for the 8-hour ozone NAAQS.

(d) [Reserved]

(e) *What obligations that applied for the 1-hour NAAQS will no longer apply after revocation of the 1-hour NAAQS for an area?*—(1) *Maintenance plans.* Upon revocation of the 1-hour NAAQS, an area with an approved 1-hour maintenance plan under section 175A of the CAA may modify the maintenance plan: To remove the obligation to submit a maintenance plan for the 1-hour NAAQS 8 years after approval of the initial 1-hour maintenance plan; and to remove the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. However, such requirements will remain enforceable as part of the approved SIP until such time as EPA approves a SIP revision removing such obligations. The EPA shall not approve a SIP revision requesting these modifications until the State submits and EPA approves an attainment demonstration for the 8-hour NAAQS for an area initially designated nonattainment for the 8-hour ozone NAAQS or a maintenance SIP for the 8-hour NAAQS for an area initially designated attainment for the 8-hour NAAQS. Any revision to such SIP must meet the requirements of section 110(l) and 193 of the CAA.

(2) *Findings of failure to attain the 1-hour NAAQS.* (i) Upon revocation of the 1-hour NAAQS for an area, EPA is no longer obligated—

(A) To determine pursuant to section 181(b)(2) or section 179(c) of the CAA

whether an area attained the 1-hour NAAQS by that area's attainment date for the 1-hour NAAQS; or

(B) To reclassify an area to a higher classification for the 1-hour NAAQS based upon a determination that the area failed to attain the 1-hour NAAQS by the area's attainment date for the 1-hour NAAQS.

(ii) In addition, the State is no longer required to impose under CAA sections 181(b)(4) and 185 fees on emissions sources in areas classified as severe or extreme for failure to meet the 1-hour attainment date.

(3) *Conformity determinations for the 1-hour NAAQS.* Upon revocation of the 1-hour NAAQS for an area, conformity determinations pursuant to section 176(c) of the CAA are no longer required for the 1-hour NAAQS. At that time, any provisions of applicable SIPs that require conformity determinations in such areas for the 1-hour NAAQS will no longer be enforceable pursuant to section 176(c)(5) of the CAA.

(4) *Nonattainment area new source review under the 1-hour NAAQS.* (i) Upon revocation of the 1-hour ozone NAAQS, for any area that was designated nonattainment for the 1-hour ozone NAAQS, the area's implementation plan provisions satisfying sections 172(c)(5) and 173 of the CAA (including provisions satisfying section 182) based on the area's previous 1-hour ozone NAAQS classification are no longer required elements of an approvable implementation plan. Instead, the area's implementation plan must meet the requirements contained in paragraphs (e)(4)(ii) through (e)(4)(iv) of this section.

(ii) If the area is designated nonattainment for the 8-hour ozone NAAQS, the implementation plan must include requirements to implement the provisions of sections 172(c)(5) and 173 of the CAA based on the area's 8-hour ozone NAAQS classification under part 81 of this chapter, and the provisions of § 51.165.

(iii) If the area is designated attainment or unclassifiable for the 8-hour ozone NAAQS, the area's implementation plan must include provisions to implement the provisions of section 165 of the CAA, and the provisions of § 51.166 of this part, unless the provisions of § 52.21 of this chapter apply in such area.

(iv) If the area is designated attainment or unclassifiable but is located in an Ozone Transport Region, the area's implementation plan must include provisions to implement, consistent with the requirements in section 184 of the CAA, the requirements of sections 172(c) and 173 of the CAA as if the area is classified as moderate nonattainment for the 8-hour ozone NAAQS.

(f) *What is the continued applicability of the* NO_X SIP Call after revocation of the 1-hour NAAQS? The NO_X SIP Call shall continue to apply after revocation of the 1-hour NAAQS. Control obligations approved into the SIP pursuant to 40 CFR 51.121 and 51.122 may be modified by the State only if the requirements of §§ 51.121 and 51.122, including the statewide NO_X emission budgets, continue to be met and the State makes a showing consistent with section 110(l) of the CAA.

§ 51.906 [Reserved]

§ 51.907 For an area that fails to attain the 8-hour NAAQS by its attainment date, how does EPA interpret sections 172(a)(2)(C)(ii) and 181(a)(5)(B) of the CAA?

For purposes of applying sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area will meet the requirement of section 172(a)(2)(C)(ii) or 181(a)(5)(B) of the CAA pertaining to 1-year extensions of the attainment date if:

(a) For the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less.

(b) For the second 1-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.

§ 51.908 What is the required timeframe for obtaining emission reductions to ensure attainment by the attainment date?

For each nonattainment area, the State must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.

§§ 51.909–51.916 [Reserved]

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 6. Part 81 is amended by adding and reserving a new subpart E to read as follows:

Subpart E—Identification of Area Designations and Classifications for the 1-Hour Ozone NAAQS as of June 15, 2004 [Reserved]

[FR Doc. 04–9153 Filed 4–29–04; 8:45 am]
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Friday,
April 30, 2004

Part III

Department of Education

Transition to Teaching Grant Program; Notice of Final Priorities and Requirements and Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1855–ZA06

Transition to Teaching

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final priorities and requirements.

SUMMARY: The Deputy Under Secretary for Innovation and Improvement announces two priorities under the Transition to Teaching program. The Deputy Under Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2004 and later years. We take this action to focus Federal financial assistance on State efforts to create or expand alternative routes to teacher certification and district efforts to streamline teacher hiring systems and processes. We intend for the priorities to help States and districts under this program to lower barriers to certification and hiring and increase the number of highly qualified teachers who are recruited into teaching from nontraditional sources. The Deputy Under Secretary also announces minimum requirements that are needed for efficient grant competitions for FY 2004 and future years, and to ensure that grantees focus their program funds on direct costs of their projects.

EFFECTIVE DATE: These priorities and requirements are effective June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C102, Washington, DC 20202–5942. Telephone: (202) 260–0223 or via Internet: *Thelma.Leenhouts@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.

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SUPPLEMENTARY INFORMATION:

General

With the beginning of the 2002–2003 school year, Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001, Public Law 107–110 (NCLB), required that all newly hired teachers of core academic subjects who teach in Title I programs be highly qualified, and, by the end of the 2005–2006 school year, Title I requires that all school district teachers of core academic subjects be highly qualified. Both States and local districts face challenges in meeting these requirements.

The Transition to Teaching program is designed to address these challenges by helping high-need schools operated by high-need local educational agencies (LEAs) secure and retain the highly qualified teachers that students in those schools need to help them achieve to challenging academic standards. It does so by encouraging the development and expansion of alternative pathways to teacher certification, and by supporting local programs that make use of these alternative pathways to recruit, hire, and retain highly qualified teachers.

Transition to Teaching projects: (1) Recruit as teachers talented mid-career professionals, recent college graduates who have not completed a teacher preparation program, and qualified school paraprofessionals; and (2) help these individuals to become successfully certified and licensed classroom teachers in high-need schools of high-need LEAs.

Through this notice, we establish two funding priorities for this program. The Department may decide to use these priorities in the FY 2004 competition and in future competitions as well. One priority focuses on State projects to create or expand, and then implement, alternative pathways to teacher certification. The other priority focuses on school district projects to streamline teacher hiring systems, timelines, and processes.

Establishing these priorities makes it possible to focus program funds at both the State level, where decisions on teacher certification requirements are made, and at the district level, where responsibility for hiring resides. These priorities are designed to open up certification through alternative pathways and to streamline district hiring practices, both of which are necessary to help States and LEAs improve their recruitment practices and, by doing so, address the NCLB highly qualified teacher requirement and increase the overall quality of their teaching force.

We published a notice of proposed priorities and requirements for this program in the **Federal Register** on February 20, 2004 (69 FR 7914–7919).

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priorities and requirements, 13 parties submitted comments on the proposed priorities and requirements. An analysis of the comments and of any changes in the priorities and requirements since publication of the notice of proposed priorities and requirements follows.

We group our discussion of the issues raised by the commenters into two groups—proposed priorities and proposed requirements. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority. However, in this notice, we have included a discussion of comments that were related to statutory issues so that we can provide needed clarification on these issues.

Proposed Priorities

Comment: While generally pleased with Priority 1, which focuses on creation or expansion of alternative routes to certification as the vehicle for recruiting and hiring teachers in high-need schools operated by high-need LEAs, one commenter recommended that we permit independent State teacher certification agencies to apply for a grant on their own behalf rather than jointly with the State educational agencies (SEAs).

Discussion: The ESEA does not permit an independent State teacher certification agency to apply on its own behalf for a grant under this program. Section 2313(b) of the ESEA provides that the following entities are eligible to receive a Transition to Teaching grant: An SEA, a high-need LEA, a for-profit or not-for-profit organization that has a proven record of effectively recruiting and retaining highly qualified teachers in a partnership with a high-need LEA or SEA, or an institution of higher education in partnership with a high-need LEA or with an SEA, or consortia of SEAs or high-need LEAs.

Section 9101(41) of the ESEA defines an SEA as "the agency primarily responsible for the State supervision of public elementary schools and secondary schools." An independent State teacher certification agency would not meet this definition. Thus, absent a change in the statute, to be eligible for a grant under this program, an independent State teacher certification agency may only apply in partnership with a high-need LEA or SEA.

Change: None.

Comments: One commenter recommended the elimination of Priority 2, which focuses on streamlining district hiring systems and policies. The commenter stated that the proposed priority does not address the major obstacles to teacher recruitment and placement, which the commenter characterized as State fiscal issues and legislative unresponsiveness. Two other commenters expressed support for this

priority, indicating that it addresses a critical need.

Discussion: While State budget constraints and legislative inaction may indeed impede district efforts to hire highly qualified and effective teachers, they are beyond the capacity of this program to address. On the other hand, the priority addresses a barrier that is a significant one for large numbers of school districts throughout the country, especially urban ones. In this regard, research conducted by The New Teacher Project and described in its 2003 publication, "Missed Opportunities: How We Keep High-Quality Teachers Out of Urban Classrooms," confirms that untimely and inefficient district hiring policies and practices result in the inability to hire large numbers of qualified individuals already recruited to teach in urban school districts. Through this priority, the Transition to Teaching program can support local efforts to address this problem.

Change: None.

Comments: Four commenters recommended the addition of a third priority focusing on the preparation of teachers of English as a Second Language (ESL) and bilingual teachers who could address the critical needs of English language learners in their States. One commenter recommended a priority for bilingual teachers with expertise in mathematics, science, English, and social studies.

Discussion: We have acknowledged the need for teachers of English language learners by including ESL in the definition of "high-need subjects" in which a recruited individual may teach. However, we do not believe that the competition should favor recruitment of teachers of particular subgroups of students or in particular subject areas. Rather, we believe that applicants should be free to tailor their program applications to address the teacher-shortage needs of the high-need LEAs that would participate in the project, including the need for ESL and bilingual teachers.

Change: None.

Proposed Requirements

Comments: A few commenters recommended revisions in proposed requirements that would require statutory changes. For example, commenters recommended revising the proposed requirement that participants who want to teach in secondary schools must have completed an academic major or the equivalent in the core academic subject the participants would teach. One commenter suggested, in the alternative, that individuals who would teach in secondary schools be eligible to participate if they have passed the State standardized subject matter competency examination in the core academic subject they will teach. Commenters further recommended that we: (1) Eliminate the requirement that participants, other than qualified mid-career changers (including qualified paraprofessionals), have graduated from institutions of higher education not less than three years before seeking a teaching position through this program; (2) eliminate the requirement that prospective teachers be placed only in high-need schools operated by high-need LEAs; and (3) expand program eligibility to include organizations that train older workers as teachers' aides, thereby allowing these agencies to partner with school districts in order to increase the number of teachers' aides.

Finally, one commenter expressed concern about the definition of high-need LEA, particularly paragraphs (b)(1) and (2) of section 2102(3) of the ESEA. This provision, applicable to the Transition to Teaching program by virtue of section 2102(3), requires that in addition to having high poverty a high-need LEA have "(1) a high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing." Given State policy changes in response to the highly qualified teacher requirements of NCLB, the commenter stressed that districts will experience increasing difficulty in being able to meet either element of this criterion.

Discussion: These commenters all seek changes to statutory provisions governing a participant's eligibility and service obligation, contained in sections 2312(1) and (2) and 2313(i) of the ESEA. We have no authority to make the changes the commenters seek.

With regard to the definition of "high-need LEA" in sections 2102(3) and 2312(2) of the ESEA, we are aware that, as they implement the highly qualified teacher requirements in sections 1119 and 9101(23) of the ESEA, fewer and fewer LEAs will have high percentages of uncertified teachers or teachers teaching out of field. The law sets as a goal that, by the end of the 2005–2006 school year, LEAs will have only certified teachers with demonstrated content knowledge teaching in core academic subjects, and hence LEAs would have no teachers teaching these subjects out-of-field.

As we discuss under the Definitions heading in the "Requirements for the FY 2004 and Future Year Grant Competitions and Award of Funds" section of this notice, the Department is continuing to determine the "high percentage" of uncertified teachers that would enable an LEA—with the requisite level of poverty—to meet the definition of a "high-need LEA" on the basis of national data that States report under section 207 of the Higher Education Act of 1965, as amended (HEA). In their HEA reports, States annually provide the Department, among other things, with the percentages of teachers for LEAs as a whole and for high-poverty LEAs who are teaching with some kind of waiver of State certification requirements, *i.e.*, the percentage of teachers who LEAs report to their States are uncertified. For the FY 2002 Transition to Teaching program competition, the Department determined that the average percentage of teachers on waivers in high-poverty LEAs, as reflected in the October 2001 HEA State reports, was the best proxy for a high percentage of teachers with emergency, provisional, or temporary certification or licensing that would permit an LEA to qualify as "high-need."

The most recent HEA reports submitted in October 2003 indicate that the national average of uncertified teachers in high-poverty LEAs last year was eight (8) percent, down from eleven (11) percent in the 2001–02 school year. However, in reconsidering this matter we believe that it is reasonable to consider a "high percentage" of teachers with emergency, provisional, or temporary certification or licensing to be equal to or greater than the national average percentage of teachers on waivers in *all* LEAs as reported in the most current HEA reports—rather than the average percentage only in high-poverty LEAs. All high-need LEAs must meet the statutory criterion of high poverty. But we see no reason to further restrict the number of LEAs that can benefit from this program by also requiring that they have at least the national percentage of teachers on waivers in *high-poverty LEAs.*

Change: For purposes of the FY 2004 and future year competitions, an LEA that meets the poverty threshold of the definition of "high-need LEA" will be considered a high-need LEA if it has at least the percentage of teachers on waivers of State certification as the national average of all LEAs. To demonstrate that it meets this requirement, the LEA will use the data it provided to the State on the percentage of its teachers on waivers of State certification, and which the State then used in completing its most recent HEA report to the Secretary.

Comment: One commenter requested that we define the term "highly-qualified paraprofessional" so that applicants would know which paraprofessionals may be recruited into teaching positions.

Discussion: Section 2312(1) of the ESEA provides that individuals eligible to participate in Transition to Teaching programs include "an individual with substantial demonstrable career experience, including a highly-qualified paraprofessional." While the section of the statute authorizing the Transition to Teaching program does not define this term, it is defined in section 2102(4) of the ESEA (for the Title II, part A program) as "a paraprofessional who has not less than 2 years of—

(A) Experience in the classroom; and

(B) Postsecondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers."

Section 2123(a)(2)(C)(ii) of the ESEA uses this term to identify paraprofessionals whom LEAs may recruit to become teachers, through alternative routes to teacher certification, with the use of Title II, part A funds. Given the comparability of that provision with the thrust of the Transition to Teaching program, we believe it is reasonable to adopt this same definition of highly qualified paraprofessional for this program.

Change: The final requirements for this competition include the definition of "highly qualified paraprofessional" contained in section 2102(4) of the ESEA.

Comments: Two commenters recommended that teachers who already have certification or licensure in one subject area be eligible to participate in Transition to Teaching projects in order to retrain and become recertified in high-need subject areas. One commenter supported the proposed requirement that these teachers not be eligible.

Discussion: The Transition to Teaching program statute provides that projects are to increase the number of teachers in high-need schools operated by high-need LEAs. The program is designed and intended to bring into teaching individuals from non-teaching careers, not to provide financial support to existing teachers who want to change their current areas of certification. Other ESEA program funds, such as those available under Title II, part A, are available if a district chooses to use funds for this purpose.

Change: None.

Comments: Three commenters recommended that individuals who are already teaching on a provisional, temporary, or emergency license be eligible to participate in the Transition to Teaching program. The commenters believe that our proposal to prohibit individuals who are teaching on a provisional, temporary, or emergency license prior to recruitment into the Transition to Teaching program from participating in Transition to Teaching projects would unfairly exclude a desirable group from participating in the program.

Discussion: We do not dispute that many individuals now teaching on a provisional, temporary, or emergency teaching license are dedicated and have demonstrated an interest in teaching. The Department proposed this requirement so that, consistent with the Transition to Teaching program's purpose, projects would focus their recruitment efforts on bringing new individuals into teaching through alternative routes. However, we do not wish to preclude individuals now teaching on a provisional, temporary, or emergency license from participating in the program if they are otherwise eligible under the definition of eligible participant in section 2312(1).

Change: The program requirements have been revised so that individuals who are now teaching but have not yet acquired full State certification may participate in the Transition to Teaching program provided they meet the eligibility requirements in section 2312(1), *i.e.*, they either have substantial, demonstrable career experience, or are recent college graduates (within three years of graduation).

Comment: One commenter recommended that the definition of a "high-need subject" not be limited to the proposed core academic subjects and special education and ESL, but rather include any subjects that a participating LEA determines to be high-need.

Discussion: We do not minimize the need for high-need schools in high-need LEAs to have teachers of other subjects. However, the Transition to Teaching program is intended to support the overall purpose and goal of NCLB: helping all students to achieve to high State academic standards so that no child is left behind. This program does so by providing financial support to help recruit, place, and train individuals from other career experiences to become highly qualified and effective teachers in high-need schools operated by high-need LEAs through alternative route programs.

Consistent with the purpose of NCLB as a whole, we continue to believe it is important that those who will operate Transition to Teaching projects use program funds to recruit teachers who can help students to achieve in the core academic subjects that are of highest priority in NCLB. The ESEA defines these subjects in section 9101(11). We have expanded the permissible subject areas in which participants of this program may teach to include special education and English as a Second Language (ESL) because of the substantial need that many high-need LEAs have for teachers in these areas who can help students with disabilities and English language learners become proficient in the ESEA core academic subjects.

Change: None.

Comment: One commenter recommended that we clarify the repayment requirement in the Transition to Teaching statute because of recent confusion regarding its implementation.

Discussion: As section 2313(j) of the ESEA requires, we are in the process of drafting proposed requirements to govern the repayment of scholarships and other financial incentives by eligible participants who do not meet their three-year service obligation. These proposals will be published in the **Federal Register** for public review and comment before they are issued as final.

Change: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities and requirements, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) Awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1—State Projects to Create or Expand, and Then Implement, Alternative Pathways to Teacher Certification

This priority supports projects designed and implemented by an SEA or a consortium of SEAs and the respective teacher certification agency of each State (if different from the SEA) to create or expand, and then implement, alternative pathways to certification. The project period is up to five years. Grantees will need to conduct both of the following activities:

(a) *Create alternatives to the State's traditional certification requirements.* In conducting this activity, States are encouraged to develop a variety of alternative pathways to certification as important options in their menu of State-approved procedures for teacher certification and licensure. For example, competency-based alternative routes would permit talented individuals interested in teaching to become fully certified through rigorous assessments of their content and professional teaching competence, thereby enabling LEAs to recruit from a larger and more talented pool of prospective teachers.

(b) *Use the alternative routes to recruit individuals from groups eligible to participate in the Transition to Teaching program.* Funded projects also would, among other things, need to work with participating high-need LEAs to—

(1) Increase the number and quality of mid-career changers, recent college graduates who have not majored in education, and qualified paraprofessionals recruited to teach high-need subjects (such as mathematics, science, and special education) in identified high-need LEAs (which may include LEAs that are charter schools), particularly those in urban and rural areas; and

(2) Provide these newly hired teachers with the support they need to become certified and effective teachers who will choose to make teaching their new long-term profession.

In particular, SEAs receiving project funds must—

(i) Target recruitment efforts on, and rigorously screen, candidates in areas where participating high-need LEAs have documented teacher shortages (*e.g.*, mathematics, science, and special education);

(ii) Place prospective teachers only in high-need schools operated by high-need LEAs;

(iii) Prepare individuals for specific positions in specific LEAs and place them in these positions early in the training process;

(iv) Ensure that recruited teachers receive the specific training they need to become fully certified or licensed teachers; and

(v) Have recruited teachers participate in a well-supervised induction period that may include the support of experienced, trained mentors.

Priority 2—District Projects to Streamline Teacher Hiring Systems, Timelines, and Processes

This priority supports projects by one or more high-need LEAs to streamline their hiring systems, timelines, and processes. The project period is up to five years. A participating high-need LEA will need to conduct both of the following activities:

(a) *Examine its current hiring system, processes, and policies to identify the critical barriers to hiring highly qualified teachers.* The lack of highly qualified teachers in most urban and rural LEAs has often been attributed to their difficulty in recruiting interested and qualified individuals. However, recent research indicates that the problem may not be one of recruitment but may stem from inefficient and untimely LEA hiring systems and processes. This is especially true in high-poverty LEAs and schools—the very LEAs and schools the Transition to Teaching program is targeted to serve. Accordingly, each participating LEA will need to examine its current hiring processes and policies and, based upon that examination, identify the critical barriers to hiring highly qualified teachers.

(b) *Design and implement efforts to remove the identified barriers and put in place systems that streamline and revamp the hiring process.* In conducting this activity, LEAs are encouraged to create an efficient and timely applicant hiring process with a strong data tracking system and clear hiring goals. These efforts also should involve negotiating policy reforms that remove critical barriers, such as delayed notification of vacancies and seniority and retirement rules.

Participating LEAs also will carry out the requirements of the Transition to Teaching program by recruiting nontraditional candidates, using the streamlined hiring system to hire these individuals for teaching in high-need schools, working with them to achieve full State certification, and retaining them for at least three years.

Requirements for the FY 2004 and Future Year Grant Competitions and Award of Funds

In order to promote both a fair and efficient program competition and appropriate uses of Transition to Teaching program funds, the Deputy Under Secretary announces the following requirements to govern grant competitions and awards in FY 2004 and later years. For the most part, these requirements are the same as those that the Department announced in the **Federal Register** on June 17, 2002 (67 FR 41221–41224) and successfully used for the FY 2002 Transition to Teaching program competition and grants awarded under it. The Notice Inviting Applications for New Awards for Fiscal Year 2002 is available on the Internet at the following site: *www.gpoaccess.gov/fr/index.html*. The only exceptions concern:

- A requirement, discussed in the section "Application Content", under which each applicant will need to include in its application a statement that each participating LEA will, rather than intends to, hire project participants, assuming that it has positions to fill and is satisfied that the participants are qualified to teach these subjects;
- A requirement discussed in the section "Participant Eligibility", that closes a loophole that has permitted some grantees to recruit existing teachers into their projects; and
- Use of the average percentage of teachers with waivers of State certification requirements in *all* LEAs, rather than the average percentage in only high-poverty LEAs—as reflected in State reports submitted to the Department under section 207 of the HEA—as the measure of when an LEA with the required degree of poverty has a "high percentage" of teachers with emergency, provisional, or temporary certification or licensing, and so is a high-need LEA under this program.

1. *Application content.* Section 2313(d)(2)(C) of the ESEA requires applicants to describe in their applications how they will use the funds received to recruit and retain individuals to teach in high-need schools operated by high-need LEAs. In addition, section 2313(i) of the ESEA requires that individuals who participate in training provided under this program serve in a high-need school operated by a high-need LEA for at least three years. In this regard, an implicit purpose of this program and the ESEA as a whole is to help ensure that all students are able to achieve to high standards, principally in the core

academic subjects defined in section 9101(11) of the ESEA. To ensure that all grantees properly implement their projects, each applicant will need to include information in its application, as the Secretary may require, that confirms that it (if it is an LEA) or each LEA with which it will work—

(a) Is a high-need LEA;

(b) Has identified for the grantee the high-need subjects for which teachers are needed; and

(c) Will hire individuals recruited through the project to meet the LEA's teaching needs, assuming that the LEA still has positions to fill and is satisfied that the individuals are qualified to teach those subjects.

2. *Definitions. High-need LEA.* Section 2102(3) of the ESEA defines "high-need LEA" to mean an LEA that—

(a)(1) Serves not fewer than 10,000 children from families with incomes below the poverty line, or (2) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) A high percentage of teachers not teaching in the academic subjects or grade levels the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

An applicant (or a grantee, should the grantee wish to add an LEA to a Transition to Teaching project after receiving a grant award) will need to demonstrate to the Department that each LEA that will participate in the project satisfies the definition of high-need LEA. The applicant (or grantee) will need to do so on the basis of the most recent data available in the year in which the Department approves the LEA's participation in the project. In this regard, we announce the following for each of these two components of the definition—

• For component (a) of "high-need LEA," the only consistent available data for all LEAs that reflect the statutory requirement for use of the total number or percentage of individuals age 5–17 from families below the poverty line (as the term is defined in section 9101(33) of the ESEA) are data from the U.S. Census Bureau. Therefore, absent a showing of alternative LEA data that meets this statutory definition, the eligibility of an LEA as a "high-need LEA" under component (a) must be determined on the basis of the most recent satisfactory Census Bureau data; we will identify the year of these data to be used in any announcement of a program competition for awards in FY 2004 and future years. (We will provide further information on this subject in the application package for this program that will be available for each competition. This information will include the Internet web site where one may obtain the LEA poverty data that the Census Bureau reports, and the kinds of poverty data the Department will accept for any LEA that is not included on this Internet web site.)

• For component (b)(1) of the definition of "high-need LEA," we interpret this phrase "not teaching in the academic subjects or grade levels that the teachers were trained to teach" as equivalent to "a high percentage of teachers teaching out of field." The Department does not have available to it suitable data with which to define what a high percentage is. Therefore, LEAs that rely on component (b)(1) will need to demonstrate to the Department's satisfaction that they have a high percentage of teachers teaching out of field. The Department will review this aspect of an LEA's proposed eligibility on a case-by-case basis. To avoid uncertainty, an LEA might choose instead to try to meet this eligibility test under component (b)(2).

• For component (b)(2) of "high-need LEA," the best data available to the Department on the percentage of teachers with emergency, provisional, or temporary certification or licensing come from the reports on the quality of teacher preparation that States annually provide to the Department in October of each year under section 207 of the HEA. In these reports, States provide the percentage of teachers in their LEAs teaching on waivers of State certification, both on a statewide basis and in high-poverty LEAs. For purposes of the program's FY 2002 competition, an LEA had a "high percentage" of teachers with emergency, provisional, or temporary certification or licensing if the percentage of teachers on waivers, as the LEA reported to the State for purposes of the State's October 2001 report to the Secretary, was at least the national average percentage of teachers on waivers in high-poverty LEAs—11 percent.

For reasons expressed in the "Analysis of Comments and Changes" section, for purposes of the FY 2004 and subsequent program competitions, an LEA has a "high percentage" of teachers with emergency, provisional, or temporary certification or licensing if the percentage of teachers on waivers, as the LEA reported to the State for purposes of the State's latest HEA report to the Secretary, was at least the national average percentage of teachers on waivers of State certification, for *all* LEAs—rather than just for high-poverty LEAs. Therefore, for the FY 2004 competition, an LEA will be considered to have a high percentage of teachers with emergency, provisional, or temporary certification or licensing if the percentage of teachers on waivers that it reported to the State for purposes of the State's October 2003 HEA report was at least six percent.

Note: For that October 2003 report, teachers on a waiver of State certification requirements *included* uncertified teachers who were participating in State-approved alternative route programs.

Based on information in future HEA State reports, we will publish the most current national percentage of uncertified teachers in all LEAs in any announcement of a program competition for awards in future years. To satisfy component (b)(2) of the definition of a high-need LEA, an LEA will need to be able to confirm that, at the time it would participate in a Transition to Teaching project, it has at least the percentage of uncertified teachers as the Department announces is a "high percentage" based on the most currently available HEA section 207 State reports.

High-need subject. For purposes of the Transition to Teaching program, a high-need subject means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, geography, special education, and English as a second language (ESL). These subjects include the "core academic subjects" specified in section 9101(11) of the ESEA and the subjects of special education and ESL.

High-need SEA. Section 2313(c) of the ESEA requires the Department to give priority in awarding grants under the program to applications from "a partnership or consortium that includes a high-need State educational agency or local educational agency." However, the ESEA does not define the term high-need SEA. As was the case for the FY 2002 competition, for purposes of this priority we define a high-need SEA as an SEA of a State that includes at least one high-need LEA.

Highly qualified paraprofessional. For purposes of the Transition to Teaching program, a highly qualified paraprofessional means a paraprofessional who has not less than two years of—

(A) Experience in a classroom, and

(B) Postsecondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers.

3. *Application review process.* Section 2313(b) of the ESEA provides that an eligible applicant for a Transition to Teaching grant must be—

(a) An SEA;

(b) A high-need LEA;

(c) A for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified teachers, in a partnership with a high-need LEA or with an SEA;

(d) An institution of higher education (IHE), in a partnership with a high-need LEA or with an SEA;

(e) A regional consortium of SEAs; or

(f) A consortium of high-need LEAs.

Given the wide variety of entities that may apply for grants under this program, the Department expects the scope of proposed recruitment, training, and placement efforts to vary widely. For example, a nonprofit organization might propose activities in various communities throughout the nation, an SEA might propose activities to be conducted on a statewide basis, and an LEA might propose activities that will focus on its own teaching needs. It is likely that if applications from these various entities were reviewed in a single application pool, reviewers would have difficulty evaluating the relative merits of the projects. In addition, the Department is interested in supporting projects of different types that can serve as potential models of recruitment, training, and retention through alternative routes to teaching. Given these factors, and in order to evaluate fairly the relative merits of applications proposing projects of such widely varied scope, we will review applications in FY 2004 and later years as we did in the FY 2002 program competition—in three different applicant pools, depending on whether the LEAs to benefit from the project are located—

(a) In more than one State;

(b) Statewide or in more than one area of a State; or

(c) In a single area of a State.

When the Department announces a competition, it will provide an estimate of the number and size of awards to be made from applications in each category. However, the Department intends to reserve the right to adjust these estimates based on the number of high-quality applications in each pool and as a whole, without regard to the relative scores of applications in each of the three applicant pools.

Finally, because of the variety of entities that may apply for grants under this program, it is possible that an LEA might be the recipient of services under both (1) its own application and (2) the application of the SEA of the State in which the LEA is located, an educational service agency that is a high-need LEA, or a nonprofit organization. In this event, should those applications propose duplicative activities the Department will offer the LEA a choice of receiving its own grant award or participating in the other entity's project. Should the LEA choose to receive its own award, the Department will adjust the other entity's grant award accordingly.

4. *Participant eligibility.* Section 2312(1) provides that an individual is eligible to participate in the Transition to Teaching program if the individual (a) has substantial, demonstrable career experience, including as a highly qualified paraprofessional, or (b) is a graduate of an IHE who—

(1) Has graduated not more than three years before applying to join a Transition to Teaching project in order to become a teacher, and

(2) In the case of an individual wishing to teach in a secondary school, has completed an academic major (or courses totaling an equivalent number of credit hours) in the academic subject that the individual will teach.

The purpose of the Transition to Teaching program is to provide financial support to enable grantees to recruit individuals from their non-teaching positions and, through alternative routes to State certification, help high-need LEAs to hire and retain them as teachers of high-need subjects. Indeed, section 2313(d)(2)(E) requires each application to describe how the proposed project will increase the number of highly qualified teachers teaching high-need academic subjects (in high-need schools operated by high-need LEAs). Consistent with this provision and the program's overall purpose, individuals who already have State teacher certification or licenses are not eligible to participate in Transition to Teaching projects. Individuals who are teaching on a provisional, temporary, or emergency license prior to recruitment into the program, are eligible to participate provided they meet the eligibility requirements in section 2312(1) of the ESEA and thereby qualify either as a mid-career professional or a recent college graduate (within three years of graduation).

5. *Evaluation and accountability.* Section 2314 of the ESEA requires grantees to submit to the Department and to the Congress interim and final reports at the end of the third and fifth years of the grant period, respectively. Subparagraph (b) of section 2314 provides that these reports must contain the results of the grantee's interim and final evaluations, which must describe the extent to which high-need LEAs that received funds through the grant have met their goals relating to teacher recruitment and retention as described in the project application.

However, while each funded project must promote the recruitment and retention of new teachers in specific identified LEAs, eligible grant recipients are not limited to LEAs. Therefore, it is possible that one or more funded projects will not provide funding to participating LEAs. In order that all project evaluations provide relevant information on the extent to which the project is meeting these LEA goals, the interim and final evaluations will need to describe the extent to which LEAs that either receive program funds or otherwise participate in funded projects have met their teacher recruitment and retention goals.

6. *Limitation on indirect costs.* The success of the Transition to Teaching Program depends upon how well grantees and the high-need LEAs with which they work recruit, hire, train, and retain highly qualified individuals from other professions and backgrounds to become teachers in high-need subjects. If the program is to achieve its purpose, we need to ensure that all appropriated funds are used as effectively as possible. To do so, we believe it is necessary to place a reasonable limitation on the amount of program funds that grant recipients may use to reimburse themselves for the indirect costs of program activities. Therefore, we place a reasonable limit on the indirect cost rate that all grantees and other recipients of program funds may use in determining the amount of indirect costs they may charge to their Transition to Teaching awards. As was the case for grants awarded under the FY 2002 competition, this limit is the lesser of eight percent or the recipient's negotiated restricted indirect cost rate.

For reasons we have offered in a limited number of other competitive grant programs that focus on improving teacher quality, we believe that a similar limitation on a recipient's indirect costs is necessary here to ensure that Transition to Teaching program funds are used to secure the new teachers that Congress intended. See, *e.g.*, the discussion of (1) 34 CFR 611.61, as proposed, that governs the Teacher Quality Enhancement Grants program authorized by Title II, part A of the HEA (65 FR 6936, 6940 (February 11, 2000)), and (2) requirements for the FY 2002 grants competition under the School Leadership program authorized by Title II, part A, subpart 5 of the ESEA (67 FR 36159, 36162 (May 23, 2002)), and

under this Transition to Teaching program (67 FR 41223–24 (June 17, 2002)).

Executive Order 12866

This notice of final priorities and requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities and requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities and requirements, we have determined that the benefits of the final priorities and requirements justify the costs.

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

Summary of potential costs and benefits: Elsewhere in this notice we discuss the potential costs and benefits of these final priorities and requirements under the **SUPPLEMENTARY INFORMATION** section.

Intergovernmental Review

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

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

Electronic Access to This Document

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

(Catalog of Federal Domestic Assistance Number 84.350 Transition to Teaching)

Program Authority: 20 U.S.C. 6681 *et seq.*

Dated: April 27, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–9852 Filed 4–29–04; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Transition to Teaching Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.350A, 84.350B, and 84.350C.

DATES: *Applications Available:* April 30, 2004.

Deadline for Notice of Intent to Apply: May 14, 2004.

Deadline for Transmittal of Applications: June 14, 2004.

Deadline for Intergovernmental Review: August 13, 2004.

Eligible Applicants: A State educational agency (SEA); a high-need local educational agency (LEA); a for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified teachers, in a partnership with a high-need LEA or an SEA; an institution of higher education, in a partnership with a high-need LEA or an SEA; a regional consortium of SEAs; or a consortium of high-need LEAs.

Estimated Available Funds: $12–$13 million. The Department has established separate funding categories for projects of different scope. These categories are:

(1) National/regional projects (84.350C) that serve eligible high-need LEAs in more than one state;

(2) Statewide projects (84.350B) that serve eligible high-need LEAs statewide or eligible high-need LEAs in more than one area of a state; and

(3) Local projects (84.350A) that serve one eligible high-need LEA or two or more eligible high-need LEAs in a single area of a state.

Estimated Range of Awards: National/regional projects—$300,000–$1,000,000 per year; Statewide projects—$150,000–$600,000 per year; and Local projects—$100,000–$400,000 per year.

Estimated Average Size of Awards: National/regional projects—$750,000 per year; Statewide projects—$375,000 per year; and Local projects—$225,000 per year.

Estimated Number of Awards: National/regional projects—2; Statewide projects—10; and Local projects—20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Transition to Teaching program encourages (1) The development and expansion of alternative routes to full State teacher certification, as well as (2) the recruitment and retention of highly qualified mid-career professionals, recent college graduates who have not majored in education, and highly qualified paraprofessionals as teachers in high-need schools operated by high-need LEAs, including charter schools that operate as high-need LEAs.

Priorities: The Department has established three priorities that are explained in the following paragraphs. One priority is from the statute for this program and two priorities are from the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**.

Competitive Preference Priorities: For FY 2004, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award 5 additional points to an application that meets Competitive Preference Priority 1, and up to an additional 20 points to an application, depending on how well the application meets either Competitive Preference Priority 2 or 3. These points are in addition to any points the application earns under the program's selection criteria.

These priorities are:

Competitive Preference Priority 1—Partnerships or Consortia That Include a High-Need LEA or a High-Need SEA

In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 2313(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6683(c)). This priority supports projects that are designed and implemented in active partnerships or consortia that include at least one high-need LEA or high-need SEA.

Competitive Preference Priority 2—State Projects to Create or Expand, and Then Implement, Alternative Pathways to Teacher Certification

This priority is from the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**. This priority supports projects designed and implemented by an SEA or a consortium of SEAs and the respective teacher certification agency of each State (if different from the SEA) to create or expand, and then implement, alternative pathways to certification. The project period is up to five years. Grantees will need to conduct both of the following activities:

(a) *Create alternatives to the State's traditional certification requirements.* In conducting this activity, States are encouraged to develop a variety of alternative pathways to certification as important options in their menu of State-approved procedures for teacher certification and licensure. For example, competency-based alternative routes would permit talented individuals interested in teaching to become fully certified through rigorous assessments of their content and professional teaching competence, thereby enabling LEAs to recruit from a larger and more talented pool of prospective teachers.

(b) *Use the alternative routes to recruit individuals from groups eligible to participate in the Transition to Teaching program.* Funded projects also would, among other things, need to work with participating high-need LEAs to—

(1) Increase the number and quality of mid-career changers, recent college graduates who have not majored in education, and qualified paraprofessionals recruited to teach high-need subjects (such as mathematics, science, and special education) in identified high-need LEAs (which may include LEAs that are charter schools), particularly those in urban and rural areas; and

(2) Provide these newly hired teachers with the support they need to become certified and effective teachers who will choose to make teaching their new long-term profession.

In particular, SEAs receiving project funds must—

(i) Target recruitment efforts on, and rigorously screen, candidates in areas where participating high-need LEAs have documented teacher shortages (*e.g.*, mathematics, science, and special education);

(ii) Place prospective teachers only in high-need schools operated by high-need LEAs;

(iii) Prepare individuals for specific positions in specific LEAs and place them in these positions early in the training process;

(iv) Ensure that recruited teachers receive the specific training they need to become fully certified or licensed teachers; and

(v) Have recruited teachers participate in a well-supervised induction period that may include the support of experienced, trained mentors.

Note: Applicants that choose to respond to Competitive Preference Priority 2 may do so however they choose. Those that respond to this priority may want to consider addressing such key factors as: (1) The data and other information the State has used to assess how and the extent to which current State certification requirements inhibit talented individuals from entering teaching; (2) the level of commitment of State leaders and policymakers to developing new or enhanced alternative certification requirements; (3) the State's statutory and/or regulatory authority to implement alternative pathways to certification; (4) how the SEA and other participating State agencies will actively involve all stakeholders with responsibility or authority for teacher preparation, hiring, and retention; and (5) a timeline for major actions that the SEA and other participating state agencies intend to implement to develop new or improved alternative pathways to teacher certification.

Competitive Preference Priority 3—District Projects to Streamline Teacher Hiring Systems, Timelines, and Processes

This priority is from the notice of final priorities and requirements, published elsewhere in this issue of the **Federal Register**. This priority supports projects by one or more LEAs to streamline their hiring systems, timelines, and processes. The project period is up to five years. A participating high-need LEA will need to conduct both of the following activities:

(a) *Examine its current hiring system, processes, and policies to identify the critical barriers to hiring highly qualified teachers.* The lack of highly qualified teachers in most urban and rural LEAs has often been attributed to their difficulty in recruiting interested and qualified individuals. However, recent research indicates that the problem may not be one of recruitment but may stem from inefficient and untimely LEA hiring systems and processes. This is especially true in high-poverty LEAs and schools—the very LEAs and schools the Transition to Teaching program is targeted to serve. Accordingly, each participating LEA will need to examine its current hiring processes and policies and, based upon that examination, identify the critical barriers to hiring highly qualified teachers.

(b) *Design and implement efforts to remove the identified barriers and put in place systems that streamline and revamp the hiring process.* In conducting this activity, LEAs are encouraged to create an efficient and timely applicant hiring process with a strong data tracking system and clear hiring goals. These efforts also should involve negotiating policy reforms that remove critical barriers, such as delayed notification of vacancies and seniority and retirement rules.

Participating LEAs also will carry out the requirements of the Transition to Teaching program by recruiting nontraditional candidates, using the streamlined hiring system to hire these individuals for teaching in high-need schools, working with them to achieve full State certification, and retaining them for at least three years.

Note: Applicants that choose to respond to Competitive Preference Priority 3 may do so however they choose. Those that respond to this priority may want to consider addressing such key factors as: (1) The existing barriers to early notification and hiring of new teachers; (2) the active engagement of LEA officials, teacher unions, and other stakeholders in developing a plan to remove existing barriers and implementing changes; (3) the actions each participating LEA intends to undertake to implement policies and systems for early notification and hiring of new teachers; and (4) a timeline for major action steps that each participating LEA intends to implement to develop the new hiring policies and systems.

Program Authority: 20 U.S.C. 6681–6684.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $12–$13 million. The Department has established separate funding categories for projects of a different scope. These categories are:

(1) National/regional projects (84.350C) that serve eligible high-need LEAs in more than one state;

(2) Statewide projects (84.350B) that serve eligible high-need LEAs statewide

or eligible high-need LEAs in more than one area of a state; and

(3) Local projects (84.350A) that serve one eligible high-need LEA or two or more eligible high-need LEAs in a single area of a state.

Estimated Range of Awards: National/regional projects—$300,000–$1,000,000 per year; Statewide projects—$150,000–$600,000 per year; and Local projects—$100,000–$400,000 per year.

Estimated Average Size of Awards: National/regional projects—$750,000 per year; Statewide projects—$375,000 per year; and Local projects—$225,000 per year.

Estimated Number of Awards: National/regional projects—2; Statewide projects—10; and Local projects—20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An SEA; a high-need LEA; a for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified teachers, in a partnership with a high-need LEA or an SEA; an institution of higher education, in a partnership with a high-need LEA or an SEA; a regional consortium of SEAs; or a consortium of high-need LEAs. Each application must identify participating LEAs that meet the definition of "high-need" in section 2102(3) of the ESEA. Applicants also should refer to the notice of final priorities and requirements, published elsewhere in this issue of the **Federal Register**, for further information, including definitions, regarding eligibility.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions. In accordance with section 2313(h)(2) of the ESEA, funds made available under this section shall be used to supplement, and not supplant, State and local public funds expended for teacher recruitment and retention programs, including programs to recruit the teachers through alternative routes to certification.

3. *Other:* The notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**, describes eligibility restrictions for individuals participating in this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.350A, 84.350B, or 84.350C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: May 14, 2004.

The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent to Thelma Leenhouts at: *Transitiontoteaching1@ed.gov*. Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants must limit Part III to the equivalent of no more than 50 single-sided, double-spaced pages printed in 12 font type or larger.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, curriculum vitae, or the bibliography of literature cited. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply. these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: April 30, 2004.

Deadline for Notice of Intent to Apply: May 14, 2004.

Deadline for Transmittal of Applications: June 14, 2004.

Note: We are requiring that applications for grants under this program be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information about how to access the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV, item 6, Other Submission Requirements, in this notice.

The application package for this program specifies the hours of operation of the e-Application Web site. If you are requesting a waiver of the electronic submission requirement, the dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are also in the application package.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 13, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice and in the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**.

6. *Other Submission Requirements:* Additional information concerning application content requirements is in the notice of final priorities and requirements, published elsewhere in this issue of the **Federal Register**.

Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures: The Government Paperwork Elimination Act

(GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under Transition to Teaching—CFDA Number 84.350A, 84.350B, and 84.350C be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*.

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C102, Washington, DC 20202–5942. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Transition to Teaching—CFDA Number 84.350A, 84.350B, and 84.350C is one of the programs included in the pilot project. If you are an applicant under Transition to Teaching, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Transition to Teaching at: *http://e-grants.ed.gov*.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are as follows. These criteria are from the statute for this program and § 75.210 of EDGAR. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion.

The "Notes" we have included after each criterion are guidance to help applicants in preparing their applications and are not required by statute or regulation.

A. Quality of the Project Design (40 points)

The Secretary considers the quality of the project design for the proposed project by considering how well the applicant describes a plan—

(1) To develop a program to recruit and retain highly qualified mid-career professionals (including highly qualified paraprofessionals) and recent graduates of an institution of higher education as highly qualified teachers in high-need schools operated by high-need LEAs and

(2) To enable individuals to become eligible for teacher certification under State-approved programs within a reduced period of time, relying on factors in lieu of traditional course work in education.

In determining the above, the Secretary considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

b. The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

c. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

d. The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

Note: The Secretary encourages applicants to address this criterion by discussing the overall project model, including: recruitment and selection strategies; accelerated training program; integration of coursework and field experience; delivery system for training and support; role of partners; mentoring and support system; tracking of teacher placement; and timeline for full certification.

B. Significance of the Project (25 Points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

1. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

2. The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

Note: The Secretary encourages applicants to address this criterion by discussing how the project will lower the barriers to teacher certification for eligible participant groups while setting high standards for selecting from among these groups the most talented and qualified individuals. The Secretary also encourages the applicant to describe the ways in which their efforts will help the States and/or high-need LEAs to be served by the project meet their clearly identified teacher quality challenges.

C. Quality of the Management Plan (15 Points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

1. The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

2. The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

D. Quality of the Project Evaluation (20 Points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: The Secretary encourages applicants to address this criterion by including benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. (Specific performance measures established for the overall Transition to Teaching program are discussed elsewhere in this notice in Section VI. Award Administration, 4. Performance Measures.) The Secretary also encourages applicants to identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. Finally, applicants are encouraged to indicate: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information about both the success at the initial site or sites and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

2. *Review and Selection Process:* Additional information concerning our review and selection of grant applications in this competition are contained in the notice of final requirements and priorities for this program, published elsewhere in this issue of the **Federal Register**.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* The Secretary requires successful applicants to submit annual performance reports and, after the last year of the project, a final report. The annual performance report documents the grantee's yearly progress toward meeting expected programmatic outcomes. These outcomes must be based on measurable performance objectives including, but not limited to, the performance measures described in paragraph 4 of this section. These reports must evaluate—

(1) The grantee's progress in meeting the application's objectives;

(2) The project's effectiveness in meeting the purposes of the Transition to Teaching program; and

(3) The project's effect on specific LEAs the project serves.

Among other things, the Department uses the annual performance reports to determine whether a grantee has demonstrated substantial progress in meeting the goals and objectives (as described in its approved application), and thereby merits a continuation award (for years 2–5). See § 75.118 of EDGAR.

Grantees also will be required to submit a final performance report, due no later than 90 days after the end of the project period.

In addition, section 2314 of the ESEA requires grantees to submit to the Department and to the Congress interim and final evaluations at the end of the third and fifth years of the grant period, respectively. These evaluations must

describe the extent to which high-need LEAs that received funds through the grant have met their goals relating to teacher recruitment and retention as described in the project application. Additional requirements pertaining to these reports are in the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**.

4. *Performance Measures:* The Secretary has established two performance indicators for assessing the effectiveness of the Transition to Teaching Program: (1) The percentage of new, highly qualified Transition to Teaching teachers who teach in high-need schools in high-need LEAs for at least three years and (2) the percentage of Transition to Teaching teachers who receive full State certification or licensure. We will track these indicators through the use of four performance measures. We will gather the data for these measures from the grantees.

Measure One: The percentage of all recruits who become highly qualified teachers and teach in high-need schools in high-need LEAs will increase.

Measure Two: The percentage of all recruits who become highly qualified mathematics or science teachers will increase.

Measure Three: The percentage of new, highly qualified Transition to Teaching teachers who teach in high-need schools in high-need LEAs for at least three years will increase.

Measure Four: The percentage of teachers receiving full certification/licensure will increase.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Beatriz Ceja, Amy Wooten, Margarita Melendez, Peggi Zelinko, or Bill Mattocks, U.S. Department of Education, 400 Maryland Avenue, SW., room 5E114, Washington, DC 20202. Telephone: (202) 260–0223 (Thelma Leenhouts); (202) 205–5009 (Beatriz Ceja); (202) 260–0464 (Amy Wooten); (202) 260–3548 (Margarita Melendez); (202) 260–2614 (Peggi Zelinko); or (202) 260–2826 (Bill Mattocks). By e-mail: *transitiontoteaching1@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

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: *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: *www.gpoaccess.gov/nara/index.html*.

Dated: April 27, 2004.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–9853 Filed 4–29–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
April 30, 2004

Part IV

Securities and Exchange Commission

17 CFR Parts 240 and 249
Foreign Bank Exemption From the Insider Lending Prohibition of Exchange Act Section 13(k); Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–49616, International Series Release No. 1275; File No. S7–15–03]

RIN 3235–AI81

Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k)

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting for qualified foreign banks an exemption from the insider lending prohibition under section 13(k) of the Securities Exchange Act of 1934, as added by section 402 of the Sarbanes-Oxley Act. This section prohibits both domestic and foreign issuers from making or arranging for loans to their directors and executive officers unless the loans fall within the scope of specified exemptions. One of these exemptions permits certain insider lending by a bank or other depository institution that is insured under the Federal Deposit Insurance Act. Foreign banks whose securities are registered with the Securities and Exchange Commission are not eligible for the bank exemption under section 13(k). The adopted rule will remedy this disparate treatment of foreign banks by exempting from section 13(k)'s insider lending prohibition those foreign banks that satisfy specified criteria similar to those that qualify domestic banks for the statutory exemption.

EFFECTIVE DATE: April 30, 2004, except that Form 20–F referenced in § 249.220f is effective June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990.

SUPPLEMENTARY INFORMATION: We are adding new Rule 13k–1 [1] and revising Form 20–F [2] under the Securities Exchange Act of 1934.[3]

I. Executive Summary and Background

In response to well-publicized corporate abuses, Congress enacted section 402 of the Sarbanes-Oxley Act [4] in order to prevent corporations from granting personal loans to their executives.[5] This section added section 13(k), entitled "Prohibition on Personal Loans to Executives," to the Exchange Act.[6] Section 13(k)(1) prohibits any issuer from directly or indirectly extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit "in the form of a personal loan" to or for any director or executive officer of that issuer.[7] Because the Sarbanes-Oxley Act's definition of issuer draws no distinction between U.S. and non-U.S. companies, section 402's insider lending prohibition applies to any domestic or foreign entity that has Exchange Act reporting obligations or that has filed a registration statement under the Securities Act of 1933[8] that, although not yet effective, has not been withdrawn.[9]

A. Section 402's "Insured Depository Institution" Exemption and the Need for a Foreign Bank Exemption

Four categories of personal loans are expressly exempt from section 402's prohibition. One of these exemptions [10] applies to "any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b)."[11] The Federal Deposit Insurance Act ("FDIA")[12] defines an "insured depository institution" as a bank or savings association that has insured its deposits with the Federal Deposit Insurance Corporation ("FDIC").[13]

Although this section 402 provision does not explicitly exclude foreign banks from the exemption, under U.S. banking law, a foreign bank cannot be an "insured depository institution" and, therefore, cannot qualify for the bank exemption. Since 1991, following enactment of the Foreign Bank Supervision Enhancement Act ("FBSEA"), a foreign bank that seeks to accept and maintain FDIC-insured retail deposits in the United States must establish a U.S. depository institution subsidiary, rather than a branch, agency or other entity, for that purpose.[14] These U.S. subsidiaries of foreign banks, and the limited number of grandfathered U.S. branches of foreign banks that obtained FDIC insurance prior to FBSEA's enactment,[15] can engage in FDIC-insured, retail deposit activities and, thus, qualify as "insured depository institutions." [16] But the foreign banks that own the U.S. insured depository subsidiaries or operate the grandfathered insured depository branches are not themselves "insured depository institutions" under the FDIA.

Because foreign banks cannot meet the threshold criterion for the "insured depository" exemption under section 402, their representatives have maintained that section 402 runs counter to the principle of "national treatment," which has been a fundamental goal of federal banking legislation concerning foreign banks.[17] Federal banking law generally permits foreign financial institutions to operate in the United States without incurring either significant advantage or disadvantage compared with U.S. financial institutions.[18] Foreign banks have stated that their inability to qualify for the "insured depository" exemption places them at a disadvantage compared to their U.S. counterparts. Foreign banks also have noted that many of them are already subject in their home jurisdictions to insider lending restrictions that are similar, although not identical to, those imposed by Federal Reserve rules. Consequently, several foreign banks have urged the Commission to adopt an exemption for foreign banks from the Exchange Act's insider lending prohibition.

B. The Commission's Rule Proposal

In response to these concerns, the Commission proposed an insider lending exemption for foreign banks that strove to strike an appropriate

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[1] 17 CFR 240.13k–1.

[2] 17 CFR 249.220f.

[3] 15 U.S.C. 78a *et seq.*

[4] Pub. L. 107–204, 116 Stat. 745 (2002).

[5] *See* Senator Charles Schumer's remarks in 148 Cong. Rec. S. 7350, 7360–7361 (July 25, 2002). *See also* Senator Carl Levin's letter, dated September 25, 2002, to Chairman Harvey Pitt, reprinted in 149 Cong. Rec. S. 2178, 2179–2180 (February 11, 2003).

[6] 15 U.S.C. 78m(k).

[7] 15 U.S.C. 78m(k)(1). Section 13(k)(1)'s insider lending ban prohibits an issuer from "arranging for" or otherwise making a loan to any of its directors or executive officers "including through any subsidiary" of that issuer.

[8] 15 U.S.C. 77a *et seq.*

[9] Sarbanes-Oxley Act Section (2)(a)(7).

[10] The other three exemptions apply to extensions of credit that existed before the Sarbanes-Oxley Act's enactment, specified home improvement and consumer credit loans, and specified loans by a broker-dealer to its employees. *See* Exchange Act Sections 13(k)(1) and 13(k)(2) [15 U.S.C. 78m(k)(2)].

[11] Exchange Act Section 13(k)(3) [15 U.S.C. 78m(k)(3)]. The Federal Reserve Board's Regulation O (12 CFR 215.1 *et seq.*) implements Federal Reserve Act Section 22(h).

[12] 12 U.S.C. 1811 *et seq.*

[13] 12 U.S.C. 1813(c)(2).

[14] 12 U.S.C. 3104(d)(1).

[15] 12 U.S.C. 3104(d)(2).

[16] Of the 46 foreign banks that are currently Exchange Act reporting companies and, thus, subject to the Sarbanes-Oxley Act, only 10 have U.S.-based operations that are FDIC-insured.

[17] *See, for example,* U.S. General Accounting Office, "Foreign Banks—Assessing Their Role in the U.S. Banking System" (February 1996) ("*GAO Foreign Banks Report*") at p. 2.

[18] *GAO Foreign Banks Report* at p. 16.

balance among various approaches.[19] Thus, we proposed a foreign bank exemption that would be consistent with the Sarbanes-Oxley Act by extending section 13(k)'s banking exemption to foreign banks only if they could satisfy specified criteria comparable to those required for domestic banks. Yet we also recognized that subjecting foreign banks to all of the Federal Reserve System's detailed requirements in the insider lending area would neither be necessary nor appropriate especially when many foreign banking regulators have well-developed regulatory schemes related to insider lending.

The proposed rule established three conditions for the foreign bank exemption from insider lending:

(1) the laws or regulations of the foreign bank's home jurisdiction must require the bank to insure its deposits, or the Federal Reserve Board must have determined that the bank is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in the foreign bank's home jurisdiction under 12 CFR 211.24(c);

(2) the laws or regulations of the foreign bank's home jurisdiction must permit insider lending only if on comparable terms to loans made to unrelated parties or, if pursuant to a widely available employee benefit or compensation program, on terms comparable to other employees, or if expressly approved by the foreign bank's home jurisdiction bank supervisor; and

(3) for any loan that, when aggregated with all other outstanding loans for a particular insider, exceeds $500,000, a majority of the foreign bank's board of directors has approved the loan in advance and the particular insider has abstained from participating in the vote regarding the loan.

We also proposed to amend Item 7.B of Form 20–F to require a foreign bank to disclose the identity of and its relationship with a director, executive officer, or other related party required to be disclosed by this Item, to whom the foreign bank had issued a loan that failed to qualify for the abbreviated disclosure treatment under Instruction 2 of Item 7.B. We proposed this revision in order to make the disclosure requirements for foreign banks comparable to those for domestic banks.

C. Comments Received

In response to this rule proposal, we received 20 comment letters from representatives of numerous banks and banking associations, law firms, one foreign government, and one national securities exchange.[20] While all of the commenters supported the adoption of a foreign bank exemption similar to the section 402 exemption for domestic banks, many expressed concern regarding several aspects of the proposed rule. The issues that generated the most discussion were:

- The proposed scope of the exemption that would limit it to issuers that are foreign banks and their parent companies without exempting other foreign bank affiliates;
- The proposed alternative first condition that would require a foreign bank to have been the subject of a Federal Reserve Board determination under 12 CFR 211.24(c) even if another bank in the foreign bank's home jurisdiction has been the subject of such a determination;
- The proposed second condition that would require the laws or regulations of a foreign bank's home jurisdiction to impose the specified insider lending restriction with which the foreign bank's insider loan must comply; and
- The proposed third condition that would require a foreign bank's board of directors to approve an insider loan prior to its issuance if the loan would cause the aggregate outstanding amount loaned to that particular insider to exceed $500,000.

Additional issues raised by some commenters included:

- The proposed definitions of foreign bank and parent company;
- The proposed deposit insurance requirement;
- A suggested revision by Canadian bank and governmental representatives regarding the insider lending restriction condition;
- A suggested exemption for certain Schedule B issuers;[21] and
- The proposed revision of Form 20–F Item 7.B.

D. Summary of the Final Rule and Amended Form 20–F

In response to many of the commenters' concerns, we have revised both proposed Rule 13k–1 and the proposed amendment to Form 20–F Item 7.B. These revisions include:

- Adopting a definition of "foreign bank" that is substantially similar to the definition under Subpart B of the Federal Reserve Board's Regulation K,[22] which governs the operations of foreign banks in the United States;
- Expanding the scope of the exemption to cover loans by a foreign bank to its insiders or those of its parent or other affiliate, which, under the existing Exchange Act definition of "affiliate,"[23] includes a foreign bank's directly and indirectly owned subsidiaries and its "sister" subsidiaries;
- Clarifying that the exemption applies to a loan by the subsidiary of a foreign bank to a director or executive officer of the foreign bank, its parent or other affiliate as long as the subsidiary is under the supervision or regulation of the bank supervisor in the foreign bank's home jurisdiction, the subsidiary's loan meets the requirements of the rule's "insider lending restriction" condition, and the foreign bank meets the requirements of the rule's first condition;[24]
- Revising the exemption's first condition to provide that the laws or regulations of the foreign bank's home jurisdiction must require the bank to insure its deposits or be subject to a deposit guarantee or protection scheme;
- Revising the exemption's alternative first condition to provide that the Federal Reserve Board must have determined that the foreign bank or another bank organized in the foreign bank's home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in its home jurisdiction under 12 CFR 211.24(c);[25]
- Revising the exemption's second condition to require the foreign bank loan to comply in fact with one of the three stated insider lending restrictions regardless of whether the laws or regulations of the foreign bank's home jurisdiction have imposed the restriction;
- Eliminating the proposed "board approval" condition in its entirety;
- Clarifying that, as used in Exchange Act section 13(k)(1), "issuer" does not include a foreign government that files a registration statement under the Securities Act on Schedule B; and

[19] Release No. 34–48481 (September 11, 2003) [68 FR 54590] ("Proposing Release").

[20] We have posted these comment letters on our Web site at *http://www.sec.gov/ rules/proposed/ s71503.shtml*. A comment summary is also available at *http://www.sec.gov/rules/extra/ s71503summary.htm*.

[21] A foreign government is able to register securities under the Securities Act by filing a Schedule B registration statement. Schedule B is located at the conclusion of the Securities Act.

[22] 12 CFR 211.20 *et seq.*

[23] 17 CFR 240.12b–2.

[24] *Note* 1 to Rule 13k–1(b) [17 CFR 240.13k–1(b)].

[25] The final rule further provides that a foreign bank may rely on a Federal Reserve Board determination that another bank in the foreign bank's jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis as long as the foreign bank is under substantially the same banking supervision or regulation in its home jurisdiction as the other bank. *Note* 2 to Rule 13k–1(b).

• Adopting Form 20–F Item 7.B.2, as proposed, but adding an instruction explaining that if a reporting company has concluded that its home jurisdiction privacy laws, such as customer confidentiality and data protection laws, prevent its identifying the insider who received a foreign bank insider loan to which Instruction 2 of Item 7.B does not apply, it must attach a legal opinion attesting to that conclusion as an exhibit and provide additional specified disclosure that does not identify the loan recipient.

II. Discussion

A. Definition of Foreign Bank

We are adopting a definition of foreign bank to mean an institution, the home jurisdiction of which is other than the United States,[26] that is regulated as a bank in its home jurisdiction, and that engages directly in the business of banking.[27] We are further adopting a definition of "engages directly in the business of banking" to mean that an institution engages directly in banking activities that are usual for the business of banking in its home jurisdiction.[28]

This adopted definition differs from the proposed definition,[29] which would have required an institution to be engaged substantially in the business of banking. We proposed to define "engaged substantially in the business of banking" to mean engaged in receiving deposits to a substantial extent in the regular course of business, having the power to accept demand deposits, and extending commercial or other types of credit.

Some commenters objected to this proposed definition on the grounds that it would exclude certain types of lending institutions, such as credit card banks, which lack the power to accept demand deposits but which nevertheless are regulated as banks in their home jurisdictions. These commenters suggested that we base Rule 13k–1's definition of foreign bank on the more general definition of foreign bank found in Subpart B of the Federal Reserve Board's Regulation K, which governs the operations of foreign banks in the United States.[30]

We agree with these commenters that a more general definition of foreign bank is necessary to accommodate the various types of foreign banks extant. A broader definition of foreign bank also would serve to ensure that the foreign bank exemption encompasses banks that are similar to those domestic banks that are eligible for the "insured depository institution" exemption under section 402.[31] We also believe that, for the sake of regulatory simplicity, it is reasonable to adopt a foreign bank definition that is substantially similar to the definition upon which foreign banks have relied when seeking regulatory approval for their U.S.-based banking activities. The adopted definition of foreign bank and the related definition of "engages directly in the business of banking" are substantially similar to the Federal Reserve Board's definitions under Subpart B of Regulation K.[32]

B. Scope of the Exemption

As adopted, Rule 13k–1 exempts an issuer that is a foreign bank or the parent or other affiliate of a foreign bank from section 13(k)'s prohibition of extending, maintaining, arranging for, or renewing credit in the form of a personal loan to or for any of its directors or executive officers with respect to a loan by the foreign bank as long as the specified criteria are satisfied under the rule.[33] Because we are applying the general definition of affiliate under the Exchange Act for this rule,[34] the scope of the foreign bank exemption is broad enough to encompass loans by a foreign bank to the insiders of an issuer that is the foreign bank's directly or indirectly owned subsidiary or a subsidiary of its parent company (the foreign bank's "sister" subsidiary.)[35]

The proposed foreign bank exemption applied only to an issuer that was a foreign bank or its parent company. Some commenters maintained that many home jurisdictions of foreign banks also permit loans by a supervised bank to the insiders of its own subsidiaries or sister affiliates. These commenters further noted that the "insured depository institution" exemption generally would apply to loans made by a domestic bank to the insiders of its affiliates.

We agree with these commenters that expansion of the foreign bank exemption's scope is necessary to accommodate the insider lending practices of foreign banks organized in jurisdictions that permit loans to insiders of the foreign bank's affiliates. As long as an issuer satisfies all of the specified criteria under Rule 13k–1, we believe it is appropriate to permit a foreign bank to lend to the insiders of its affiliates.

Expanding the foreign bank exemption's scope is also necessary to achieve comparability with the scope of the "insured depository institution" exemption relied upon by domestic banks. This latter exemption is available only to insured depository institutions that are subject to the Federal Reserve Board's insider lending restrictions. Codified as Regulation O, these insider lending restrictions apply to loans by an insured depository institution to its insiders and the insiders of its parent holding company and any other subsidiary of the parent holding company.[36] Moreover, Regulation O does not restrict an insured depository institution from making loans to insiders of its subsidiaries except to the extent that a subsidiary's insider is also an insider of the insured depository institution.[37]

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[26] Under the Exchange Act, the term "United States" includes the District of Columbia, Puerto Rico, the Virgin Islands, and any other possession of the United States. *See* the definition of "State" in Exchange Act section 3(a)(16) [15 U.S.C. 78c(a)(16)].

[27] 17 CFR 240.13k–1(a)(1).

[28] 17 CFR 240.13k–1(a)(3).

[29] We are adopting unchanged from the proposed definition the first two prongs that require an institution to have its home jurisdiction outside the United States and to be regulated as a bank in its home jurisdiction. We also are adopting unchanged the definition of home jurisdiction to mean the country, political subdivision or other place in which a foreign bank is incorporated or organized. 17 CFR 240.13k–1(a)(2).

[30] *See* 12 CFR 211.21(n), which defines in part a foreign bank to mean "an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States."

[31] Domestic credit card banks are typically "insured depository institutions" and subject to the Federal Reserve Board's insider lending provisions under Regulation O. These banks are therefore eligible for the exemption from the insider lending prohibition under Section 402.

[32] *See* 12 CFR 211.21(k), which defines "engages directly in the business of banking outside the United States" to mean that the "foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where it is organized or operating."

[33] 17 CFR 240.13k–1(b).

[34] Under 17 CFR 240.12b–2, the term "affiliate" means "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified."

[35] Rule 13k–1(a)(4) [17 CFR 240.13k–1(a)(4)] also adopts the definitions of "parent" and "subsidiary" under 17 CFR 240.12b–2, both of which depend upon the definition of affiliate. Consequently, we are not adopting the proposed definition of parent that would have required a company to own or control a majority of a company's voting shares. Issuers should consult precedent under the federal securities laws when determining whether a particular entity can be a parent company if it directly or indirectly owns or controls less than 50 percent of a company's voting shares.

[36] *See* 12 CFR 215.1(b). Although Regulation O applies by its terms only to national and state member banks, the federal banking laws also make all insured state nonmember banks and savings associations subject to the insider lending restrictions of Regulation O. *See* 12 U.S.C. 1828(j)(2) and 1468(b).

[37] *See* the Federal Reserve Board's adopting release regarding certain amendments to Regulation O at 57 FR 22417, 22421 (May 28, 1992).

Some commenters requested on similar grounds that we extend the exemption to permit a foreign bank's subsidiary, such as a mortgage lender, to lend to the insiders of the foreign bank, its parent company or other affiliates. We agree that the foreign bank exemption should cover loans by a foreign bank's subsidiary to the insiders of the foreign bank, its parent or other affiliates but only if the subsidiary is under the supervision or regulation of the bank supervisor in the foreign bank's home jurisdiction, the subsidiary's loan meets the requirements of Rule 13k–1's "insider lending restriction" condition, and the foreign bank satisfies the rule's first condition.[38] This treatment is consistent with the treatment of subsidiaries of "insured depository institutions" under the existing domestic bank exemption under section 402.[39]

C. The First Condition—the Home Jurisdiction Deposit Protection or CCS Requirement

As adopted, the foreign bank exemption's first condition mandates that either:

- The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits or be subject to a deposit guarantee or protection scheme; or
- The Board of Governors of the Federal Reserve System has determined that the foreign bank or another bank organized in the foreign bank's home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in its home jurisdiction under 12 CFR 211.24(c) ("comprehensive consolidated supervision" or "CCS").[40]

The adopted first condition retains the alternative form of the proposed rule, which most commenters favored. This condition is consistent with the Sarbanes-Oxley Act by making it more likely that a qualifying foreign bank is subject in its home jurisdiction to a banking regulatory regime that generally addresses the risks that section 402 was intended to guard against. However, the adopted first condition differs in two respects from the proposed rule.

1. The "Deposit Guarantee or Protection Scheme" Revision

We have revised the "deposit insurance" prong to accommodate foreign banks whose home jurisdictions require them to be subject to deposit guarantee or protection schemes rather than deposit insurance requirements. We recognize that foreign jurisdictions can differ legitimately on the details of their bank deposit protection programs. Some jurisdictions with well-developed bank regulation and supervision have elected to adopt deposit guarantee or protection schemes rather than deposit insurance requirements. We agree with those commenters who noted that a deposit guarantee or protection scheme condition would serve the same purpose as a deposit insurance condition—to help ensure that a foreign bank is subject to a certain level of regulation as a bank in its home jurisdiction.

2. "The CCS Determination" Revision

We have revised the "CCS determination" prong to require that either the foreign bank or another bank in the foreign bank's home jurisdiction must be the subject of a CCS determination. This revision is in response to numerous commenters who maintained that, because the proposed rule required a foreign bank to be the subject of a CCS determination by the Federal Reserve Board, it would deny the exemption to a foreign bank organized in the same jurisdiction as another bank that has received a favorable CCS determination simply because the foreign bank never applied for Federal Reserve Board approval for which a CCS determination is necessary.[41]

The adopted rule clarifies that in order for a foreign bank to rely on the CCS determination of another bank in its home jurisdiction, it must be under substantially the same banking supervision or regulation as the other bank in the home jurisdiction.[42] Although we are not requiring, as some commenters suggested, that a foreign bank provide a legal opinion or certification as an exhibit to its Form 20–F annual report attesting to its being subject to the same banking supervision or regulation as the other bank, we do expect that a foreign bank or affiliate issuer will undergo a good faith assessment regarding whether the foreign bank is under substantially the same supervision or regulation as another bank in its home jurisdiction before relying on the foreign bank exemption.

Extending the foreign bank exemption's application in this fashion finds support in numerous Federal Reserve Board decisions in which the Board has based its CCS determination primarily on a finding that the foreign bank applicant is subject to supervision or regulation by its home jurisdiction bank supervisor on substantially the same terms and conditions as another bank that has already received a favorable CCS determination.[43] This revision is also consistent with section 402 since it would render eligible for the foreign bank exemption only banks whose home jurisdiction laws and supervision already have been deemed by the Board to be sufficiently comprehensive to justify permitting another foreign bank to conduct business in the United States.

D. The Second Condition—the Home Jurisdiction "Insider Lending Restriction" Requirement

As adopted, the foreign bank exemption's second condition requires that any loan by the foreign bank to its directors or executive officers or to those of its parent or other affiliate:

- Is on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank, its parent or other affiliate; or
- Is pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank, its parent or other affiliate and does not give preference to any of the executive officers or directors of the foreign bank, its parent or other affiliate over any other employees of the foreign bank, its parent or other affiliate; or
- Has received the express approval of the bank supervisor in the foreign bank's home jurisdiction.[44]

1. The "Compliance In Fact" Revision

In response to several commenters, we have revised the proposed second condition to eliminate the requirement that a home country's laws or regulations must impose the specified insider lending restrictions. We agree with those commenters who noted that such a requirement would produce an extraterritorial effect that is unnecessary

[38] *See* Note 1 to 17 CFR 240.13k–1(b).

[39] Because Regulation O defines a member bank to include any of its subsidiaries, Regulation O applies to loans by an insured depository institution's subsidiary, such as a mortgage lender, to insiders of the insured depository institution, its parent or other affiliate. *See* 12 CFR 215.2(j). Because the subsidiary is also treated as an "insured depository institution" that is subject to Regulation O, it is therefore eligible for the Section 402 exemption.

[40] 17 CFR 240.13k–1(b)(1).

[41] The Federal Reserve Board generally is required to make a CCS determination when a foreign bank seeks to open a U.S. banking office, acquire a U.S. bank, or become certified as a financial holding company. *See* 12 CFR 211.24(c), 12 CFR 225.13(a)(4), and 12 CFR 225.92(c) and (e).

[42] *See* Note (2) to Rule 13k–1(b).

[43] *See, for example,* the Federal Reserve Board Order Concerning HSH Nordbank AG, Hamburg/Kiel, Germany, 89 Federal Reserve Bulletin No. 7 (July 2003) at p. 344.

[44] 17 CFR 240.13k–1(b)(2).

to achieve the rule's purpose—to establish an exemption from insider lending for foreign banks that satisfy criteria similar to those required for domestic banks under section 402. Accordingly, the rule's second condition requires only that a foreign bank loan complies in fact with one of the specified criteria, which we are adopting as proposed.

The adopted second condition is consistent with section 402 since the first two criteria are based on primary insider lending restrictions under Regulation O.[45] We are adopting the third criteria in recognition that some jurisdictions hinge the legality of a bank insider loan on its pre-approval by the home jurisdiction bank supervisor. In the interest of comity, we believe that some measure of deference to the home jurisdiction bank supervisor regarding the content of its insider lending restrictions is appropriate.

2. Other Second Condition Comments

Some commenters requested that we revise the rule to eliminate the second condition for an issuer that could satisfy the "CCS determination" prong of the first condition. We have not adopted this suggestion because, as we stated in the proposing release, the governing Federal Reserve Board rules do not list the presence of insider lending restrictions as a factor for determining whether a foreign bank is subject to CCS in its home jurisdiction.[46] The Board decisions that do mention the presence of home jurisdiction insider lending restrictions do not discuss them in any detail.

Our goal has been to adopt an insider lending exemption for foreign banks that are subject to insider lending restrictions similar to those imposed on domestic banks under Regulation O. Since the existence of home jurisdiction insider lending restrictions has not historically been dispositive in a CCS determination, we believe that an "insider lending restriction" condition for the foreign bank exemption is essential.

We also received a request from Canadian commenters to adopt a rule that, as is the case under Canadian law, would permit a foreign bank to make a loan to senior management on preferential terms as long as the conduct review committee of the bank's board of directors approved the loan. We have declined this request since it would contravene Congress' intent in adopting section 402, which was to preclude loans to executives even if approved by a company's board of directors. Moreover, since Regulation O does not posit board approval as the sole criterion for permitting a domestic bank to make an insider loan, we do not believe it to be a suitable criterion for the foreign bank exemption.

E. Elimination of the Proposed Third Condition—the "Board Approval" Requirement

The proposed rule's third condition would have required the advance approval of a majority of a foreign bank's board of directors for any insider loan that, when aggregated with the amount of all other outstanding loans to a particular director or executive officer, exceeds $500,000.[47] Several commenters objected to the proposed third condition on the grounds that it would increase the rule's burden on foreign banks without being necessary to further the rule's intended purpose of preventing insider abuse. These commenters further asserted that the $500,000 aggregate limit was outdated since it was based on a Regulation O provision that had not been increased to account for inflation since its adoption in 1983. Given these concerns, and because the board approval condition does not appear to be necessary to further the rule's purpose of protecting against improper insider lending, we have eliminated the proposed third condition in its entirety.

F. Exemption for Foreign Governments That File Securities Act Registration Statements On Schedule B

We are adopting an exemption from section 402's insider lending prohibition for foreign governments that file Securities Act registration statements on Schedule B.[48] We have implemented this exemption by providing that, as used in Exchange Act section 13(k)(1), the term "issuer" does not include a foreign government that files a registration statement under the Securities Act on Schedule B.[49] As foreign governments typically do not have "directors or executive officers," section 402's prohibition against making loans to such individuals is simply not meaningful to the vast majority of Schedule B filers.

Moreover, a commenter has noted its belief that, because of serious comity concerns, section 402's insider lending prohibition should not apply to Schedule B filers.[50] The Commission has historically treated foreign governments differently than other registrants under the federal securities laws because of a broad range of concerns that include traditional comity issues as well as concerns about the practical applicability of various disclosure requirements to foreign governments. Because of these concerns, we have not generally applied the rules adopted for domestic and foreign private issuers under the Sarbanes-Oxley Act to foreign government issuers.

For example, we exempted foreign governments from the listed issuer audit committee requirements under section 301 of the Sarbanes-Oxley Act.[51] In doing so, we noted that the exemption encompassed all registrants that are eligible to file Securities Act registration statements on Schedule B.[52] We believe

[45] *See* 12 CFR 215.4(a)(1) and (2).

[46] *See* 12 CFR 211.24(c)(1)(B)(ii), which provides that when making a CCS determination, "the Board shall determine whether the foreign bank is regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation." Although information regarding a foreign bank's dealings with affiliates is one factor that the Board must consider when conducting a CCS determination, the definition of "affiliate" includes companies only, such as a foreign bank's parent company and sister subsidiaries, and not insiders of these companies. *See, for example*, 12 CFR 211.21(a).

[47] The proposed third condition would also have required the intended loan recipient to abstain from the required board vote. We based this proposed third condition on similar Regulation O requirements. *See* 12 CFR 215.4(b)(1) and (2).

[48] 17 CFR 240.13k–1(c). This provision references the definition of foreign government in 17 CFR 230.405, according to which the term "foreign government" means the government of any foreign country or of any political subdivision of a foreign country.

[49] In a number of situations, the staff has not objected to certain foreign government-owned or controlled banks registering debt securities on Schedule B. *See, for example* Bank of Greece No-Action Letter (June 2, 1993); Kreditanstalt für Wiederaufbau No-Action Letter (September 21, 1987). We are not directing the staff to change its practice.

[50] *See* the Shearman & Sterling LLP letter (October 8, 2003) at p. A–1, n.2. This commenter specifically requested that we exempt those issuers that have filed a Schedule B registration statement for unlisted debt securities, which has not yet gone effective and which has not been withdrawn. Because Exchange Act section 15(d) (15 U.S.C. 78o(d)) does not apply to foreign governments, this issuer would not have any Exchange Act reporting obligations once the registration statement became effective. Accordingly, the pre-effective period is the only time that section 402's insider lending prohibition would apply to this issuer. We agree with this commenter that applying section 402's prohibition in this situation would be unfair, would provide no meaningful protection, and does not appear to advance Congress' objective in adopting section 402. We also believe, however, that because of broader concerns, the exemption should apply to any foreign governmental entity that files a Schedule B registration statement.

[51] *See* 17 CFR 240.10A–3(c)(6)(iii). Sarbanes-Oxley Act Section 301 added Exchange Act Section 10A(m)(1) [15 U.S.C. 78j–1(m)(1).]

[52] *See* Release No. 33–8220, n. 159 (April 9, 2003) (68 FR 18788).

that this same exemptive treatment is appropriate for foreign government issuers under section 402. Accordingly, the adopted rule exempts from section 402's insider lending prohibition a foreign government that files a Securities Act registration statement on Schedule B, whether the securities are listed or unlisted.

G. Revision of Form 20–F

We are adopting the proposed amendment to Item 7.B.2 of Form 20–F, which provides that if a company, its parent or any of its subsidiaries is a foreign bank that has granted a loan to which Instruction 2 of this item does not apply,[53] it must identify the director, senior management member, or other related party required to be described by this item[54] who received the loan, and must describe the nature of the loan recipient's relationship to the foreign bank. The purpose of this amendment is to ensure that substantially the same disclosure standards apply to domestic and foreign bank insider loans that no longer qualify for abbreviated disclosure treatment.[55]

Some commenters objected to this amendment on the grounds that it would conflict with the privacy laws of some foreign countries regarding customer confidentiality and data protection. In response to these commenters, we are adopting new Instruction 3 to Item 7.B, which provides that if a company, its parent or any of its subsidiaries is a foreign bank that is unable to provide the additional required disclosure concerning an insider loan because it has concluded that such disclosure would conflict with privacy laws, such as customer confidentiality and data protection laws, of its home jurisdiction, it must provide a legal opinion attesting to that conclusion as an exhibit.[56] In addition, the company must disclose in the Form 20–F that:

- An unnamed director, senior management member, or other related party for which disclosure is required by Item 7.B.2, has been the recipient of a loan to which Instruction 2 of this Item does not apply;
- the company's home jurisdiction's privacy laws prevent the disclosure of the name of this loan recipient; and
- this loan recipient is unable to waive or has otherwise not waived application of these privacy laws.

H. Effective Date

We solicited comment on the proposed effective dates for Rule 13k–1 and the Form 20–F amendment, but received no comments on this issue. Therefore, the effective date of Rule 13k–1 will be the date of its publication in the **Federal Register**, as proposed. Because of the exemptive nature of Rule 13k–1, the fact that it relieves a restriction precluding loans to directors and executive officers, and for good cause, we do not believe that a transition period is necessary to enable foreign bank issuers and other interested parties to prepare for the new rule.[57] The date of the Form 20–F amendment will be 30 days from the date of its publication in the **Federal Register**, as proposed.

III. Paperwork Reduction Act Analysis

The final rule amendment contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[58] The title of the affected collection of information is Form 20–F. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20–F unless it displays a currently valid OMB control number. The disclosure is mandatory and will not be kept confidential, except that, as noted below, some confidential information need not be disclosed if a legal opinion and additional, explanatory disclosure is provided.

Form 20–F (OMB Control No. 3235–0288) sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. The Commission adopted Form 20–F pursuant to the Exchange Act and the Securities Act in order to ensure that investors are informed about foreign private issuers that have registered securities with the Commission. The hours and costs associated with preparing, filing and sending Form 20–F constitute reporting and cost burdens imposed by this collection of information.

We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[59] As discussed in Part II above, we received several comment letters regarding the rule proposal. We have revised both proposed Rule 13k–1 and the amendment to Form 20–F in response to these comments.

In particular, we are adopting the amendment to Item 7.B.2 of Form 20–F as proposed, which requires a foreign bank to identify, and describe its relationship with, an insider to which it issued a loan that does not qualify for "abbreviated disclosure" treatment under Instruction 2 of Item 7.B. However, we are also adopting new Instruction 3 to Item 7.B, which exempts a foreign bank from this additional disclosure requirement as long as it provides a legal opinion attesting to its conclusion that privacy laws of the foreign bank's home jurisdiction preclude providing the additional disclosure. As a further condition, a foreign bank must disclose in the Form 20–F the fact that an insider has been the recipient of a loan to which Instruction 2 of Item 7.B does not apply, its home jurisdiction's privacy laws prevent the disclosure of the insider's name, and the insider is unable to or otherwise has not waived application of these privacy laws.

We are slightly revising our previous burden estimates regarding Form 20–F because of this revision. We have based our estimate of the effects that the final rule will have on Form 20–F primarily on our review of actual filings of this form, on the form's requirements, and on the most recently completed PRA submission for this form.

As a result of the adopted amendment to Form 20–F, we have increased by 1 hour our estimate in the Proposing Release of the total annual burden hours incurred by registrants themselves in the preparation of Form 20–F to 769,827 hours (from the previously estimated 769,826 hours). We also have increased by $675 the total annual costs attributed to the preparation of Form 20–F by outside firms to $690,502,255 (from the previously estimated $690,501,580).

[53] Instruction 2 permits a company to provide specified abbreviated disclosure about bank loans that "are not disclosed as nonaccrual, past due, restructured or potential problems under Industry Guide 3 * * *"

[54] For example, Form 20–F Item 7.B.2 requires disclosure regarding loans made to a close family member of a company's director or senior management member.

[55] The form amendment does not apply to the few Canadian banks that are subject to the Multijurisdictional Disclosure System and file their Exchange Act annual reports and registration statements on Form 40–F (17 CFR 249.240f). We have not similarly amended Form 40–F because, as we explained in the proposing release, Form 40–F's content is determined primarily by the applicable Canadian securities administrator.

[56] We have also provided a corresponding exhibit instruction for this Item 7.B legal opinion. *See* amended paragraph 14 of Instructions as to Exhibits.

[57] 5 U.S.C. 553(d)(1).

[58] 44 U.S.C. 3501 *et seq.*

[59] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

We have derived these estimates from the following assumptions. First, we continue to estimate that foreign private issuers file 1,194 Forms 20–F each year resulting in a total of 3,079,304 annual burden hours. We also continue to estimate that 41 foreign banks file annual reports on Form 20–F. We further continue to estimate that approximately 10% of reporting foreign banks (4 foreign banks) will have insider loans that do not qualify for abbreviated disclosure treatment and, therefore, must be disclosed under Item 7.B.2 of Form 20–F.

However, we also expect that 25% of the foreign private issuers affected by the Form 20–F amendment (1 foreign private issuer) will incur 3 additional burden hours resulting from having to provide the legal opinion and additional disclosure required by newly adopted Instruction 3 to Item 7.B. We expect that foreign private issuers themselves will incur 25% of the additional burden required by the Form 20–F amendment (approximately 1 additional hour) resulting in 769,827 annual burden hours incurred by foreign private issuers (increased from the previously estimated 769,826 hours). We further estimate that outside firms, including legal counsel and other advisors, will account for 75% of the additional burden required by the revised Form 20–F amendment at an average cost of $300 per hour for a total additional cost of $675 and a total annual cost of $690,502,255 (from the previously estimated $690,501,580). While we estimate that the Form 20–F amendment will result in a total of 3,079,307 annual burden hours (increased from the previously estimated 3,079,304 hours) required to prepare the Form 20–F, we expect that the number of total burden hours per response will remain at 2,579 hours.[60]

[60] Because Securities Act Form F–4 (OMB Control No. 3235–0325) (17 CFR 239.34) and Form F–1 (OMB Control No. 3235–0258) (17 CFR 239.31) require the disclosure of information specified in Form 20–F Item 7.B, the Form 20–F amendment will potentially affect Forms F–4 and F–1 registrants. However, based on our review of Form F–4 and F–1 registration statements filed by foreign bank issuers during the three most recently completed years, we expect that the Form 20–F amendment will not have a material effect on these collections of information for the following reasons. First, during 2001 through 2003, the 46 reporting foreign banks filed only 7 Form F–4 registration statements and 2 Form F–1 registration statements. 5 of the 7 Form F–4 registrants incoporated by reference their most recent Form 20–F annual report and, therefore, did not repeat the Item 7.B disclosure in their Securities Act registration statements. Securities Act registrants that are able to incorporate by reference should not sustain any additional effect from the Form 20–F amendment since no additional analysis and disclosure is required for the Securities Act registration statement other than what is required for the Form 20–F. Second, none of the remaining Forms F–4 and F–1 registrants disclosed any insider loans that would have triggered the additional disclosure requirements mandated by the Form 20–F amendment. Accordingly, since none of these Securities Act registrants would have been affected by the Form 20–F amendment, we do not anticipate that this amendment will have a material effect on foreign bank issuers filing registration statements under the Securities Act.

IV. Cost-Benefit Analysis

In the Proposing Release, we solicited comment on the expected costs and benefits of proposed Rule 13k–1 and the proposed Form 20–F amendment. We also requested data to quantify the costs and value of the benefits identified. In response most commenters expressed support for the Commission's attempt to remedy the disparate treatment of foreign banks under Section 402 by crafting an insider lending exemption for foreign banks that satisfy criteria comparable to those that qualify domestic banks for the statutory exemption. However, several commenters also maintained that various aspects of the rule proposal would impose costs on foreign banks and their affiliates that were excessive or unnecessary to achieve the rule's purpose.

Although none of the commenters provided quantitative data to support their views, we have revised both the proposed rule and form amendment in response to several of the commenters' concerns. We expect that the adopted Rule 13k–1 and the Form 20–F amendment will result in the following benefits and costs.

A. Expected Benefits

For several years, U.S. investors have sought to diversify their holdings by investing in the securities of foreign issuers, including foreign banks. At the same time, foreign issuers, including foreign banks, have sought opportunities to raise capital and effect other securities-related transactions in the United States. Rule 13k–1 will benefit both U.S. investors and foreign bank issuers by removing a regulatory impediment that, if left unchecked, could discourage foreign banks from entering or remaining in U.S. capital markets.

U.S. investors will benefit from Rule 13k–1 to the extent that this rule encourages a foreign bank to maintain or achieve its Exchange Act reporting status. A foreign bank will benefit from Rule 13k–1 by being able, like its domestic counterpart, to provide qualified personal loans to its executive officers and directors while an Exchange Act reporting company. In addition, if a foreign bank is subject in its home jurisdiction to insider lending restrictions that are substantially similar to those under Rule 13k–1, the foreign bank will benefit by not having to comply with a separate set of insider lending restrictions.

Investors will benefit from the Form 20–F amendment by having access to similar information about a foreign bank issuer's insider loans that do not qualify for abbreviated disclosure treatment as is available for comparable domestic bank insider loans. Foreign bank issuers whose home jurisdictions' privacy laws preclude disclosure of an insider loan recipient's identity will benefit from the Form 20–F amendment to the extent that the benefit of being able to keep this insider information confidential exceeds the cost of having to provide the legal opinion and other disclosure required by the Form 20–F amendment.

B. Expected Costs

Investors could incur costs resulting from Rule 13k–1 if some foreign bank issuers decide to terminate their participation in, or refrain from entering, U.S. capital markets because they perceive the costs associated with complying with the adopted rule to be too high. Investors could also incur costs resulting from the diminution in value of a foreign bank issuer's securities if the rule encourages a foreign bank to make a material insider loan that eventually becomes problematic.

We expect that a foreign bank issuer will incur costs if its home jurisdiction insider lending rules are less restrictive than those imposed by Rule 13k–1. These costs will include attorney and other professional fees incurred as a foreign bank issuer ensures that it is in compliance with Rule 13k–1 in addition to its own set of insider lending rules. Based on the following assumptions, we estimate that, in the aggregate, foreign bank issuers will annually incur costs relating to 264 hours of work performed by their internal staff as well as costs of $237,600 relating to work performed by outside firms as a result of Rule 13k–1:

- There are currently 46 foreign banks that are Exchange Act reporting companies;[61]
- 14 of these foreign banks (30%) are subject to insider lending restrictions in their home jurisdictions that are substantially similar to at least one of the insider lending restrictions under Rule 13k–1;

[61] 41 of these foreign bank issuers file Form 20–F annual reports and 5 file Form 40–F annual reports.

• These 14 foreign banks will not incur any significant compliance costs resulting from Rule 13k–1;

• 32 of these foreign banks (70%) are subject to insider lending rules in their home jurisdictions that are less strict than the insider lending restrictions under Rule 13k–1;

• Each of these 32 foreign bank issuers will lend to an average of 11 of its or its affiliates' directors or executive officers (a total of 352 insiders) per year; [62]

• These 32 foreign banks will incur 3 additional hours of work for each insider loan in order to ensure that it complies with Rule 13k–1 (a total of 1056 hours for the 352 insider loans);

• Each of the 32 foreign bank issuers will rely on its own internal staff to perform 25% of the additional work (264 hours) and hire outside legal counsel or other professional staff to perform 75% of the additional work (792 hours); and

• The outside staff will charge a rate of $300/hour to perform the 792 hours of additional work (for a total of $237,600).

We expect that, as a result of the adopted amendment of Form 20–F Item 7.B, foreign bank issuers will incur in the aggregate approximately an additional two hours of work for their internal staff and an additional $1,575 of work for outside firms when preparing the Form 20–F.[63] This Form 20–F amendment requires a foreign bank issuer to disclose the identity of its director, executive officer or other related party who has received a loan that does not qualify for abbreviated disclosure treatment under Instruction 2 to Item 7.B, and to describe the nature of the loan recipient's relationship to the foreign bank issuer. This amendment exempts a foreign bank issuer from providing the additional disclosure as long as it attaches a legal opinion attesting to its conclusion that its home jurisdiction privacy laws preclude providing the additional disclosure, and as long as the foreign bank issuer provides specified, non-confidential disclosure regarding the insider loan.

[62] We have derived this average from a review of the most recent Form 20–F and 40–F annual reports filed by these foreign banks.

[63] We have derived these expected costs by adding the additional burden estimated to result from adoption of the Form 20–F Item 7.B.2 amendment, as set forth in the Paperwork Reduction Act section of the Proposing Release (1 burden hour of work for internal staff and $900 of work for outside firms), with the additional burden estimated to result from adoption of Instruction 3 to Item 7.B, as set forth in Part III of this Release (1 burden hour of work for internal staff and $675 of work for outside firms).

V. Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2) of the Exchange Act [64] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts. Furthermore, section 2(b) of the Securities Act [65] and section 3(f) of the Exchange Act [66] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation.

In the Proposing Release, we considered proposed Rule 13k–1 and the proposed amendment to Form 20–F in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, proposed Rule 13k–1 and the proposed Form 20–F amendment would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of proposed Rule 13k–1 and the proposed Form 20–F amendment.

Although no commenter submitted empirical data to support its views, some commenters maintained that various aspects of the proposed rule and Form 20–F amendment would unfairly burden foreign banks and place them at a competitive disadvantage with their domestic counterparts. In response to these concerns, we have revised the rule proposal to eliminate or reduce unnecessary burdens on foreign banks that could produce anti-competitive effects. These revisions include:

• Expanding the scope of the foreign bank exemption so that, similar to the domestic bank exemption, it covers loans by a foreign bank to the insiders of its affiliates;

• Expanding the definition of foreign bank so that it includes types of banks comparable to those eligible for the domestic bank exemption;

• Permitting a foreign bank to satisfy the "CCS determination" condition if it is under substantially the same supervision as another bank organized in its home jurisdiction that has received a CCS determination by the Federal Reserve Board;

• Making a foreign bank eligible for the foreign bank exemption if it complies in fact with one of the specified insider lending restrictions even if not required by its home jurisdiction's laws or regulations; and

• Permitting a foreign bank issuer to keep confidential the identity of an insider recipient of a loan that no longer qualifies for "abbreviated disclosure" treatment under Form 20–F Item 7.B.2 if the issuer has concluded that such disclosure would conflict with its home jurisdiction's privacy laws as long as the issuer submits a legal opinion attesting to that conclusion and provides some additional corresponding disclosure in the Form 20–F.

These and other revisions should enable adopted Rule 13k–1 to have a beneficial effect on competition in U.S. capital markets by eliminating or significantly reducing the burden imposed by section 402's insider lending prohibition on most foreign bank issuers. Moreover, the adopted Form 20–F amendment should provide investors with comparable information about problematic insider loans by foreign and domestic bank issuers while reducing the burden of the additional disclosure requirement for those foreign bank issuers that face genuine conflicts with their home jurisdiction laws.

Consequently, adopted Rule 13k–1 and the adopted Form 20–F amendment should encourage foreign banks to continue or achieve their status as Exchange Act reporting companies. Such encouragement could facilitate increased competition among U.S. capital market participants for the securities of foreign and domestic bank reporting companies to the ultimate benefit of investors.

[64] 15 U.S.C. 78w(a)(2).

[65] 15 U.S.C. 77b(b).

[66] 15 U.S.C. 78c(f).

VI. Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act,[67] we certified that, when adopted, proposed Rule 13k–1 and the proposed amendment to Form 20–F under the Exchange Act would not have a significant economic impact on a substantial number of small entities. We included this certification in Part VI of the Proposing Release. While we encouraged written comments regarding this certification, none of the commenters responded to this request.

[67] 5 U.S.C. 605(b).

VII. Statutory Basis and Text of Rule Amendments

We are adopting new Exchange Act Rule 13k–1 and the amendment to Form 20–F under the authority in sections 6, 7, 10 and 19 of the Securities Act,[68] sections 3(b), 12, 13, 23 and 36 of the Exchange Act,[69] and section 3(a) of the Sarbanes-Oxley Act of 2002.

Text of Rule Amendments

List of Subjects

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Add § 240.13k–1 to read as follows:

§ 240.13k–1 Foreign bank exemption from the insider lending prohibition under section 13(k).

(a) For the purpose of this section:

(1) *Foreign bank* means an institution:

(i) The home jurisdiction of which is other than the United States;

(ii) That is regulated as a bank in its home jurisdiction; and

(iii) That engages directly in the business of banking.

(2) *Home jurisdiction* means the country, political subdivision or other place in which a foreign bank is incorporated or organized.

(3) *Engages directly in the business of banking* means that an institution engages directly in banking activities that are usual for the business of banking in its home jurisdiction.

(4) *Affiliate, parent* and *subsidiary* have the same meaning as under 17 CFR 240.12b–2.

(b) An issuer that is a foreign bank or the parent or other affiliate of a foreign bank is exempt from the prohibition of extending, maintaining, arranging for, or renewing credit in the form of a personal loan to or for any of its directors or executive officers under section 13(k) of the Act (15 U.S.C. 78m(k)) with respect to any such loan made by the foreign bank as long as:

(1) Either:

(i) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits or be subject to a deposit guarantee or protection scheme; or

(ii) The Board of Governors of the Federal Reserve System has determined that the foreign bank or another bank organized in the foreign bank's home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor in its home jurisdiction under 12 CFR 211.24(c); and

(2) The loan by the foreign bank to any of its directors or executive officers or those of its parent or other affiliate:

(i) Is on substantially the same terms as those prevailing at the time for comparable transactions by the foreign bank with other persons who are not executive officers, directors or employees of the foreign bank, its parent or other affiliate; or

(ii) Is pursuant to a benefit or compensation program that is widely available to the employees of the foreign bank, its parent or other affiliate and does not give preference to any of the executive officers or directors of the foreign bank, its parent or other affiliate over any other employees of the foreign bank, its parent or other affiliate; or

(iii) Has received express approval by the bank supervisor in the foreign bank's home jurisdiction.

Notes to paragraph (b):

1. The exemption provided in paragraph (b) of this section applies to a loan by the subsidiary of a foreign bank to a director or executive officer of the foreign bank, its parent or other affiliate as long as the subsidiary is under the supervision or regulation of the bank supervisor in the foreign bank's home jurisdiction, the subsidiary's loan meets the requirements of paragraph (b)(2) of this section, and the foreign bank meets the requirements of paragraph (b)(1) of this section.

2. For the purpose of paragraph (b)(1)(ii) of this section, a foreign bank may rely on a determination by the Board of Governors of the Federal Reserve System that another bank in the foreign bank's home jurisdiction is subject to comprehensive supervision or regulation on a consolidated basis by the bank supervisor under 12 CFR 211.24(c) as long as the foreign bank is under substantially the same banking supervision or regulation as the other bank in their home jurisdiction.

(c) As used in paragraph (1) of section 13(k) of the Act (15 U.S.C. 78m(k)(1)), *issuer* does not include a foreign government, as defined under 17 CFR 230.405, that files a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) on Schedule B.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend Form 20–F (referenced in § 249.220f) by revising paragraph 2 of Item 7.B of Part 1, adding new paragraph 3 to Instructions to Item 7.B of Part 1, renumbering paragraph 14 as paragraph 15 of Instructions as to Exhibits, and adding new paragraph 14 of Instructions as to Exhibits to read as follows:

Note: The text of Form 20–F does not and the amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–0288.

Expires: March 31, 2006.

Estimated average burden hours per response: 2579.

United States Securities and Exchange Commission, Washington, DC 20549

Form 20–F

* * * * *

Part 1

* * * * *

Item 7. Major Shareholders and Related Party Transactions

* * * * *

B. Related party transactions

* * * * *

2. The amount of outstanding loans (including guarantees of any kind) made by the company, its parent or any of its subsidiaries to or for the benefit of any of the persons listed above. The information given should include the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan. In addition, if the company, its parent or any of its subsidiaries is a foreign bank (as defined in 17 CFR 240.13k–1) that has made a loan to which Instruction 2 of this Item does not apply, identify the director, senior management member, or other related party required to be described by this Item who received the loan, and describe the nature of the loan

[68] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s.

[69] 15 U.S.C. 78c, 78*l*, 78m, 78w, and 78mm.

recipient's relationship to the foreign bank.

* * * * *

Instructions to Item 7.B

* * * * *

3. In response to Item 7.B.2, if you are unable to identify the recipient of a foreign bank loan to which Instruction 2 of this Item does not apply because you have concluded that such disclosure would conflict with privacy laws, such as customer confidentiality and data protection laws, of your home jurisdiction, you must provide a legal opinion attesting to that conclusion as an exhibit. You must also disclose that:

(A) an unnamed director, senior management member, or other related party for which disclosure is required by this Item, has been the recipient of a loan to which Instruction 2 of this Item does not apply;

(B) your home jurisdiction's privacy laws prevent the disclosure of the name of this loan recipient; and

(C) this loan recipient is unable to waive or has otherwise not waived application of these privacy laws.

* * * * *

Instructions as to Exhibits

* * * * *

14. The legal opinion required by Instruction 3 of Item 7.B of this Form.

* * * * *

By the Commission.

Dated: April 26, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9822 Filed 4–29–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
April 30, 2004

Part V

Environmental Protection Agency

40 CFR Part 247

Comprehensive Procurement Guideline IV for Procurement of Products Containing Recovered Materials; Recovered Materials Advisory Notice IV; Final Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[RCRA–2001–0047; SWH–FRL–7655–2]

RIN 2050–AE23

Comprehensive Procurement Guideline IV for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the Comprehensive Procurement Guideline (CPG) by designating seven new items that are or can be made with recovered materials, including: modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. In addition, EPA is revising the designations for three items, including cement and concrete, railroad grade crossing surfaces, and polyester carpet. For cement and concrete, EPA is adding cenospheres and silica fume as recovered material options. For railroad grade crossing surfaces, EPA is adding recovered wood and plastic as recommended recovered materials. For polyester carpet, EPA is revising its designation to designate polyester carpet for moderate end-uses only, as defined by the Carpet and Rug Institute.

The CPG implements portions of the Resource Conservation and Recovery Act (RCRA) and the Executive Order "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition," which require EPA to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure such designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. Today's action will use government purchasing power to stimulate the use of these materials in the manufacture of products, thereby fostering markets for materials recovered from solid waste.

EFFECTIVE DATES: This rule is effective on May 2, 2005.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item designations, contact Terry Grist at (703) 308–7257 or Sue Nogas at (703) 308–0199.

ADDRESSES: EPA has established a docket for this action under Docket ID No. No. RCRA–2001–0047. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OSWER 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 Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action may potentially affect procuring agencies that purchase the following items: Cement and concrete; polyester carpet for moderate end-use; railroad grade crossing surfaces; modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. Under RCRA section 6002, procuring agencies include the following: (1) Any federal agency; (2) any state or local agency using appropriated federal funds for a procurement; or (3) any contractors of these agencies who are procuring these items for work they perform under the contract. See RCRA section 1004(17). The requirements of section 6002 apply to these procuring agencies only when the agencies procure designated items whose price exceeds $10,000 or when the quantity of the item purchased in the previous year exceeded $10,000. A list of entities that this rule may cover is provided in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more of a designated item in a given year.
State Government	A state agency that uses appropriated federal funds to procure $10,000 or more of a designated item in a given year.
Local Government	A local agency that uses appropriated federal funds to procure $10,000 or more of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated federal funds that purchases $10,000 or more of a designated item in a given year.

This table is not intended to be exhaustive. To determine whether this action applies to your procurement practices, you should carefully examine the applicability criteria in 40 CFR § 247.12. If you have questions about whether this action applies to a particular entity, contact Terry Grist at (703) 308–7257 or Sue Nogas at (703) 308–0199.

As noted above, RCRA section 6002 applies to procuring agencies that use at least a portion of federal funds to procure over $10,000 worth of a designated product in a given year. Therefore, EPA estimates that this rule would apply to 35 federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local governments that would be impacted by this rule based on information on the amount of federal funds that are dispersed to specific counties. In addition, EPA assumed that 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

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

1. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Preamble Outline

I. What Is the Statutory Authority for This Amendment?

EPA ("the Agency") is promulgating this amendment to the Comprehensive Procurement Guideline under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962. The Agency is also promulgating this amendment in compliance with section 502 of Executive Order (E.O.) 13101, "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition," (63 FR 49643, September 14, 1998).

II. Why Is EPA Taking This Action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring items designated under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item made of the highest percentage of recovered materials practicable.

E. O. 13101 establishes the procedures EPA must follow when implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. At the same time EPA promulgates the CPG, the Agency must publish its recommended procurement practices for entities that purchase designated items in a related Recovered Materials Advisory Notice (RMAN). These practices must also provide recommendations for the content of recovered materials in the designated items. The Executive Order also directs EPA to update the CPG every 2 years and to issue RMANs periodically to reflect changing market conditions.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082).

On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items—including cement and concrete containing cenospheres and silica fume—and revise two other previously designated items.[2] At the same time, EPA published a draft RMAN IV notice (66 FR 45297), which provided draft recommendations on purchasing the proposed designated items. (For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/*.)

Today, EPA is designating seven of the items that were proposed: modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. In addition, in today's action, EPA is revising the designations for three items: cement and concrete, railroad grade crossing surfaces, and polyester carpet. EPA explained fully the basis for its proposed designations and revised designations in proposed CPG IV at 66 FR 45256. These form the basis for today's decision to designate seven items and to revise designations for three others. For the reasons explained in Section V of this notice, EPA is not issuing final designations at this time for two of the items proposed in the proposed CPG IV: carpet made from nylon fiber facing and/or nylon carpet backing made from recovered materials, and tires containing recovered rubber. The seven newly designated items are listed below by product category.

Construction Products
- Modular threshold ramps
- Nonpressure pipe
- Roofing materials

Nonpaper Office Products
- Office furniture

Vehicular Products
- Rebuilt vehicular parts

Miscellaneous
- Bike racks
- Blasting Grit

[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

[2] EPA now considers that two of the items that it proposed for designation (cement and concrete containing cenospheres and silica fume) were in actuality proposed revisions to the existing designation for cement and concrete containing coal fly ash and ground granulated blast furnace slag.

III. What Criteria Did EPA Use To Select Items for Designation?

RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream

(3) Economic and technological feasibility of producing the item

(4) Other uses for the recovered materials used to produce the item

EPA also consulted with federal procurement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires that each procuring agency that procures an item that EPA has designated procure the item that contains the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if the procuring agency determines: (1) The item is not available within a reasonable period of time; (2) the item fails to meet the performance standards that the procuring agency has set forth in the product specifications; or (3) the item is available only at an unreasonable price.

EPA recognized that these criteria could provide procuring agencies with a rationale for not purchasing EPA-designated items that contain recovered materials. For this reason, EPA considers the limitations cited in RCRA section 6002(c) when it selects items to designate in the CPG. Therefore, in CPG I, the Agency outlined the following criteria that it uses when it selects items for designation:

- Use of materials found in solid waste
- Economic and technological feasibility and performance
- Impact of government procurement
- Availability and competition
- Other uses for recovered materials

EPA discussed these criteria in the CPG I background documents and repeated that discussion, for reader convenience, in Section II of the document entitled, "Proposed Comprehensive Procurement Guideline (CPG) IV and Draft Recovered Materials Advisory Notice (RMAN) IV—Supporting Analyses." The RCRA public docket for the proposed CPG IV rule, Docket No. RCRA–2001–0047, contains this document.

In CPG I, EPA stated that it had adopted two approaches for designating items that are made with recovered materials. For some items, such as floor tiles, the Agency designated *broad* categories and provided information in the RMAN about the appropriate applications or uses for the items. For other items, such as plastic trash bags, EPA designated *specific* items, and, in some instances, specified the types of recovered materials or applications to which the designation applies. The Agency explained the approaches that it took to designate items in the preamble to CPG I (60 FR 21373, May 1, 1995), and repeats them here for the convenience of the reader:

> EPA sometimes had information on the availability of a particular item made with a specific recovered material (*e.g.*, plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material.

The Agency understands that some procuring agencies may believe that designating a broad category of items in the CPG requires that they (1) procure all items included in such category with recovered materials content and (2) establish an affirmative procurement program for the entire category of items, even when specific items within the category do not meet the procuring agency's performance standards. RCRA clearly does not require such actions, as implemented through the CPG and the RMAN. RCRA section 6002 does not require a procuring agency to purchase items that contain recovered materials if the items are not available or if they do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item that contains recovered material is only available at an unreasonable price, or if purchasing such items does not maintain a reasonable level of competition. See also 40 CFR § 247.2(d). However, EPA stresses that the statute requires that a procuring agency must purchase the product made with the highest percentage of recovered materials practicable in the absence of the circumstances identified above.

The items designated today have all been evaluated against EPA's criteria. The Agency discusses these evaluations in the "Background Document for the Final CPG IV/RMAN IV," which the Agency has placed in the docket for the final CPG IV and RMAN IV. You can also access the document electronically. (See Section VIII below for Internet access directions.)

IV. What Are the Definitions of Terms Used in Today's Action?

Today, in 40 CFR 247.3, EPA is defining the following new item-specific terms: cenospheres; silica fume; modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. These definitions are based on industry definitions, such as the American Society for Testing and Materials (ASTM) or other industry standards. Where industry definitions do not exist for the designated items, EPA's definitions describe the scope of items that the Agency is designating.

For several items that the Agency is designating today (*i.e.*, railroad grade crossing surfaces, modular threshold ramps, nonpressure pipe, roofing materials, office furniture, bike racks, and blasting grit), EPA recommends in the final RMAN IV that procuring agencies use two different measures of the content of recovered materials: (1) a component of postconsumer recovered materials and (2) a component of total recovered materials. In these instances, EPA found that manufacturers were using both types of materials to manufacture the products. Limiting the Agency's recommendation to only postconsumer content levels would be inconsistent with RCRA's requirement that EPA designate items which are or can be made with recovered materials whose procurement will carry out the objective of section 6002—the procurement of items composed of the highest percentage of recovered materials practicable. The statute defines "recovered materials" to include waste materials and byproducts which have been recovered or diverted from solid waste. Section 1004(19) of RCRA, 42 U.S.C. 6903(19). If the Agency only recommended postconsumer content levels, it would fail to take into account the contribution that manufacturers using other manufacturers' byproducts

as feedstock have made and can make to solid waste management.

Because the recommendations for the items that the Agency is designating today use the terms "postconsumer materials" and "recovered materials," we repeat the definitions for these terms in this notice. The Agency provided these definitions in CPG I, and they are also provided at 40 CFR 247.3.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. *Postconsumer material* is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but the term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

V. What Did Commenters Say About the Proposed CPG IV and Draft RMAN IV?

Twenty-nine commenters responded to the proposed CPG IV and the draft RMAN IV. These commenters represented various interests, including but not limited to Federal, state, and local government agencies; product manufacturers; trade associations; environmental interest groups; and product users.[3]

In this section, EPA discusses the major comments that commenters provided on the proposed CPG IV. The most significant comments received on the draft RMAN IV are discussed in the preamble to the notice of availability of the final RMAN IV, which is published in the notices section of today's **Federal Register**. You can find a summary of all comments and EPA's responses in the "Background Document for the Final CPG IV/RMAN IV."

A. General Comments

1. Designation of Steel

Comment: The Office of the Deputy Under Secretary of Defense commented that items manufactured from steel should either not be listed, or listed as a generic category rather than as individual items. The Office contends that virtually all new steel produced today has recovered content, and there is no practical way a purchasing officer could influence the recovered material content in steel items, such as bike racks. In addition, in the Office's view, there would be no way of verifying that a particular batch of steel was made from either a basic oxygen furnace or an electric arc furnace. The Office added that designating steel bike racks and furniture does not appear to support the objectives of RCRA Section 6002 because listing individual items would not significantly increase the procurement of products made from recovered material or help develop a market for recyclable waste materials.

Response: The CPG designates individual items because agency requirements are typically expressed in terms of end products rather than raw material inputs. With the exception of large system acquisitions, agencies generally procure individual items. In addition, RCRA 6002(e)(1) requires EPA to designate "items" that are or can be made with recovered materials. For these reasons, the CPG designates items and organizes them by functional category rather than by material type. With regard to verification of the steel manufacturing process used to produce a specific steel item, EPA obtained this information from the steel industry prior to making its recommendations in the RMAN. Therefore, if an item is generally made from steel from an electric arc furnace (EAF), EPA's recommendations reflect the recovered materials content from that particular process. Likewise, EPA's recommendations for items made from steel made in a basic oxygen furnace (BOF) reflect the recovered materials content for that process. Therefore, agencies need not be concerned with verifying the type of steel process used to make the item. EPA's RMAN recommendations already take the type of steel into account. In those cases where a designated item is manufactured using both of the steel processes, the ranges of recovered materials for both of those processes are provided. Therefore, in determining the recovered materials content for any given steel item, procuring agencies may use the RMAN ranges provided for that item. In cases where an item can be made from both steel processes, agencies may use a combination of the ranges of both processes to signify the potential range of recovered materials. Therefore, the recommended recovered materials content ranges would be 25%–100% total recovered materials and 16%–67% postconsumer content. (EPA also used this method in the draft RMAN recommendations for blasting grit.)

Furthermore, EPA disagrees that designating bike racks and office furniture does not support the objectives of RCRA. One of the objectives of RCRA is to encourage the procurement of products made with recovered materials. Bike racks and office furniture are items that can be made from recovered steel as well as from other recovered materials. Therefore, designating these items promotes the recovery of steel, as well as these other materials. EPA has concluded that if products are made from more than one type of recovered material, then the procurement guidelines should accurately reflect that fact and promote the procurement of all recovered content products, regardless of the particular recovered material used. Not to include steel products in the CPG could result in a bias against the purchase of steel products when procurement officials are considering a purchase of several functionally equivalent products made from various recovered materials. Furthermore, RCRA requires EPA to make recommendations, including recycled content recommendations, for designated items. Since bike racks and office furniture are made from recovered steel, as well as from other recovered materials, EPA has concluded that it is appropriate to include recovered steel among the recovered materials listed in the designations for bike racks and office furniture.

2. Designation of Additional Items

Comment: The Department of Defense suggested additional items for future CPG designations, including biobased fuels made from recovered cooking oils; roofing shingles (both asphalt and tile) made from recovered vinyl, aluminum, and cellulose fiber; and asphalt mixes made from crumb rubber.

Response: EPA will consider biobased fuels made from cooking oils as potential CPG items and requests that DOD provide additional information, as outlined in EPA's September 20, 1995, Notice and Request for Information entitled "Procedures for Submission of Recycled Content Products" (60 FR 48714). This notice describes the criteria used by EPA to designate items, including purchasing barriers; the solid waste impacts of an item designation; economic and technological feasibility and performance; impact of government purchasing; and suggested recovered material content levels.

With regard to roofing shingles (both asphalt and tile) made from recovered vinyl, aluminum, and cellulose fiber, EPA researched these types of roofing products and is designating roofing products made from recovered aluminum, fiber, and plastic, among various other recovered materials, in

[3] As noted previously, EPA is not issuing final designations for two of the items proposed in CPG IV—tires containing recovered rubber and nylon fiber facing and/or nylon carpet backing made from recovered materials. Nevertheless, we generally discuss the comments received on these items and explain why we are not proceeding to finalize them in today's **Federal Register**.

today's rulemaking. EPA also considered the designation of roofing shingles made from recovered asphalt, as discussed in the "Recovered Material Product Research for the Comprehensive Procurement Guideline IV: Draft Report," which is available in the docket for this rulemaking. The agency's research indicated that the asphalt used in matting, roll roofing, shingles, coatings, modified bitumen, and built-up roofing is not recovered asphalt. However, EPA did not discount roofing products containing asphalt. EPA has included RMAN recommendations for these products under the category of the recovered material used in the product along with the virgin asphalt. For example, if a product contains both asphalt and recovered fiber, EPA's recommendations can be found under the "Fiber (Felt) or Fiber Composite" material category in the RMAN table, implying that the fiber is the recovered material in the product, not the asphalt.

Finally, regarding asphalt mixes made from crumb rubber, EPA is currently researching the use of various recovered materials, including crumb rubber and recycled asphalt pavement (RAP), in road construction applications for possible future designation.

3. Other General Comments

Comment: The White House Task Force on Recycling requested that EPA include examples of solicitation and contract language used by federal agencies and others to purchase the proposed designated construction products, including cement and concrete containing silica fume, nonpressure pipe, roofing materials, and blasting grit.

Response: The Office of the Federal Environmental Executive (OFEE) has workgroups consisting of federal procuring agencies which focus on a number of issues, such as record keeping and reporting. The purpose of these workgroups is to share information and develop consensus programs. EPA will contact procuring agencies, possibly through the existing workgroups established by OFEE, to help identify contract language that has been used to procure these items and/or to draft model language that could be used in solicitations, as well as to share any sample language developed with the other federal agencies.

Comment: OFEE further requested EPA to provide guidance regarding unintentional barriers to purchasing the proposed designated construction products, and specifically referenced a barrier to the purchase of blasting grit created by inappropriate packaging (volume) requirements.

Response: EPA includes general guidance on the development of affirmative procurement plans in Appendix V of the background document to this final rulemaking. Section A of Appendix V explains that agencies are required to examine their specifications for designated items and should remove any requirements that constitute barriers to their purchase. EPA has revised this section to discuss the need to consider unintentional barriers to purchasing designated items, such as packaging, color, or cosmetic requirements that have no bearing on the item's functionality or performance, but that might prevent its purchase with the highest percentage recovered materials practicable. EPA has provided guidance in Appendix V of the "Background Document for Final CPG IV/RMAN IV" and in the final RMAN IV in the "General Recommendations" section.

Comment: The U.S. Department of Energy commented that a key problem in implementing the CPG has been finding vendors and manufacturers who have the designated items available with recycled content. DOE believes EPA's vendor list needs to be updated and that a process needs to be developed to provide procuring agencies with current information on the availability of recycled-content products.

Response: During 2002, EPA developed and launched a comprehensive, searchable online vendor database covering all CPG-designated items and more than 2,000 individual vendor entries. This database was tested by a number of procuring agencies through a coordinated effort with OFEE and is fully operational. The database allows a user to search for vendors and suppliers by product category, individual product, or material. The purpose of the database system is to provide buyers with a more accessible and reliable reference source they can use to identify vendors. EPA intends to maintain and update the database on a regular basis to ensure that the information is accurate and current, given the constraints of obtaining this information from the companies themselves.

B. Comments on Proposed Item Designations

The vast majority of commenters supported the item designations proposed in CPG IV and provided only minor comments. A few commenters provided major comments on several specific items, as discussed below. No commenters provided comments on nonpressure pipe and threshold ramps. EPA has included a summary of all comments on the proposed CPG IV and our responses in the "Background Document for the Final CPG IV/RMAN IV." Comments related to the draft RMAN IV are discussed in the preamble to the notice of availability of the final RMAN IV, which is published in the Notices section of today's **Federal Register**.

Based on the item-specific comments received, we are designating seven of the items proposed in the proposed CPG IV, and we are not finalizing the designations for two other items at this time (carpet made from nylon fiber facing and/or nylon carpet backing made from recovered materials, and tires containing recovered rubber). This section discusses the major comments submitted on several items proposed for designation in the proposed CPG IV.

1. Tires

Comment: The Department of Defense commented that the safety, durability, and other environmental impacts of tires containing recovered rubber are not adequately addressed to justify designating them in the CPG. DOD highlighted several assertions in EPA's research regarding tensile strength, heat built-up, tire durability, and decreased tread life. It also argued that a shorter tire life will result in no overall savings in the use of recovered material, producing no net reduction in the amount of solid tire waste produced by the overall system.

Response: At the time of EPA's initial research, the Agency identified at least five major U.S. tire manufacturers that were incorporating some percentage of crumb rubber into some of their tire lines. Based on DOD's comments, however, EPA conducted additional research on tires containing recovered rubber. EPA was not able to verify to what extent recovered rubber is currently being incorporated into tires or obtain answers to any of the safety concerns raised by the commenter. Until such time that EPA can obtain current information on these issues, we have decided it is not appropriate to include tires containing recovered materials as a designated item. EPA will continue to conduct research on tires and monitor the tire-making industry to determine if designation is feasible at a future time.

2. Rebuilt Vehicular Parts

Comment: The White House Task Force on Recycling-Office of the Federal Environmental Executive questioned what the designation of rebuilt automotive parts will accomplish toward the statutory objectives of

reducing solid waste by creating markets for materials recovered from solid waste, since most federal agencies are already purchasing them and are satisfied with their performance. In addition, The Task Force indicated that rebuilt automotive parts are primarily purchased with federal credit cards, so it would be difficult for agencies to track procurement of them and lead to an administrative burden with no appreciable new benefit to the environment.

Response: EPA's proposal of rebuilt vehicular parts is consistent with previous designations for other remanufactured or refurbished products, such as reinked printer ribbons and toner cartridges. Motor vehicle part rebuilders recover and reclaim thousands of automotive components made from plastic and metal that could otherwise be landfilled. While EPA realizes that rebuilt vehicular parts may seem to be a common practice in the industry, markets for products containing recovered materials can fluctuate and directly influence the recovery rate of these items in the industry. While the designation of rebuilt vehicular parts may not create "new" markets, it can help ensure market stability, perhaps some market expansion, and continued recovery of these items. By designating these items, EPA also has concluded that increased environmental awareness with respect to procuring vehicular parts and services will contribute positively to an agency's overall effort to purchase more environmentally preferable products and services.

With regard to recordkeeping burden, EPA notes that procuring agencies have been statutorily required to monitor the procurement of designated items, regardless of the method of procurement, since the first guidelines were issued in 1983. Therefore, this requirement is not new. Furthermore, neither RCRA 6002 nor E.O. 13101 requires that the designation of items be based on the relationship between administrative burden and the level of benefit to the environment, as implied in the comments.

3. Cement and Concrete Containing Cenospheres and Silica Fume

Comment: The Department of Energy (DOE) submitted a comment expressing concerns that cenospheres and silica fume additives may not be readily available in all locations. In addition, DOE indicated that, although silica fume can be used to produce a higher-strength concrete, it has inherent problems of placement, workability, and curing, and is considerably more expensive than fly ash. None of DOE's concrete vendors are familiar with the application of cenospheres as a concrete additive.

Response: EPA has stated in the past that it recognizes that some items or materials may not always be readily available. Under section 6002(c)(1)(A), any procuring agency may decline to procure designated items where such items are not reasonably available within a reasonable period of time. Here, EPA's designation simply expands the list of recovered materials recommended to procuring agencies when purchasing cement and concrete. If an application warrants the use of higher-strength concrete, an agency may want to consider the use of cement and concrete with additional recovered materials, such as cenospheres or silica fume. Agencies, however, are not limited to using cement and concrete containing silica fume or cenospheres. EPA's research found that there is a small market for specialty cement containing cenospheres, which is typically used as a patching cement where higher strength is desired.

Comment: The Department of Defense submitted a comment stating that cenospheres appear to be a specialty item costing significantly more than fly ash, and, therefore, the value derived from using cenospheres in concrete will primarily be due to special properties, such as lightness and strength, rather than any societal gains based on diverting waste material.

Response: EPA agrees that cement and concrete containing cenospheres is a specialty item that may cost more than regular cement and concrete. An agency can choose whether cement and concrete with cenospheres suits its needs, application, and/or budget. If not, the agency can use cement and concrete containing one of the other recovered materials recommended in the RMAN. In EPA's view, the value and benefit of using cement and concrete with cenospheres (or silica fume) will be derived both from its special properties, as well as the diversion of these materials from disposal.

4. Nylon Carpet and Nylon Carpet Backing

EPA received a number of comments on its proposed comprehensive procurement guideline for nylon carpet and its recovered materials content recommendations for nylon carpet face fiber and nylon carpet backing contained in the draft RMAN IV. Many of these comments provided additional information that was conflicting in nature. As a result of these comments, EPA decided not to finalize the designation of carpet made from nylon fiber facing and/or nylon carpet backing at this time. EPA instead issued a Notice of Data Availability (NODA) on July 16, 2003 (68 FR 42040) announcing the availability of information on nylon carpet submitted both during and after the public comment period and provided a summary of the revisions EPA is considering making to the draft RMAN for nylon carpet as a result of this information. EPA will consider information and data submitted in response to this notice when issuing the final RMAN recommendations for nylon carpet in the future. The NODA can be accessed at *http://www.epa.gov/cpg.* Supporting materials and public comments submitted in response to the NODA are available through EPA's electronic public docket and comment system, *EPA Dockets* [EDOCKET]. The docket number is RCRA–2003–0013.

5. Bike Racks

Comment: The White House Task Force on Recycling submitted a comment in which it questioned the rationale for designating bike racks. The Task Force claims it is not clear whether individual agencies purchase $10,000 worth of bike racks annually or if agencies create barriers to using bike racks containing recovered content.

Response: As discussed in the proposed FR notice and background document, EPA has determined that bike racks meet all of the statutory criteria for designating items under the CPG. It is conceivable that agencies such as the Department of the Interior, state and local governments, and large school districts receiving federal funds could purchase $10,000 worth of bike racks annually. Moreover, the $10,000 level is not a selection criterion for designation, but rather is just the threshold at which certain provisions of RCRA 6002 apply. EPA believes designating bike racks will encourage the use of alternative materials, such as plastic, in the manufacture of bike racks.

6. Polyester Carpet

In the proposed CPG IV, EPA requested comments on its proposal to revise the polyester carpet designation based on new Carpet and Rug Institute (CRI) end-use classifications of moderate- and heavy-wear.

Comment: Five organizations submitted comments on EPA's recommended use of polyester carpet in moderate and heavy use classifications. Comments submitted by CRI included a new carpet End-Use Applications Classification table which lists private offices as heavy and severe wear applications. In its comments, CRI urged

that EPA limit its recommendation for polyester carpets to polyester carpets used only in moderate end-use applications, as indicated in CRI's Carpet End-Use Applications Classification table.

Response: EPA had proposed the use of polyester carpet for moderate end-use applications, which, at the time, included private offices. In the Background Document for Proposed CPG IV, EPA noted that, at the time the proposed CPG IV was issued, the CRI End-Use Classifications were under review and were expected to be revised. The revised CRI classification now classifies private offices as heavy- and severe-use applications. Based on the public comments received, as well as the fact that private offices have been re-classified as heavy- and/or severe-use applications and so are no longer classified as moderate-use applications, the final CPG designation for polyester carpet has been revised to remove references to heavy-wear applications and private offices.

VI. Where Can Agencies Get Information on the Availability of EPA-Designated Items?

EPA has developed a searchable online Supplier Database containing names of manufacturers, suppliers, and distributors of CPG-designated items. (*See* section VIII below for Internet access information.) Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting their needs.

Other information is available from the GSA, the Defense Logistics Agency (DLA), state and local recycling offices, private corporations, and trade associations. Refer to Section XV of the document, "Background Document for the Final CPG IV/RMAN IV" for more information on these other sources of information.

State and local recycling programs are also a potential source of information on local distributors and the availability of designated items. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information. Information is also available from trade associations whose members manufacture or distribute products containing recovered materials.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." 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 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; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA estimates that the costs associated with today's rule is well below the $100 million threshold. EPA has prepared an Economic Impact Analysis (EIA) to evaluate the potential impact of today's action. The results of the EIA are discussed below. More information on the estimated economic impact of today's rule is included in the "Economic Impact Analysis for the Final Comprehensive Procurement Guideline IV." A copy of this document is in the public docket.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from $5.0 to $9.7 million, with costs being spread across all procuring agencies (*i.e.*, federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that influence the costs, EPA conducted sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with today's final rule are provided in the EIA for this rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF CPG IV AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	2,853–5,707	5,707
States	542–1,085	1,085
Local Governments	1,556–2,762	2,159
Contractors	34–101	68
Total	4,985–9,655	9,019

As a result of today's rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's rule are included in the EIA.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that today's final rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials collected in recycling programs.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's final rule. If a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications

or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's final rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. For example, according to information published by the Steel Recycling Institute, recycling one ton of steel saves nearly 11 million Btus of energy; 2,500 lbs. of ore; 1,400 lbs. of coal; and 120 lbs. of limestone. Recycling can also reduce greenhouse gas emissions associated with manufacturing new products. When compared to landfilling, recycling one ton of high density polyethylene, low density polyethylene, or polyethylene terephthalate plastic can reduce greenhouse gas emissions by up to 0.64 metric tons of carbon equivalent (MTCE). In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, today's final rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many state and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

B. Paperwork Reduction Act

This final rule contains no new information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business as defined by RFA default definitions for small business (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of today's rule to determine whether its actions would have a significant impact on a substantial number of small entities. In the case of small entities that are small governmental jurisdictions, EPA has concluded that the rule will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the seven new items and the revised designations of three items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances, items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small entities that are small businesses would not be significant. Any costs to small businesses that are "procuring agencies" (and subject to RCRA section 6002) are likely to be insubstantial. RCRA section 6002 applies to a contractor with a federal agency (or a state or local agency that is a procuring agency under section 6002) when the contractor is purchasing a designated item, is using federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are "incidental to" the purposes of the contract, *i.e.*, not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a "procuring agency" for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if a state or federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any

costs to small businesses that are "procuring agencies" (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

After considering the economic impacts of today's final rule on small entities, EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions is described in greater detail in the EIA for the final rule.

While not a factor relevant to determining whether the final rule will have a significant impact for RFA purposes, EPA has concluded that the effect of today's final rule will be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with federal mandates that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with the law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a federal mandate that may result in estimated annualized costs of $100 million or more to either state or local or tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this final rule on state and local governments, they are exempt from inclusion as federal intergovernmental mandates if such duties are conditions of federal assistance. Even if they are not conditions of federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon state and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $3.85 million annually. The cost of enforceable duties that may arise as a result of today's final rule on the private sector is estimated not to exceed $101,000 annually. Thus, the final rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the CPG IV final rule may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement programs and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $3.85 million annually. In compliance with Executive Order 12875 entitled Enhancing the Intergovernmental Partnership, 58 FR 58093 (October 28, 1993), which requires the involvement of state and local governments in the development of certain federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in a CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in a CPG is presented.

The requirements do not significantly affect small governments, because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, $3.85 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 of the Act have been satisfied.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on states and localities. As a result of today's action, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002, including rule review and implementation, and for federal

agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of today's final rule will range from $5.0 to $9.7 million. EPA's estimate reflects the costs of the rule for all procuring agencies (*i.e.*, federal agencies, state and local agencies that use appropriated federal funds to procure designated items, and government contractors), not just states and localities. Thus, the costs to states and localities alone will be even lower and not substantial. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any mandate on tribal governments or impose any duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it does not involve decisions regarding environmental health or safety risks.

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 and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), Pub. L. No. 104–113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not establish technical standards. Therefore, the Agency has not conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. As part of this rulemaking effort, EPA has developed guidance for procuring agencies to use in complying with section 6002's obligation to purchase items with recovered materials content to the maximum extent practicable. These recommendations include reference to any known industry standards and, as previously noted, are published today in the companion RMAN for the designated items. In developing these recommendations, EPA did consider current voluntary consensus standards on recovered materials content.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 2, 2005.

VIII. Supporting Information and Accessing Internet

The index of supporting materials for today's final CPG IV is available at the OSWER Docket in the EPA Docket Center and on the Internet. The address and telephone number of the EPA Docket Center are provided in the **SUPPLEMENTARY INFORMATION** Section above. The index and the following supporting materials are available at the EPA Docket Center and on the Internet:

"Background Document for the Final CPG IV/RMAN IV," U.S. EPA, Office of Solid Waste and Emergency Response, September 2003.

Copies of the following supporting materials are available for viewing at the EPA Docket Center only:

"Economic Impact Analysis for the Final Comprehensive Procurement Guideline IV," U.S. Environmental Protection Agency, September 2003.

"Processing and characterization of a lightweight concrete using cenospheres," Journal of Materials Science, Vol. 37, 4217–4225, October 1, 2002.

To access information on the Internet go to *http://www.epa.gov/cpg.*

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: April 22, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40 of the Code of Federal

Regulations, Part 247, is amended as set forth below.

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

■ 1. The authority citation for Part 247 is revised to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 13101, 63 FR 49643, 3 CFR, 1998 Comp., p. 210.

■ 2. In § 247.3, the following definitions are added alphabetically:

§ 247.3 Definitions.

* * * * *

Bike racks are free-standing or anchored units that provide a method for cyclists to secure their bicycles safely.

* * * * *

Blasting grit is a type of industrial abrasive used to shape, cut, sharpen, polish, or finish surfaces and materials.

* * * * *

Cenospheres, a naturally-occurring waste component of coal fly ash, are very small, inert, lightweight, hollow, "glass" spheres composed of silica and alumina and filled with air or other gases.

* * * * *

Modular threshold ramps are ramps used to modify existing door thresholds and other small rises to remove access barriers created by differentials in landing levels.

* * * * *

Nonpressure pipe is pipe used to drain waste and wastewater, to vent gases, and to channel cable and conduit in various applications.

* * * * *

Office furniture is furniture typically used in offices, including seating, desks, storage units, file cabinets, tables, and systems furniture (or "cubicles").

* * * * *

Rebuilt vehicular parts are vehicular parts that have been remanufactured, reusing parts in their original form.

* * * * *

Roofing materials are materials used to construct a protective cover over a structure to shield its interior from the natural elements.

* * * * *

Silica fume is a waste byproduct of alloyed metal production.

■ 3. In § 247.11, add paragraph (d) to read as follows:

§ 247.11 Vehicular products.

* * * * *

(d) Rebuilt vehicular parts.

■ 4. In § 247.12, revise paragraphs (c), (d), and (j) and add paragraphs (k), (l), and (m), to read as follows:

§ 247.12 Construction products.

* * * * *

(c) Cement and concrete, including concrete products such as pipe and block containing:

(1) Coal fly ash;

(2) Ground granulated blast furnace slag (GGBF);

(3) Cenospheres; or

(4) Silica fume from silicon and ferrosilicon metal production.

(d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.

* * * * *

(j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.

(k) Modular threshold ramps containing recovered steel, rubber, or aluminum.

(l) Nonpressure pipe containing recovered steel, plastic, or cement.

(m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

■ 5. In § 247.16, add paragraph (l) to read as follows:

§ 247.16 Nonpaper office products.

* * * * *

(l) Office furniture containing recovered steel, aluminum, wood, agricultural fiber, or plastic.

■ 6. In § 247.17, add paragraphs (h) and (i) to read as follows:

§ 247.17 Miscellaneous products.

* * * * *

(h) Bike racks containing recovered steel or plastic.

(i) Blasting grit containing recovered steel, coal and metal slag, bottom ash, glass, plastic, fused alumina oxide, or walnut shells.

[FR Doc. 04–9864 Filed 4–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2001–0047; SWH–FRL–7655–1]

Recovered Materials Advisory Notice IV

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final document.

SUMMARY: The Environmental Protection Agency is providing notice of the availability of the final Recovered Materials Advisory Notice IV (RMAN IV) and supporting materials. The final RMAN IV contains EPA's recommendations for purchasing seven newly designated items and three revised items presented in the final Comprehensive Procurement Guideline IV, which is published elsewhere in today's **Federal Register.** The final RMAN IV also contains revised recommendations for two other previously designated items. This action will help use government purchasing power to stimulate the use of recovered materials in the manufacture of products and expand markets for those recovered materials. EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA). The seven newly designated items for which EPA is making recommendations include: modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. The five items for which EPA is making revised recommendations include: cement and concrete; polyester carpet; railroad grade crossing surfaces; latex paint; and retread tires.

EFFECTIVE DATES: These recommendations apply to the seven new items (*i.e.,* modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit) whose designations are effective May 2, 2005, as well as to the five items that were previously designated (*i.e.,* cement and concrete, polyester carpet, railroad-grade crossing surfaces, latex paint, and retread tires).

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item recommendations, contact Terry Grist at (703) 308–7257 or Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2001–0047. 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 OSWER 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 Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Preamble Outline

I. What Is the Statutory Authority for This Action?

EPA is issuing the Recovered Materials Advisory Notice IV (RMAN IV) under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962; and Executive Order (E.O.) 13101 (63 FR 49643, September 14, 1998).

II. Why Is EPA Taking This Action?

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be produced with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA designates an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase it composed of the highest percentage of recovered materials practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; and (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to procuring agencies only when procuring a designated item where the price of the item exceeds $10,000 or when the quantity of the item, or functionally equivalent items, purchased in the previous year exceeded $10,000.

Executive Order 13101 (63 FR 49643, September 14, 1998) requires EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered materials content levels for the designated items in Recovered Materials Advisory Notices (RMAN). The Executive Order (E.O.) also requires EPA to update the CPG every two years and the RMAN periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the

recommendations are guidance, the RMAN is not codified in the CFR. This process allows EPA to revise its recommendations in a timely manner and in response to changes in a product's availability or recovered materials content.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082). On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/*.

The 11 items EPA proposed for designation in the proposed CPG IV were: cement and concrete containing cenospheres; cement and concrete containing silica fume; modular threshold ramps; nonpressure pipe; nylon carpet and nylon carpet backing; roofing materials; office furniture; rebuilt vehicular parts; tires; bike racks; and blasting grit. The proposed designations of cement and concrete containing cenospheres and silica fume are actually proposed revisions to the existing designation of cement and concrete containing coal fly ash and ground granulated blast furnace slag. Consequently, today EPA is publishing recommendations for seven of the originally proposed items: modular threshold ramps; nonpressure pipe; roofing materials; office furniture; rebuilt vehicular parts; bike racks; and blasting grit. At the same time, EPA is also revising its recommendations for five items: cement and concrete; polyester carpet; railroad grade crossing surfaces; latex paint, and retread tires. As for the latex paint recommendations, as previously discussed in the draft RMAN IV notice, EPA is deleting reference to specification TT–P–2846, which was cancelled by the U.S. General Services Administration (GSA), and recommends that procuring agencies refer to commercial item description (CID) A–A–3185 instead when purchasing recycled paint. (A copy of this CID has been placed in the docket for the final RMAN IV.) Regarding the retread tire recommendations, although not previously discussed in the draft RMAN IV, EPA has recently learned that the GSA Federal Tire Program's Quality Assurance Facility Inspection Program (QAFIP) is defunct. Therefore, EPA is revising the retread tire recommendations by deleting reference to the GSA QAFIP. EPA is not designating tires or nylon carpet and nylon carpet backing at this time and, therefore, is not issuing final recommendations for purchasing these items. The reasons for this decision are discussed in Section IV of this notice and in the final CPG IV, published in the rules section of today's **Federal Register.**

Section 6002 requires that each procuring agency that procures a designated item must procure such items composed of the highest percentage of recovered material practicable consistent with maintaining a satisfactory level of competition, except in defined circumstances. These include a determination that the item (1) is not reasonably available within a reasonable period of time; (2) fails to meet applicable performance standards; and (3) is only available at an unreasonable price. *See also* 40 CFR 247.2(d). For further discussion of when a procuring agency must purchase items with recovered materials content see 61 FR 58067 (November 12, 1996).

III. What Are the Definitions of Terms Used in This Action?

Today's final RMAN IV recommends postconsumer and/or total recovered materials content levels for the following previously and newly designated items: railroad grade crossing surfaces, modular threshold ramps, nonpressure pipe, roofing materials, office furniture, bike racks, and blasting grit. For these items, EPA found that manufacturers were using both postconsumer and other types of recovered materials to manufacture these products. Limiting the Agency's recommendation to only postconsumer content levels would be inconsistent with RCRA's requirement that EPA designate items which are or can be made with recovered materials whose procurement will carry out the objective of section 6002—the procurement of items composed of the highest percentage of recovered materials practicable. The statute defines "recovered materials" to include waste materials and byproducts which have been recovered or diverted from solid waste. Section 1004(19) of RCRA, 42. U.S.C. 6903(19). If the Agency only recommended postconsumer content levels, it would fail to take into account the contribution that manufacturers using other manufacturers' byproducts as feedstock have made and can make to solid waste management.

EPA defined the terms "recovered materials" and "postconsumer materials" in the CPG and in 40 CFR 247.3. We repeat the definitions of these terms in this notice for the convenience of the reader.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but the term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

IV. What Did Commenters Say About the Recommendations in the Draft RMAN IV?

This section discusses the major public comments on the draft RMAN IV. A summary of all of the comments and the Agency's response is provided in the document entitled "Background Document for the Final Comprehensive Procurement Guideline (CPG) IV and Recovered Materials Advisory Notice (RMAN) IV," August 2003, hereafter referred to as the "Background Document for the Final CPG IV/RMAN IV." A copy of this document has been placed in the docket for the final RMAN IV. *See* **SUPPLEMENTARY INFORMATION** above for information about reviewing documents in the public docket. This document is also available electronically on the Internet. See section V of this notice for information on accessing this document electronically.

A. Item-Specific Comments

1. Polyester Carpet

In the proposed CPG IV and RMAN IV, EPA requested comments on its proposal to revise the polyester carpet

[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

designation to reference new Carpet and Rug Institute (CRI) end-use classifications of moderate- and heavy-wear.

Comment: Five organizations submitted comments on EPA's recommended use of polyester carpet in moderate and heavy minimum use classifications based on CRI's End-Use Applications Classification. In its comments, CRI urged that EPA limit its recommendation for polyester carpets to polyester carpets used only in moderate end-use applications, as indicated in CRI's revised Carpet End-Use Applications Classification document. With its comments, CRI provided a revised table for Carpet End-Use Applications Classification. In the Background Document for Proposed CPG IV and Draft RMAN IV, EPA noted that at the time the proposed CPG IV/RMAN IV was issued, the classifications were under review and were expected to be revised. CRI also provided GSA-recommended density specifications for polyester carpet construction.

With regard to EPA's proposal clarifying its original specifications for polyester carpet, the White House Task Force on Recycling indicated that it was not clear whether EPA intended to exclude bachelor-enlisted quarters and other dormitory-style housing from the scope of its revision. The Task Force asked that EPA state unambiguously in the final notice whether the specifications apply to these types of housing.

Response: EPA has revised the final RMAN to address CRI's comments and reference CRI's End-Use Applications Classification. The final RMAN for polyester carpet is thus limited to moderate end uses and does not include heavy or severe end uses. Under CRI's revised classification system, bachelor-enlisted quarters and other dormitory-styled housing are categorized as "heavy" use. Therefore, these types of housing would be excluded from the polyester carpet recommendation. EPA also has included the GSA-recommended density specifications provided by CRI in the final RMAN.

Comment: Manatt, Phelps, & Phillips, LLP (on behalf of Milliken Carpet) does not believe EPA has sufficiently explored and evaluated the problems related to uses for polyester carpet, particularly as they relate to performance characteristics. Specifically, the company does not believe that polyester carpet should be recommended for heavy-wear applications. Even though EPA's recommendation does not include polyester carpet for severe-wear and commercial applications, Milliken believes some heavy-wear applications, such as in private offices, may be considered "commercial" use in some situations. Three other commenters (DuPont Nylon Flooring, the National Recycling Coalition, and CRI) stated that polyester carpet should be limited to moderate end-use classifications.

Response: As discussed above, EPA has revised the recommendations for polyester carpet to reflect CRI's revised End-Use Applications Classification table and is revising its recommendation to limit polyester carpet to moderate end uses. Thus, today's RMAN does not recommend the use of polyester carpet in heavy-wear applications such as in bachelor quarters, dormitory-style housing, private offices, or other heavy or severe-wear applications as identified in CRI's classification table. A copy of CRI's revised End-Use Applications Classification table has been placed in the RCRA docket for this final notice.

Comment: Milliken also commented that EPA's instructions on purchasing polyester carpet for suitable applications is confusing in light of EPA's proposed designation of nylon carpet. Milliken believes that the language EPA included in the proposed rule may be interpreted to require the purchase of polyester carpet over nylon carpet when both products are designated for the same use. Milliken suggests making it clear that customers can choose either nylon carpet or polyester carpet if both qualify for a particular use. Milliken specifically referred to language on page 45267 of Proposed CPG IV.

Response: In the carpet discussion on page 45267 of the proposal, it was not EPA's intention to favor one type of carpet product over another. However, since the proposal, EPA issued a notice of data availability (NODA) announcing the availability of information on nylon carpet submitted both during and after the public comment period and provides a summary of the revisions EPA is considering making to the draft RMAN for nylon carpet as a result of this information. (*See* the CPG IV final rule, published in the rules section of today's **Federal Register**, and IV.A.3. of this preamble for further discussion of the NODA.) EPA will consider information and data submitted in response to the NODA when issuing the final RMAN recommendations for nylon carpet in the future. The NODA can be accessed at *http://www.epa.gov/cpg.* Supporting materials and public comments for this notice are available through EPA's electronic public docket and comment system. If EPA moves forward with a nylon carpet designation, it will ensure that the distinction between the Agency's recommendations for both polyester and nylon carpet are clear.

2. Cement and Concrete Containing Cenospheres and Silica Fume

Comment: The American Portland Cement Association (APCA) is a trade association representing virtually all domestic portland cement production. APCA submitted a comment suggesting mostly minor technical and administrative changes to EPA's draft recommendation. These recommended changes primarily pertain to citing ASTM specifications and the way to express the recommended range of recovered content of silica fume and cenospheres in cement and concrete. APCA suggested that the RMAN recommendations for silica fume in cement and concrete should be 5 to 10 percent of cementitious material on a dry weight basis and those for cenospheres in cement and concrete should be a minimum of 10 percent by volume.

Response: After reviewing APCA's comments, EPA agrees the proposed changes should be cited in the RMAN. Although EPA acknowledges that we inadvertently cited ASTM C–618 as applicable to cenospheres used in cement and concrete, the Agency believes there is still justification for designating cement and concrete containing cenospheres and that appropriate recommendations can be made in the RMAN, since all suppliers of cenospheres have specifications, including Material Safety Data Sheets, for their cenospheres. EPA believes that the recovered material content information suggested by APCA is more appropriate than the ASTM specifications contained in the draft RMAN. Therefore, in the final RMAN, EPA has changed the information regarding recovered content ranges for silica fume in cement and concrete to "5 to 10 percent of cementitious material on a dry weight basis" and to "a minimum of 10 percent by volume" for cenospheres.

Comment: The National Ready Mixed Concrete Association (NRMCA) submitted a comment indicating that the concrete industry has no history of purchasing cenospheres as an ingredient and that concrete producers have not been buying it as a product separate from fly ash for use in concrete. In addition, ASTM C–618 does not address cenospheres, and there is no technical literature documenting their use in concrete. NRMCA added that the presence of cenospheres in fly ash occurs naturally so the generation facility for fly ash has no control over

whether it can be produced. It depends on many factors, including type of coal being used, plant type, and firing conditions. Furthermore, NRMCA indicated that the variety of cenospheres discussed in EPA's proposal are used for applications other than cement and concrete. Moreover, the cenosphere range of 10–15 percent is typically the amount of fly ash used in cement. The cenospheres content would be 1/10th of the fly ash, if at all.

NRMCA also commented on the use of silica fume in cement and concrete. They indicated that silica fume in cement is only used for high performance applications and should only be used when the construction application requires it. In addition, its availability is not as wide as other products, and its cost is much higher. Finally, demand for silica fume is so high that a large percentage is imported from Europe, which begs the question of whether silica fume would ever be diverted to a landfill in the first place.

Response: With regard to NRMCA's comment about the use of cenospheres, EPA explained in the proposed CPG that cenospheres are a component of fly ash. EPA's research found that cenospheres can be and are separated and removed from fly ash and sold and used as a recovered material. EPA's research also found that there is a market, albeit small, for high-strength cement to which recovered cenospheres, specifically, have been added. EPA has adjusted its recommendations to reflect cement and concrete to which only cenospheres have been added. EPA spoke with several suppliers of cenospheres who indicated that their product is used in producing this type of specialty cement. EPA recognizes that it inadvertently cited ASTM C–618 as applying to cement with cenospheres, when in actuality, it applies to fly ash and raw or calcinated pozzolan for use as an admixture in concrete. As previously stated, although no industry standards exist for cement and concrete containing cenospheres alone, EPA learned that suppliers of cenospheres have specifications available for the cenospheres themselves, including Material Safety Data Sheets. EPA has removed reference to ASTM C–618 in the final RMAN. EPA agrees that in typical cement containing fly ash, the percent of cenospheres would be about 1/10 that of the fly ash. However, in the cases where cenospheres have been specifically added to produce a high-strength specialty cement, the percentage of cenospheres alone can reach 10–40 percent, according to contacts in the industry.

With regard to NRMCA's comment on silica fume in cement, EPA agrees, and its research did find, that cement containing silica fume is a high-performance product that may cost more than other types of cement. However, in issuing recommendations for silica fume (and cenospheres), EPA is simply expanding the list of recommended recovered materials used in cement in concrete. If an application warrants the use of higher-strength concrete, an agency now has recommendations for procuring cement and concrete containing silica fume. Agencies, however, will not be limited to using cement and concrete containing silica fume, or cenospheres for that matter. Also, it should be noted that EPA's research found that in a recent year 115,000 tons of silica fume were generated and only 67,200 tons were reused. So, regardless of whether silica fume is being imported from other countries, there is obviously a need to encourage more reuse of silica fume that is generated domestically.

3. Nylon Carpet and Nylon Carpet Backing

EPA received a number of comments on its proposed designation of nylon carpet in the proposed CPG IV and its recovered materials content recommendations for nylon carpet face fiber and nylon carpet backing contained in the draft RMAN IV. Many of these comments provided additional information that was conflicting in nature. As a result of these comments, EPA decided not to finalize the designation of nylon carpet face fiber and nylon carpet backing at this time. EPA instead issued a NODA on July 16, 2003 (68 FR 42040) announcing the availability of information on nylon carpet submitted both during and after the public comment period and provided a summary of the revisions EPA is considering making to the draft RMAN for nylon carpet as a result of this information. EPA will consider information and data submitted in response to this notice when issuing the final RMAN recommendations for nylon carpet in the future. The NODA can be accessed at *http://www.epa.gov/cpg.* Supporting materials and public comments submitted in response to the NODA are available through EPA's electronic public docket and comment system, *EPA Dockets* [EDOCKET]. The docket number is RCRA–2003–0013.

4. Roofing Materials

Comment: Nuline believes that there is a significant omission in the background document. Nuline provided language to recognize its product—organic corrugated asphalt panels and tiles—as part of the designation in the Residential Roofing section. Nuline requested that EPA insert the language into Section 1.e of the background document following the designation for Organic Corrugated Asphalt Panels and Tiles.

Response: In its research, EPA included discussion of Nuline's roofing product in the section addressing "fiber" products, since the product contains 50 percent cellulose fibers. EPA's research found that asphalt roofing products do not typically contain recovered asphalt, so the Agency placed items such as those made by Nuline in the "Fiber" category. To make it clearer, EPA has changed the material to "Fiber or Fiber Composite" in the RMAN table to capture companies making roofing products both from fiber alone or fiber combined with other materials, such as asphalt or wood. EPA has also adjusted the recommended postconsumer and total recovered content to 50–100 percent to reflect information provided by the commenter. In addition, upon designation, Nuline and other companies will be added to EPA's online Supplier Database.

5. Office Furniture

Comment: Pacific Northwest Fiber (PNF), the Idaho State Department of Agriculture, and the Spokane County Conservation District submitted comments in support of the designation of office furniture, since it would establish new uses for diverted agriculture fiber, such as grass seed residue, wheat straw, rice straw, bagasse, and other agricultural products. All three commenters noted competition from the forest products industry. PNF believes particle board made from agricultural fiber or from wood or other materials diverted from the solid waste stream would qualify as recovered material, but that traditional wood particle board would not qualify as recovered material because it is manufactured from wood fiber "generated from, and commonly reused within an original manufacturing process."

Response: EPA agrees that diverted agricultural fibers that meet the statutory definition of "recovered materials" would be included in office furniture designated in the CPG. Traditional wood particle board would not contain recovered materials if the recovered wood fiber is generated from, and is commonly used within, the original manufacturing process to manufacture particle board. However, EPA's research found that some particle

board manufacturers are using materials that fall under the RCRA definitions of postconsumer and recovered materials. Examples of postconsumer materials used in particle board include used pallets and wood crating, and recovered wood from home deconstruction. Examples of non-postconsumer recovered materials used in particle board include mill wastes, scraps, and trimmings from the lumber industry.[2]

Comment: The Composite Panel Association (CPA) commented on the level of recovered wood used in the manufacture of particle board and fiberboard. Based on its survey of the industry and subsequent findings, CPA recommends that EPA change the postconsumer content range in the RMAN from "1 to 50 percent" to "Greater than 0 percent" with no upper level value. In addition, CPA asserts that nearly all manufacturers use a high percentage of recovered material and that the total recovered content range should be changed to "Greater than 80 percent" with no upper limit.

Response: At the time of EPA's proposed rulemaking, CPA had provided information that some particleboard (PB)/medium density fiberboard (MDF) plants use a small amount of postconsumer wood in their products. Based on this initial information, EPA set the lower level of the postconsumer range at 1 percent. However, based on the subsequent information provided by CPA, EPA now recognizes that, although the PB/MDF industry does use some postconsumer wood, it is not always feasible, mostly due to logistical reasons. For example, CPA indicated that many PB/MDF plants are located near the raw material source, such as sawmills and plywood plants, which means they are often far from urban areas where most postconsumer wood waste is available. Furthermore, EPA recognizes that many plants, if they are able to obtain postconsumer wood, are not able to obtain enough to equate to 1 percent of their final product. Therefore, EPA has concluded that the recommended postconsumer content level should be "Greater than 0 percent." In addition, since a high level of recovered wood is commonly used by the industry, EPA is recommending a total recovered content range of 80—100 percent, which represents what is currently being used in the industry.

Additional Revision for Office Furniture RMAN: EPA realizes that, in the particleboard recommendation in Table G–9 of the draft RMAN, we inadvertently recommended recycled content levels only for "wood composites." EPA's recommendation should have read "wood or wood composites." The final RMAN corrects this error.

6. Blasting Grit

Comment: The Utility Solid Waste Activities Group (USWAG) c/o Edison Electric Institute and the American Coal Ash Association (ACAA) commented that there was an erroneous reference to the Bevill Regulatory Determination on Wastes from the Combustion of Fossil Fuels as a "final rule." This was actually issued as a "regulatory determination," which is legally distinct from a final rule. In addition, USWAG and ACAA pointed out what they believe was an oversight in including only coal slag, but not bottom ash, in the RMAN specification.

Response: EPA agrees that the "Regulatory Determination on Wastes from Combustion of Fossil Fuels" was issued as a "regulatory determination," rather than as a final rule, and understands that there is a legal distinction between the two terms. EPA also agrees that it inadvertently omitted bottom ash from its RMAN recommendations. EPA's research found that "* * * bottom ash can also be used as a light-to medium-duty blasting grit." Therefore, in this final notice, EPA has amended the RMAN table to add 100 percent total recovered content bottom ash as a recommended recovered material for blasting grit.

Comment: During the public comment period, Environmental Abrasives (formerly Idaho Powder Products) submitted information on its recycled fused alumina oxide material, which it has researched, developed, patented, and is processing for use as an abrasive material. According to the company, the material is the waste product from the manufacture of cast fused alumina oxide containers and lab equipment, and since the material is typically landfilled, it presents a solid waste problem that can be alleviated by collection and use as an abrasive product. Environmental Abrasives' product is marketed in the same cost range, if not less, than other similar products. The product has already been used for a federally funded job in Nevada.

Response: Since this fused alumina oxide material is an appropriate material for use as an abrasive, and it meets EPA's criteria and definition of recovered material, EPA has added it to the final RMAN table as a recommended material. Although EPA is unaware of any ASTM or other industry specifications for this material used as an abrasive, Environmental Abrasives indicated that users can request instruction for proper use of the product on its Web site *http://www.enviroabrasives.com.*

V. Supporting Information and Accessing Internet

The index of supporting materials for today's final CPG IV is available in the EPA Docket Center and on the Internet. The address and telephone number of the EPA Docket Center are provided in the **SUPPLEMENTARY INFORMATION** Section above. The index and the following supporting materials are available in the EPA Docket Center and on the Internet:

"Background Document for the Final CPG IV/RMAN IV," U.S. EPA, Office of Solid Waste and Emergency Response, September 2003.

Copies of the following supporting materials are available for viewing at the EPA Docket Center only:

"Economic Impact Analysis for the Final Comprehensive Procurement Guideline IV," U.S. Environmental Protection Agency, September 2003.

"Processing and characterization of a lightweight concrete using cenospheres," Journal of Materials Science, Vol. 37, 4217–4225, October 1, 2002.

To access information on the Internet go to *http://www.epa.gov/cpg.*

Dated: April 22, 2004.

Michael O. Leavitt,

Administrator.

Recovered Materials Advisory Notice IV

The following represents EPA's recommendations to procuring agencies for purchasing the items designated today in the Comprehensive Procurement Guideline IV in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA) and section 502(b) of E.O. 13101. These recommendations are intended to be used in conjunction with the RMANs issued on May 1, 1995 (60 FR 21386), November 13, 1997 (62 FR 60975), and January 19, 2000 (65 FR 3082), and the Paper Products RMANs issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). Refer to May 1, 1995, November 13, 1997, and January 19, 2000 RMANs for definitions,

[2] As noted in the final RMAN IV recommendations for office furniture, while EPA has no evidence or indication that wood treated with chromated copper arsenate (CCA) is currently used in office furniture, EPA is not recommending the use of CCA-treated wood as a recovered material in office furniture. The arsenic in CCA is a known human carcinogen and EPA is currently conducting a thorough and comprehensive risk assessment of CCA as a part of the pesticide reregistration process for CCA. In addition, EPA is conducting a risk assessment for children who contact CCA-treated wood playsets and decks.

general recommendations for affirmative procurement programs, and recommendations for previously designated items. In the case of cement and concrete, polyester carpet, railroad grade crossing surfaces, latex paint, and retread tires, the recommendations published today revise the previous recommendations issued in RMAN I, RMAN II, and RMAN III.

Contents

I. General Recommendations

General recommendations for definitions, specifications, and affirmative procurement programs can be found in the May 1, 1995 RMAN (60 FR 21386). Procuring agencies should avoid specifications that may result in unintentional barriers to purchasing designated items, such as packaging, color, or cosmetic requirements that have no bearing on the item's functionality or performance, but that might prevent its purchase with the highest percentage recovered materials practicable.

II. Specific Recommendations for Procurement of Designated Items

Recommendations for purchasing previously-designated items can be found in the May 1, 1995, November 13, 1997, and January 19, 2000 RMANs, and the May 29, 1996 and June 8, 1998 Paper Products RMANs. Revised recommendations for cement and concrete, polyester carpet, railroad grade crossing surfaces, latex paint, and retread tires are included in today's notice.

Part B—Vehicular Products

Section B–2. (Revised) Retread Tires

Note: EPA learned that the U.S. General Services Administration (GSA) Federal Tire Program's Quality Assurance Facility Inspection Program (QAFIP) is defunct. Therefore, EPA is revising the retread tire recommendations by deleting reference to the GSA QAFIP. The following are EPA's revised recommendations for procuring retreading services and retread tires. These recommendations replace those issued in RMAN I (60 FR 21386, May 1, 1995).

Procurement of tire retreading services for the agencies' used tire casings: EPA recommends that procuring agencies specify that tire repair and retread services must conform to Federal Specification ZZ–T–441H (or current version).

Procurement of tires through competition between vendors of new tires and vendors of retread tires: EPA recommends that procuring agencies specify that retread tires must meet the requirements of Federal Specification ZZ-T–381, "Tires, Pneumatic, Vehicular (Highway) (New and Retreaded).

Section B–4. Rebuilt Vehicular Parts

Note: Based on EPA's research, rebuilt vehicular parts generally contain between 60 and 95% postconsumer material. However, this level of detail might not be readily available from distributors to procurement officials. Therefore, EPA is not recommending a range of recovered content.

Preference Program: EPA recommends that procuring agencies whose vehicles (passenger vehicles as well as medium- and heavy-duty equipment, including trucks, cranes, off-road vehicles, and military vehicles) are serviced by a motor pool or vehicle maintenance facility establish a service contract to require the use of rebuilt vehicular parts in the agencies' vehicles or establish a program for vehicular parts rebuilding and reuse consisting of either recovering a used vehicular part and rebuilding it, replacing it with a rebuilt part, or contracting to have the part replaced with a rebuilt part. This designation applies to vehicles served by both on-site and commercial facilities.

Specifications: To be labeled "rebuilt" or "remanufactured," a part must be processed in accordance with the FTC's "Guides for the Rebuilt, Reconditioned and Other Used Automotive Parts Industry," 16 CFR part 20. Rebuilders must test each part for compliance with FTC specifications and correct defects as necessary.

Part C—Construction Products

Section C–3. (Revised) Cement and Concrete Containing Coal Fly Ash, Ground Granulated Blast Furnace Slag, Cenospheres, and Silica Fume From Silicon or Ferrosilicon Metal Production

Note: Following are EPA's revised recommendations for procuring cement and concrete. EPA previously designated cement and concrete containing coal fly ash and ground granulated blast furnace slag (GGBF) in CPG I and provided information about recovered materials content in RMAN I (60 FR 21386, May 1, 1995). EPA has amended the designation to add cenospheres and silica fume from silicon or ferrosilicon metal production as other recovered materials for use as cement and concrete additives. Procuring agencies should substitute these recommendations for the recommendations found in section C–3 of RMAN I.

Preference Program: EPA recommends that procuring agencies prepare or revise their procurement programs for cement and concrete or for construction projects involving cement and concrete to allow the use of coal fly ash, ground granulated blast furnace slag (GGBF slag), cenospheres, or silica fume, as appropriate. EPA does not recommend that procuring agencies favor one recovered material over the other. Rather, EPA recommends that procuring agencies consider the use of all of these recovered materials and choose the one (or the mixture of them) that meets their performance requirements, consistent with availability and price considerations. EPA also recommends that procuring agencies specifically include provisions in all construction contracts to allow for the use, as optional or alternate materials, of cement or concrete which contains coal fly ash, GGBF slag, cenospheres, or silica fume, where appropriate. Due to variations in cement, strength requirements, costs, and construction practices, EPA is not recommending recovered materials content levels for cement or concrete containing coal fly ash, GGBF slag, cenospheres, or silica fume. However, EPA is providing the following information about recovered materials content.

- Replacement rates of coal fly ash for cement in the production of blended cement generally do not exceed 20–30 percent, although coal fly ash blended cements may range from 0–40 percent

coal fly ash by weight, according to ASTM C 595, for cement Types IP and I(PM). Fifteen percent is a more accepted rate when coal fly ash is used as a partial cement replacement as an admixture in concrete.

• According to ASTM C 595, GGBF slag may replace up to 70 percent of the Portland cement in some concrete mixtures. Most GGBF slag concrete mixtures contain between 25 and 50 percent GGBF slag by weight. EPA recommends that procuring agencies refer, at a minimum, to ASTM C 595 for the GGBF slag content appropriate for the intended use of the cement and concrete.

• According to industry sources, cement and concrete containing cenospheres typically contains a minimum of 10 percent cenospheres (by volume).

• According to industry sources, cement and concrete containing silica fume typically contains silica fume that constitutes 5 to 10 percent of cementitious material on a dry weight basis.

Specifications for Cement and Concrete Containing Fly Ash and Ground Granulated Blast Furnace Slag: For cement and concrete containing coal fly ash and ground granulated blast furnace slag, the following recommendations address guide specifications, materials specifications, contract specifications, performance standards, mix design, and quality control.

• *Guide specifications.* EPA recommends that procuring agencies ensure that their guide specifications do not inappropriately or unfairly discriminate against the use of coal fly ash or GGBF slag in cement and concrete. EPA further recommends that procuring agencies revise their guide specifications to require that contract specifications for individual construction projects or products allow for the use of coal fly ash or GGBF slag, unless the use of these materials is technically inappropriate for a particular construction application.

• *Materials specifications.* EPA recommends that procuring agencies use the existing voluntary consensus specifications referenced in Table C–3 for cement and concrete containing fly ash and/or GGBF slag.

TABLE C–3.—RECOMMENDED SPECIFICATIONS FOR CEMENT AND CONCRETE CONTAINING RECOVERED COAL FLY ASH AND/OR GROUND GRANULATED BLAST FURNACE SLAG

Cement specifications	Concrete specifications
ASTM C 595, "Standard Specification for Blended Hydraulic Cements."	ASTM C 618, "Standard Specification for Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Portland Cement Concrete."
ASTM C 150, "Standard Specification for Portland Cement."	ASTM C 311, "Standard Methods of Sampling and Testing Fly Ash and Natural Pozzolans for Use as a Mineral Admixture in Portland Cement Concrete."
AASHTO M 240, "Blended Hydraulic Cements."	ASTM C 989, "Ground Granulated Blast-Furnace Slag for Use in Concrete Mortars."
	AASHTO M 302, "Ground Granulated Blast Furnace Slag for Use in Concrete and Mortars."
	American Concrete Institute Standard Practice ACI 226.R1, "Ground Granulated Blast-Furnace Slag as a Cementitious Constituent in Concrete."

• *State specifications.* EPA recommends that procuring agencies consult other agencies with established specifications for coal fly ash or GGBF slag to benefit from their experience. Procuring agencies can consult the Federal Highway Administration, which maintains a data base of State highway agency material specifications. The States of Alabama, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Maryland, Michigan, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Virginia, and West Virginia have adopted specifications which allow the use of GGBF slag in one or more applications. If needed, procuring agencies can obtain these specifications from the respective State transportation departments and adapt them for use in their programs for cement and concrete, as appropriate.

• *Contract specifications.* EPA recommends that procuring agencies which prepare or review "contract" specifications for individual construction projects revise those specifications to allow the use of cement and concrete containing coal fly ash or GGBF slag as optional or alternate materials for the project, where appropriate, consistent with the agencies' performance and price objectives.

• *Performance standards.* EPA recommends that procuring agencies review and, if necessary, revise performance standards relating to cement or concrete construction projects to insure that they do not arbitrarily restrict the use of coal fly ash or GGBF slag, either intentionally or inadvertently, unless the restriction is justified on a job-by-job basis: (1) to meet reasonable performance requirements for the cement or concrete or (2) because the use of coal fly ash or GGBF slag would be inappropriate for technical reasons. EPA recommends that this justification be documented based on specific technical performance information. Legitimate documentation of technical infeasibility for coal fly ash or GGBF slag can be for certain classes of applications, rather than on a job-by-job basis. Procuring agencies should reference such documentation in individual contract specifications to avoid extensive repetition of previously documented points. However, procuring agencies should be prepared to submit such documentation to analysis by interested persons, and should have a review process available in the event of disagreements.

• *Mix design.* In concrete mix design specifications which specify minimum cement content or maximum water, the cement ratios could potentially unfairly discriminate against the use of coal fly ash or GGBF slag. Such specifications should be changed in order to allow the partial substitution of coal fly ash or GGBF slag for cement in the concrete mixture, unless technically inappropriate. Cement ratios may be retained, as long as they reflect the cementitious characteristics which coal fly ash or GGBF slag can impart to a concrete mixture, *e.g.*, by considering Portland cement plus coal fly ash or Portland cement plus GGBF slag as the total cementitious component.

• *Quality control.* Nothing in this RMAN should be construed to relieve the contractor of responsibility for providing a satisfactory product. Cement and concrete suppliers are already responsible both for the quality of the ingredients of their product and for meeting appropriate performance requirements, and will continue to be under this RMAN. Nothing in EPA's recommendations should be construed as a shift in normal industry procedures for assigning responsibility and liability for product quality.

• *Additional Considerations:*

• Procuring agencies should expect suppliers of blended cement, coal fly ash or GGBF slag, and concrete to demonstrate (through reasonable testing programs or previous experience) the performance and reliability of their product and the adequacy of their quality control programs. However, procuring agencies should not subject cement and concrete containing coal fly ash or GGBF slag to any unreasonable testing requirements.

• In accordance with standard industry practice, coal fly ash and GGBF slag suppliers should be required to provide to users a statement of the key characteristics of the product supplied. These characteristics may be stated in appropriate ranges. Other characteristics should be requested as needed by the procuring agency.

• Agencies desiring a testing or quality assurance program for cements, blended cements, or coal fly ash should contact the U.S. Army Engineer Waterways Experiment Station, PO Box 631, Vicksburg, Mississippi 39180.

Specifications for Cement and Concrete Containing Cenospheres and Silica Fume: For cement and concrete containing cenospheres, EPA recommends that procuring agencies contact cenosphere suppliers to obtain specifications, such as material safety data sheets for assisting with use of cenospheres in cement and concrete.

For cement and concrete containing silica fume, EPA recommends that procuring agencies refer to the following national specifications and guidelines, which enable procuring agencies to buy high-performance concrete containing silica fume of a standard quality, when purchasing cement and concrete with silica fume: ASTM C1240, AASHTO M840, and ACI 234R–96. ACI 234R–96 describes the properties of silica fume; how silica fume interacts with cement; the effects of silica fume on the properties of fresh and cured concrete; typical applications of silica fume concrete; recommendations on proportions, specifications, and handling of silica fume in the field.

Section C–4. (Revised) Recommendations for Polyester Carpet

Note: On May 1, 1995, EPA issued a final designation for polyester carpet containing recovered materials in CPG I (60 FR 21370). EPA has revised the polyester carpet recommendations to reference the new Carpet and Rug Institute (CRI) classifications and specify that the recommendations be limited to moderate-wear applications such as those found in single-family housing units and similar applications as identified by CRI.

Preference Program: EPA recommends that, based on the recovered materials content levels recommended for polyester carpet in CPG I, procuring agencies establish minimum content standards for use in purchasing polyester carpet for moderate-wear applications such as those found in single-family housing units and other similar applications as identified by the Carpet and Rug Institute (CRI). This recommendation does not include polyester carpet for heavy-or severe-wear or commercial-type applications.

Specifications: Procuring agencies should refer to CRI's table entitled "Use Classification by End-Use Application" for a complete listing of CRI's recommended carpet applications. A copy of this table has been placed in the public docket for this RMAN.

Procuring agencies should also refer to GSA's minimum density recommendations, as follows:

• Cut pile constructions: 5,000 ounces/yard^3 minimum density

• Loop pile constructions: 4,500 ounces/yard^3 minimum density

While numerous carpet specifications exist, the members of the carpet industry do not utilize any universal standards. Specifications vary and are determined based on the particular factors of the installation. The project's designer, architect, general contractor, and/or facility manager typically decide the specifications. Some procuring agencies, such as the Department of the Army and the Department of Housing and Urban Development, have developed their own specifications for end-use carpet applications. These specifications should be readily available to procurement officials in those agencies.

Section C–7. (Revised) Specification for Reprocessed and Reconsolidated Latex Paints for Specified Uses

EPA is deleting reference to Federal specification TT–P–2846, which was cancelled by GSA, and recommends that procuring agencies refer to commercial item description (CID) A–A–3185 instead when purchasing recycled paint.

Section C–10. (Revised) Railroad Grade Crossing Surfaces Made From Recovered Content Concrete, Rubber, Steel, Wood, and Plastic

Note: EPA previously designated railroad grade crossing surfaces made from recovered content concrete, rubber, and steel (65 FR 3070).

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–10a (Revised), procuring agencies revise their procurement programs for railroad grade crossing surfaces to allow the use of recovered content concrete, rubber, steel, wood, and plastic railroad grade crossing surfaces.

TABLE C–10A. (REVISED).—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR RAILROAD GRADE CROSSING SURFACES MADE FROM RECOVERED CONTENT CONCRETE, RUBBER, STEEL, WOOD, AND PLASTIC

Surface material	Recovered material	Postconsumer content (%)	Total recovered materials content (%)
Concrete	Coal Fly Ash		15–20
Rubber	Tire Rubber		85–95
Steel	Steel	16	25–30
		67	100
Wood	Wood or wood composite	90–97	90–97
Plastic	Plastic or plastic composite	85–95	100

Notes: The recommended recovered materials content levels for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or other additives.

Coal fly ash can be used as an ingredient of concrete slabs, pavements, or controlled density fill product, depending on the type of concrete crossing system installed. Higher percentages of coal fly ash can be used in the concrete mixture; the higher percentages help to produce a more workable and durable product but can prolong the curing process.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

Railroad grade crossing surfaces made from recovered wood may also contain other recovered materials such as plastics. The percentages of these materials contained in the product would also count toward the recovered materials content level of the item.

Railroad grade crossing surfaces made from recovered plastics may also contain other recovered materials such as auto shredder residue, which contains a mix of materials. The percentages of these materials contained in the product would also count toward the recovered materials content level of the item.

Specifications: EPA has not identified any industry specifications or standards for wood or plastic railroad grade crossing surfaces.

Section C–11. Modular Threshold Ramps Containing Recovered Steel, Rubber, or Aluminum

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–11, procuring agencies establish minimum content standards for use in purchasing modular threshold ramps containing recovered materials.

TABLE C–11.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR MODULAR THRESHOLD RAMPS CONTAINING RECOVERED STEEL, RUBBER, OR ALUMINUM

Material	Postconsumer content (%)	Total recovered material content (%)
Steel	16–67	25–100
Aluminum		10
Rubber	100	100

Notes: The recommended recovered materials content levels for steel in this table reflect the fact that the designated item may contain steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF), or a combination of both. Steel from the BOF process contains 25%–30% total recovered steel, of which 16% is postconsumer. Steel from the EAF process contains 100% total recovered steel, of which 67% is postconsumer. According to industry sources, modular threshold ramps containing a combination of BOF and EAF steel would contain 25%–85% total recovered steel, of which 16%–67% would be postconsumer. Since there is no way of knowing which type of steel was used in the manufacture of the item, the postconsumer and total recovered material content ranges in this table encompass the whole range of possibilities, *i.e.*, the use of EAF steel only, BOF steel only, or a combination of the two.

These recommendations are for modular threshold ramps. EPA understands that ramps may also be constructed of cement and concrete. For these ramps, procuring agencies should follow the procurement guidelines for cement and concrete containing recovered materials.

Specifications: Although the Federal Government is not governed by ADA, the Access Board's ADA standards are more current than the UFAS and are therefore generally used by Federal facilities. According to the "Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities" (28 CFR part 36), published in the **Federal Register**, July 26, 1991, ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curbramps, must be stable, firm, and slip-resistant. The guidelines do not define what is meant by "stable, firm, and slip-resistant," but the Access Board recommends static coefficient of friction values of 0.8 for ramps and 0.6 for accessible routes.

Section C–12. Nonpressure Pipe Containing Recovered Steel, Plastic, or Cement

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–12a, procuring agencies establish minimum content standards for use in purchasing nonpressure pipe containing recovered materials.

TABLE C–12A.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR NONPRESSURE PIPE CONTAINING RECOVERED STEEL, PLASTIC, OR CEMENT

Material	Postconsumer content (%)	Total recovered materials content (%)
Steel	16	25–30
	67	100
HDPE	100	100
PVC	5–15	25–100
Cement	Refer to cement and concrete recommendations in C–3 of the RMAN.	

Note: The recommended recovered materials content levels for steel in this table reflect the fact that the designated item can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered steel, of which, 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which, 67% is postconsumer steel.

Specifications: EPA recommends that procuring agencies refer to the following tables C–12b, C–12c, C–12d, and C–12e when purchasing nonpressure pipe containing recovered materials. For additional guidelines see the "Background Document for Proposed CPG IV and Draft RMAN IV," which can be found in the RCRA public docket.

TABLE C–12B.—ASTM PLASTIC PIPE SPECIFICATIONS

F1960, Standard Specification for Co-extruded Poly(Vinyl Chloride) (PVC) Non-Pressure Plastic Pipe Having Reprocessed Recycled Content.
F1732, Standard Specification for Poly(Vinyl Chloride) (PVC) Sewer and Drain Pipe Containing Recycled PVC Material.
D1248, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials.
F810, Smooth Wall Polyethylene (PE) Pipe for Use in Drainage and Waste Absorption Fields.
F405, Standard Specification for Corrugated Polyethylene (PE) Tubing and Fittings.
F512, Standard Specification for Poly(Vinyl Chloride) (PVC) Conduit and Fittings for Underground Installation.
F667, Standard Specification for Large Diameter Corrugated Polyethylene Tubing and Fittings.
F949, Standard Specification for Poly(Vinyl Chloride) (PVC) Corrugated Sewer Pipe With a Smooth Interior and Fittings.
D2665, Standard Specification for Poly(Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings.
D3034, Standard Specification for Type PSM Poly(Vinyl Chloride) (PVC) Sewer Pipe and Fittings.

TABLE C–12B.—ASTM PLASTIC PIPE SPECIFICATIONS—Continued

D2239, Standard Specifications for Polyethylene (PE) Plastic Pipe (SIDR-PR) Based on Controlled Inside Diameter.
D2447, Standard Specification for Polyethylene (PE) Plastic Pipe Schedules 40 and 80, Based on Controlled Outside Diameters.
D2729–96a, Standard Specification for Poly(Vinyl Chloride) (PVC) Sewer Pipe and Fittings.
D3035, Standard Specification for Polyethylene (PE) Plastic Pipe (DR-PR) Based on Controlled Outside Diameter.
D4976, Standard Specification for Polyethylene Plastic Molding and Extrusion Materials.
D3350, Standard Specification for Polyethylene Plastic Pipe and Fitting Materials.
D4396, Standard Specification for Rigid Poly(Vinyl Chloride) (PVC) and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds for Plastic Pipe and Fittings Used in Nonpressure Applications.
F810, Standard Specification for Smooth Wall Polyethylene (PE) Pipe for Use in Drainage and Waste Disposal Absorption Fields.
F405, Standard Specification for Corrugated Polyethylene (PE) Tubing and Fittings.
F1970, Standard Specification for Special Engineered Fittings or Appurtenances for Use in Poly(Vinyl Chloride) (PVC) or Chlorinated Poly(Vinyl Chloride) (CPVC) Systems.

Note: ASTM Committee C13 on Concrete Pipe is responsible for the formulation and review of specifications, test methods and definitions for concrete pipe and develops and reviews practices and guides covering design, installation, testing, economic evaluation, and performance of concrete pipe systems. While the previous ceiling on fly ash content had been set at 25 percent, in 1999, ASTM Committee C13 removed all limitations on fly ash content in pipe.

TABLE C–12C.—ASTM CONCRETE PIPE SPECIFICATIONS

C14–99, Standard Specification for Concrete Sewer, Storm Drain, and Culvert Pipe.
C118–99, Standard Specification for Concrete Pipe for Irrigation or Drainage.
C412–99, Standard Specification for Concrete Drain Tile.
C444–95, Standard Specification for Perforated Concrete Pipe.
C505–99a, Standard Specification for Nonreinforced Concrete Irrigation Pipe With Rubber Gasket Joints.
C654–99, Standard Specification for Porous Concrete Pipe.
C76–99, Standard Specification for Reinforced Concrete Culvert, Storm Drain, and Sewer Pipe.
C506–99, Standard Specification for Reinforced Concrete Arch Culvert, Storm Drain, and Sewer Pipe.
C507–99, Standard Specification for Reinforced Concrete Elliptical Culvert, Storm Drain, and Sewer Pipe.
C478–97, Standard Specification for Precast Reinforced Concrete Manhole Sections.

TABLE C–12D.—ASTM AND AASHTO SPECIFICATIONS FOR STEEL PIPE

Material	Description	AASHTO specifications	ASTM specifications
Zinc Coated Sheets and Coils	Steel base metal* with 610 g/m^2 (2 oz/ft^2) zinc coating	M–218	A929M
Polymer Coated Sheets and Coils	Polymer coatings applied to sheets* and coils* 9.25 mm (0.010 in.) thickness each side.	M–246	A742M
Fiber Bonded Coated Coils	Steel base metal with zinc coating and fibers pressed into the zinc while molten to form fiber bonded coating.		A885
Aluminum Coated	Steel base metal* coated with 305 g/m^2 (1 oz/ft^2) of pure aluminum	M–274	A929M
Sewer and Drainage Pipe	Corrugated pipe fabricated from any of the above sheets or coils. Pipe is fabricated by corrugating continuous coils into helical "from with lockseam or welded seam, or by" rolling annular corrugated mill sheets and riveting seams		
	Galvanized corrugated steel pipe	M–36	A760M
	Polymeric pre-coated sewer and drainage pipe	M–245	A762M
	Fiber bonded impregnated corrugated steel pipe		A760M
	Aluminized corrugated steel pipe	M–36	A760M
	Structural plate pipe	M–167	A761M
Asphalt Coated Steel Sewer Pipe	Corrugated steel pipe of any of the types shown above with a 1.3 mm (0.0050 in.) high purity asphalt cover.	M–190	A849, A862
Invert Paved Steel Sewer Pipe	Corrugated steel pipe of any one for the types shown above with an asphalt pavement poured in the invert to cover the corrugation by 3.2 mm (⅛ in.).	M–190	A849, A862
Fully Lined Steel	With an internal asphalt lining centrifugally spun in place	M–190	A849, A862
	Corrugated steel pipe with a single thickness of smooth sheet fabricated with helical ribs projected outward.	M–36	A760M
	With an internal concrete lining in place	M–36	A760M
	Corrugated steel pipe with a smooth steel linter integrally formed with the corrugated shell.	M–36	A760M
Cold Applied Bituminous Coatings	Fibrated mastic or coat tar base coatings of various viscosities for field or shop coating of corrugated pipe or structural plate.	M–243	A849
Gaskets and Sealants	Standard O-ring gasket		D1056
	Gasket strips, butyl or neoprene		C361

NOTES: *Yield point 0230 Mpa (33 ksi) min.; tensile strength—310 Mpa (45 ksi) min.; Elongation (50 mm/2 in.)—20% min.
AASHTO pipe specifications restrict the use of recycled plastic through the reference to "rework" material. Specifications referenced by those who commented in 1994 are listed in Table C–12e. AASHTO's specifications are updated annually.

TABLE C–12E.—AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS PIPE SPECIFICATIONS (1994)

M252–93, Corrugated Polyethylene Drainage Tubing.
M294–93, Corrugated Polyethylene Pipe.
M278, Class PS 46 Polyvinyl Chloride (PVC) Pipe.
Section 18, Standard Specifications for Highway Bridges.

Section C–14. Roofing Materials Containing Recovered Steel, Aluminum, Fiber, Rubber, Plastic or Plastic Composites, or Cement

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–14, procuring agencies establish minimum content standards for use in purchasing or procuring roofing materials or services. EPA's research indicates that wood shakes and shingles as well as asphalt/plastic composite roofing materials can be made from recovered materials, but we were unable to identify recycled-content percentages in these products. In the case of asphalt/plastic composite roofing materials, EPA found that the plastic was the recovered material in the items, not the asphalt.

TABLE C–14.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR ROOFING MATERIALS CONTAINING RECOVERED STEEL, ALUMINUM, FIBER, RUBBER, PLASTIC OR PLASTIC COMPOSITES, OR CEMENT

Material	Postconsumer content (%)	Total recovered materials content (%)
Steel	16	25–30
	67	100
Aluminum	20–95	20–95
Fiber (Felt) or Fiber Composite	50–100	50–100
Rubber	12–100	100
Plastic or Plastic/Rubber Composite	100	100
Wood/Plastic Composite	.....	100
Cement	Refer to cement and concrete recommendations in C–3 of the RMAN.	

NOTE: The recommended recovered materials content levels for steel in this table reflect the fact that the designated item can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered steel, of which, 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which, 67% is postconsumer steel.

Specifications: EPA recommends that procuring agencies refer to the 186 standards for roofing products maintained by ASTM's Committee D08 on Roofing, Waterproofing, and Bituminous Materials. The specifications, however, do not discuss use of recovered materials, nor do they preclude the use of recovered materials.

Part G. Nonpaper Office Products

Section G–9. Office Furniture Containing Recovered Steel, Aluminum, Wood, Agricultural Fiber, and Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–9, procuring agencies establish minimum content standards for use in purchasing office furniture with recovered materials, including remanufactured or refurbished office furniture.

TABLE G–9.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR OFFICE FURNITURE

Product	Material	Postconsumer content (%)	Total recovered materials (%)
Furniture structure	Steel	16	25–30
Furniture structure	Aluminum	.....	75–100
Particleboard/Fiberboard component	Wood or wood composite	Greater than 0	80–100
	Agricultural fiber	.....	100
Fabric	PET	100	100
Plastic furniture component	HDPE	70–75	95
Remanufactured or Refurbished Furniture.	Various	25–75	25–75

Notes: The recommended recovered materials content levels for steel in this table reflect the fact that the designated item is generally made from steel manufactured in a Basic Oxygen Furnace (BOF). Steel from the BOF process contains 25%–30% total recovered steel, of which, 16% is postconsumer steel.

Particleboard and fiberboard used in the wood components of office furniture may also contain other recovered cellulosic materials, including, but not limited to, paper, wheat straw, and bagasse. The percentages of these materials contained in the product would also count toward the recovered materials content level of the item. In addition, while EPA has no evidence or indication that wood treated with chromated copper arsenate (CCA) is currently used in office furniture, EPA is not recommending the use of CCA-treated wood as a recovered material in office furniture. The arsenic in CCA is a known human carcinogen and EPA is currently conducting a thorough and comprehensive risk assessment of CCA as a part of the pesticide reregistration process for CCA. In addition, EPA is conducting a risk assessment for children who contact CCA-treated wood playsets and decks.

Specifications: EPA did not identify any standards or specifications that would preclude government agencies from purchasing office furniture with recovered materials content or remanufactured or refurbished office

furniture. GSA requires that remanufactured furniture meet the same Underwriters Laboratories, ASTM, and Business and Institutional Furniture Manufacturer's Association standards and fire codes (Boston and California) as new furniture.

Part H. Miscellaneous Products

Section H–8. Bike Racks Containing Recovered Steel or Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–8, procuring agencies establish minimum content standards for use in purchasing bike racks.

TABLE H–8.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BIKE RACKS

Material	Postconsumer content (%)	Total recovered materials content (%)
Steel	16	25–30
HDPE	100	100

Notes: The recommended recovered materials content levels for steel in this table reflect the fact that the designated item is generally made from steel manufactured in a Basic Oxygen Furnace (BOF). Steel from the BOF process contains 25%–30% total recovered steel, of which, 16% is postconsumer steel.

Specifications: EPA did not identify any industry standards or specifications that would preclude the use of recovered materials in bike racks.

Section H–9. Blasting Grit Containing Recovered Steel, Coal and Metal Slag, Bottom Ash, Glass, Plastic, Fused Alumina Oxide, and Walnut Shells

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–9, procuring agencies establish minimum content standards for use in purchasing blasting grit containing recovered materials.

TABLE H–9.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BLASTING GRIT

Material	Postconsumer content (%)	Total recovered materials content (%)
Steel	16–67	25–100
Coal Slag	.....	100
Copper and Nickel Slag	.....	100
Bottom Ash	.....	100
Glass	100	100
Glass/Plastic	20	100
Fused Alumina Oxide	100	100
Walnut Shells	.....	100

Note: The recommended recovered materials content levels for steel in this table reflect the fact that the designated item may contain steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF), or a combination of both. Steel from the BOF process contains 25%–30% total recovered steel, of which 16% is postconsumer. Steel from the EAF process contains 100% total recovered steel, of which 67% is postconsumer. According to industry sources, blasting grit containing a combination of BOF and EAF steel would contain 25%–85% total recovered steel, of which 16%–67% would be postconsumer. Since there is no way of knowing which type of steel was used in the manufacture of the item, the postconsumer and total recovered material content ranges in this table encompass the whole range of possibilities, *i.e.*, the use of EAF steel only, BOF steel only, or a combination of the two.

Specifications: EPA did not find any specifications that would preclude the use of recovered materials in blasting grit. EPA recommends that procuring agencies exercise OSHA or other required standard safety practices when using blasting grit, particularly when using blasting grit containing slag materials.

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Part VI

Department of the Interior

Minerals Management Service

30 CFR Part 203

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions; Final Rule and Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AD01

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule—technical amendments.

SUMMARY: The effective date of the final rule originally published January 26, 2004 (69 FR 3492) entitled "Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions" ("January final rule"), with an effective date of March 1, 2004, is changed to May 3, 2004, to ensure compliance with the 60-day review period for final rules required by applicable statute. The January final rule will become effective May 3, 2004. This final rule also promulgates related amendments to dates prescribed in the January final rule as originally published that follow from the change in the effective date.

DATES: The effective date of the rule published on January 26, 2004 (69 FR 3492) is changed from March 1 to May 3, 2004. The changes published in this rule are effective on April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, Minerals Management Service, at (703) 787–1536. E-mail: *Marshall.Rose@mms.gov*. Address: Minerals Management Service, MS 4050, 381 Elden Street, Herndon, Virginia 20170.

SUPPLEMENTARY INFORMATION: The January final rule provided for (1) temporary incentives in the form of royalty suspension volumes for producing gas from certain deep wells (at least 15,000 feet true vertical depth below the datum at mean sea level (TVD SS)); (2) a royalty suspension supplement for drilling certain unsuccessful deep wells; and (3) price thresholds that may result in discontinuation of the royalty relief. The effective date of the January final rule as originally published was March 1, 2004.

However, 5 U.S.C. 801(a)(1)(A) provides that before a rule can take effect, the Federal agency promulgating the rule must submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, and the proposed effective date of the rule. Section 801(a)(3) then provides:

> (3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—
>
> (A) The later of the date occurring 60 days after the date on which—
>
> (i) The Congress receives the report submitted under paragraph (1); or
>
> (ii) The rule is published in the **Federal Register**, if so published.

The January final rule is a major rule under 5 U.S.C. 804(2) because it has an annual effect on the economy of $100 million or more. In the case of the January final rule, the Congress did not receive the rule until March 4, 2004. Therefore, the January final rule cannot become effective before May 3, 2004. As a consequence, gas produced from qualifying wells between March 1 and May 2, 2004, that would have been subject to a royalty suspension volume under the January final rule as published will not be subject to the royalty suspension provisions because the January final rule cannot take effect before May 3, 2004. This change does not require public comment under 5 U.S.C. 552(b)(3)(B) and is published as a final rule—technical amendments because the applicable statute compels changing the effective date to a date that complies with its terms.

MMS recognizes that this is contrary to expectations of lessees who had based operational and investment decisions on the original effective date published in January 2004. The resulting inequity is addressed in a simultaneous notice published in the **Federal Register** today.

The change in the effective date from March 1 to May 3, 2004, necessitates corresponding changes to various sections of the January final rule that refer to March 1, 2004, and other dates that are either 3 months after that date or 5 years after that date. Each reference to March 1, 2004, in the January final rule is changed to May 3, 2004. Each reference to June 1, 2004, in the January final rule is changed to August 3, 2004. Each reference to March 1, 2009, in the January final rule is changed to May 3, 2009. These changes also do not require public comment under 5 U.S.C. 552(b)(3)(B) and are promulgated here as a final rule—technical amendments because they are a necessary consequence of the change in the effective date compelled by statute.

Under 5 U.S.C. 552(b)(3)(B) and 5 U.S.C. 552(d)(3), MMS has determined for good cause that notice and public comment before making these technical amendments final is impracticable, unnecessary, or contrary to the public interest, and that good cause exists for making this rule immediately effective. As explained above, this final rule—technical amendments corrects MMS's administrative error in failing to comply with 5 U.S.C. 801(a)(3).

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

According to the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, jobs, the environment, or other units of government. As of mid-April, 2004, MMS has been notified of six qualified deep wells that are on production. They have an average well flow rate of 10 MMcf per day. MMS is aware of 16 others that are being drilled and could conceivably qualify and come onto production before May 3, 2004. Because of the high risk and startup time involved, we assume that only 3 of the 16 pending deep wells qualify and produce on average for one of the months covered by this rule. Thus, we estimate that about 6.5 Bcf might be produced by qualified wells between March and June, 2004 (with a somewhat lesser volume produced between March 1 and May 2, 2004). The associated royalty liability on the part of the lessees would total between $5 million and $6 million (with a somewhat lesser amount for the period between March 1 and May 2, 2004), assuming a gas price of $5/Mcf.

b. This rule will not create inconsistencies with other agencies' actions because there are no changes in requirements from the existing rule.

c. This rule is an administrative change that will not affect entitlements, grants, user fees, loan programs, or their recipients. This rule has no effect on these programs or rights of the programs' recipients.

d. This rule will not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The rule corrects an administrative error.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Leasing on the United States OCS is limited to residents of the United States or companies incorporated in the United States. This rule does not change that requirement, so it does not change the ability of United States firms to compete in any way.

Paperwork Reduction Act (PRA)

The revisions do not contain any information collection requirements subject to the PRA. We will not submit a form OMB 83–I to OMB for review and approval under section 3507(d) of the PRA.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State Governments. This rule does not impose costs on States or localities. States and local governments play no part in the administration of the deep gas royalty relief program.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant takings implications. A Takings Implication Assessment is not required because the rule would not take away or restrict a bidders right to acquire OCS leases.

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

This rule is not a significant rule and is not subject to review by OMB under Executive Order 12866. This clarification rule does not have a significant effect on energy supply, distribution, or use.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments. A statement containing additional UMRA (2 U.S.C. 1531 *et seq.*) information is not required.

Civil Justice Reform (Executive Order 12988)

According to 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.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Government-to-Government Relationship With Tribes

According to the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, MMS has determined that there are no effects from this action on Federally recognized Indian tribes.

List of Subjects for 30 CFR Part 203

Continental shelf, Government contracts, Mineral Royalties, Oil and gas exploration, Public lands-mineral resources, Reporting requirements, Royalty suspension.

Dated: April 26, 2004.

Patricia E. Morrison,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons explained in the preamble, MMS amends 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

■ 1. The authority citation for Part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

■ 2. In § 203.0, the introductory text and paragraph (1) of the definition of "certified unsuccessful well" and the definition of "qualified well" are revised to read as follows:

§ 203.0 What definitions apply to this part?

* * * * *

Certified unsuccessful well means an original well, or a sidetrack with a sidetrack measured depth of at least 10,000 feet, on your lease that:

(1) You begin drilling on or after March 26, 2003, and before May 3, 2009, and before your lease produces gas or oil from a deep well with a perforated interval the top of which is at least 18,000 feet true vertical depth below the datum at mean sea level (TVD SS);

* * * * *

Qualified well means a deep well:

(1) For which drilling begins on or after March 26, 2003;

(2) That produces natural gas (other than test production), including gas associated with oil production, before May 3, 2009; and

(3) For which you have met the requirements prescribed in § 203.43.

* * * * *

■ 3. In § 203.41, the first two sentences of paragraphs (b) and the first two sentences of paragraph (d) are revised to read as follows:

§ 203.41 If I have a qualified well, what royalty relief will my lease earn?

* * * * *

(b) We will suspend royalties on gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR–A) for your lease under § 216.53, as and to the extent prescribed in § 203.42. All gas production from qualified wells reported on the OGOR–A, including production that is not subject to royalty (except for production to which a royalty suspension supplement under §§ 203.44 and 203.45 applies), counts toward the lease royalty suspension volume.

* * * * *

(d) We will suspend royalties on gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR–A) for your lease under § 216.53, as and to the

extent prescribed in § 203.42. All gas production from qualified wells reported on the OGOR–A, including production that is not subject to royalty (except for production to which a royalty suspension supplement under §§ 203.44 and 203.45 applies), counts toward the lease royalty suspension volume.

* * * * *

■ 4. In § 203.42, paragraph (a)(1) and the introductory text of paragraph (b) are revised to read as follows:

§ 203.42 To which production do I apply the royalty suspension volume earned from qualified wells on my lease?

* * * * *

(a)(1) Occurring on and after the later of May 3, 2004, or the date that the first qualified well that earns your lease the royalty suspension volume begins production (other than test production);

* * * * *

(b) This paragraph applies to any lease all or part of which is within an MMS-approved unit. If your lease has a qualified well, a share of the production from all the qualified wells in the unit participating area will be allocated to your lease each month according to the participating area percentages. Subject to the requirements of §§ 203.40, 203.41, 203.43, 203.44, and 203.47, you must apply the royalty suspension volume to the earliest gas production occurring on and after the later of May 3, 2004, or the date that the first qualified well that earns your lease the royalty suspension volume begins production (other than test production):

* * * * *

■ 5. In § 203.43, paragraph (d) and the introductory text of paragraph (e) are revised to read as follows:

§ 203.43 What administrative steps must I take to use the royalty suspension volume?

* * * * *

(d) If you produced from a qualified well before May 3, 2004, you must provide the information in paragraph (b) of this section no later than August 3, 2004.

(e) If you cannot produce from a well that otherwise meets the criteria for a qualified well before May 3, 2009, the MMS Regional Supervisor for Production and Development may extend the deadline for beginning production for up to 1 year, based on the circumstances of the particular well involved, provided you demonstrate that:

* * * * *

■ 6. In § 203.44, the first two sentences of paragraph (b) and the introductory text of paragraph (e) are revised to read as follows:

§ 203.44 If I drill a certified unsuccessful well, what royalty relief will my lease earn?

* * * * *

(b) We will suspend royalties on oil and gas volumes produced on or after May 3, 2004, reported on the Oil and Gas Operations Report, Part A (OGOR–A) for your lease under § 216.53, as and to the extent prescribed in § 203.45. All oil and gas production reported on the OGOR–A, including production that is not subject to royalty (except for production to which a royalty suspension volume under §§ 203.41 and 203.42 applies), counts toward the lease royalty suspension supplement.

* * * * *

(e) If the same wellbore that earns a royalty suspension supplement as a certified unsuccessful well later produces from a perforated interval the top of which is 15,000 feet TVD SS or deeper before May 3, 2009, it will become a qualified well subject to the following conditions:

* * * * *

■ 7. In § 203.46, paragraph (c) is revised to read as follows:

§ 203.46 What administrative steps do I take to obtain and use the royalty suspension supplement?

* * * * *

(c) If you commenced drilling a well that otherwise meets the criteria for a certified unsuccessful well on or after March 26, 2003, and finished it before May 3, 2004, provide the information in paragraph (b) of this section no later than August 3, 2004.

* * * * *

[FR Doc. 04–9862 Filed 4–29–04; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Relief or Reduction in Royalty Under Certain Federal Oil and Gas Leases on the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (DOI), under authority granted in the Outer Continental Shelf Lands Act, is eliminating the royalty set forth in certain Federal offshore oil and gas leases on gas produced from certain deep wells on those leases between March 1 and May 2, 2004.

DATES: *Effective Date:* April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, Minerals Management Service, at (703) 787–1536. e-mail: *Marshall.Rose@mms.gov.* Address: Minerals Management Service, MS 4050, 381 Elden Street, Herndon, Virginia 20170.

SUPPLEMENTARY INFORMATION: MMS published a final rule entitled "Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Relief or Reduction in Royalty Rates—Deep Gas Provisions" in the **Federal Register** on January 26, 2004 (69 FR 3492) ("January final rule"). That rule provided for (1) temporary incentives in the form of royalty suspension volumes for producing gas from certain deep wells (at least 15,000 feet true vertical depth below the datum at mean sea level (TVD SS)); (2) a royalty suspension supplement for drilling certain unsuccessful deep wells; and (3) price thresholds that may result in discontinuation of the royalty relief. The effective date for the January final rule as originally published was March 1, 2004.

However, 5 U.S.C. 801(a)(1)(A) provides that before a rule can take effect, the Federal agency promulgating the rule must submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, and the proposed effective date of the rule. Section 801(a)(3) then provides:

> (3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—
>
> (A) The later of the date occurring 60 days after the date on which—
>
> (i) The Congress receives the report submitted under paragraph (1); or
>
> (ii) The rule is published in the **Federal Register**, if so published.

The January final rule is a major rule under 5 U.S.C. 801–808 because it has an annual effect on the economy of $100 million or more. In the case of the January final rule, the Congress did not receive the rule until March 4, 2004. Therefore, the January final rule could not, by law, become effective before May 3, 2004. As a consequence, gas produced between March 1 and May 2, 2004, that would have been subject to a royalty suspension volume under the January final rule as published will not be subject to the royalty suspension provisions of the final rule because the rule cannot take effect before May 3, 2004. The DOI published a Final Rule—Technical Amendments today changing the effective date of the January final rule and making associated amendments to relevant dates in the regulatory text.

Publishing the final rule on January 26, 2004, with a March 1, 2004, effective date created the expectation that lessees could begin applying the royalty relief prescribed in the January final rule to production beginning March 1, 2004. In the course of meetings with offshore producers, MMS learned that several lessees, in making project startup and investment decisions, acted in reliance on the March 1, 2004, date and the incentives provided in the January final rule. The statutory delay in the effective date of the January final rule and the reliance by some lessees on the March 1, 2004, date have created an unexpected and substantial disadvantage to these lessees with respect to the calculations on which they based their project startup and investment decisions.

Section 8(a)(3)(B) of the OCS Lands Act (OCSLA), 43 U.S.C. 1337(a)(3)(B) (as added by section 302(2) of the Deep Water Royalty Relief Act of 1995, Pub. L. No. 104–58, 109 Stat. 563, 565), provides in relevant part:

> In the Western and Central Planning Areas of the Gulf of Mexico * * * the Secretary may, in order to—
>
> (i) Promote development or increased production on producing or non-producing leases; or
>
> (ii) Encourage production of marginal resources on producing or non-producing leases;
>
> Through primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). * * *

The Secretary of the Interior has delegated the authority to the MMS Director to exercise the royalty relief authority granted under the statute.

By this notice, the DOI eliminates the royalty on gas produced between March 1 and May 2, 2004, from wells drilled on or after March 26, 2003, with a perforated interval the top of which is at least 15,000 feet TVD SS. This notice corrects the problem created by the agency's oversight regarding the January final rule's effective date, and corrects the negative effects of the lessees' reliance on the incentives provided for in the January final rule to promote development and production. This notice is published under the authority provided in 43 U.S.C. 1337(a)(3)(B). The relief granted by this notice will fulfill both the lessees' and MMS's expectations regarding the amount of royalty relief to which lessees would be entitled and for what period of time under the January final rule, and it corrects the inequity to the lessees that otherwise would result from MMS's error.

This relief is very limited. It applies to only a very few leases and the unusual circumstances originating with MMS's error that delayed the beginning of the royalty relief for these deep wells provided in the January final rule.

This action protects the integrity of an MMS commitment to OCS operators who acted in good faith on a deep drilling incentive. It avoids penalizing, because of an administrative error, those operators who acted expeditiously on the incentive. Such a penalty would be inconsistent with an incentive whose principal purpose is to accelerate deep drilling.

Because this royalty relief is granted outside the January final rule, the volume of production on which a lessee will not pay royalties as a result of this notice does not count against the royalty suspension volume for the lease under the January final rule (*see* 30 CFR 203.41). MMS acknowledges that the result of this notice is to grant lessees an additional 2 months of royalty relief above the level to which they were entitled in the January final rule, assuming that production levels prove to be high enough to equal or exceed the total royalty suspension volume provided for under the January final rule and this notice. However, MMS believes that this result is the most fair and equitable to the lessees in light of the purposes of the statutory grant of royalty relief authority and the fact that the problems are the fault of the government, not the lessees.

Dated: April 26, 2004.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 04–9861 Filed 4–29–04; 8:45 am]

BILLING CODE 4310–MR–P

Federal Register

Friday,
April 30, 2004

Part VII

The President

Executive Order 13335—Incentives for the Use of Health Information Technology and Establishing the Position of the National Health Information Technology Coordinator

Federal Register
Vol. 69, No. 84
Friday, April 30, 2004

Presidential Documents

Title 3—

The President

Executive Order 13335 of April 27, 2004

Incentives for the Use of Health Information Technology and Establishing the Position of the National Health Information Technology Coordinator

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to provide leadership for the development and nationwide implementation of an interoperable health information technology infrastructure to improve the quality and efficiency of health care, it is hereby ordered as follows:

Section 1. *Establishment.* (a) The Secretary of Health and Human Services (Secretary) shall establish within the Office of the Secretary the position of National Health Information Technology Coordinator.

(b) The National Health Information Technology Coordinator (National Coordinator), appointed by the Secretary in consultation with the President or his designee, will report directly to the Secretary.

(c) The Secretary shall provide the National Coordinator with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Secretary shall ensure that the National Coordinator begins operations within 90 days of the date of this order.

Sec. 2. *Policy.* In fulfilling its responsibilities, the work of the National Coordinator shall be consistent with a vision of developing a nationwide interoperable health information technology infrastructure that:

(a) Ensures that appropriate information to guide medical decisions is available at the time and place of care;

(b) Improves health care quality, reduces medical errors, and advances the delivery of appropriate, evidence-based medical care;

(c) Reduces health care costs resulting from inefficiency, medical errors, inappropriate care, and incomplete information;

(d) Promotes a more effective marketplace, greater competition, and increased choice through the wider availability of accurate information on health care costs, quality, and outcomes;

(e) Improves the coordination of care and information among hospitals, laboratories, physician offices, and other ambulatory care providers through an effective infrastructure for the secure and authorized exchange of health care information; and

(f) Ensures that patients' individually identifiable health information is secure and protected.

Sec. 3. *Responsibilities of the National Health Information Technology Coordinator.* (a) The National Coordinator shall, to the extent permitted by law, develop, maintain, and direct the implementation of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures. The National Coordinator shall report to the Secretary regarding progress on the development and implementation of the strategic plan within 90 days after the National Coordinator begins operations and periodically thereafter. The plan shall:

(i) Advance the development, adoption, and implementation of health care information technology standards nationally through collaboration among public and private interests, and consistent with current efforts to set health information technology standards for use by the Federal Government;

(ii) Ensure that key technical, scientific, economic, and other issues affecting the public and private adoption of health information technology are addressed;

(iii) Evaluate evidence on the benefits and costs of interoperable health information technology and assess to whom these benefits and costs accrue;

(iv) Address privacy and security issues related to interoperable health information technology and recommend methods to ensure appropriate authorization, authentication, and encryption of data for transmission over the Internet;

(v) Not assume or rely upon additional Federal resources or spending to accomplish adoption of interoperable health information technology; and

(vi) Include measurable outcome goals.

(b) The National Coordinator shall:

(i) Serve as the Secretary's principal advisor on the development, application, and use of health information technology, and direct the Department of Health and Human Service's health information technology programs;

(ii) Ensure that health information technology policy and programs of the Department of Health and Human Services (HHS) are coordinated with those of relevant executive branch agencies (including Federal commissions) with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes activities primarily within the areas of its greatest expertise and technical capability;

(iii) To the extent permitted by law, coordinate outreach and consultation by the relevant executive branch agencies (including Federal commissions) with public and private parties of interest, including consumers, providers, payers, and administrators; and

(iv) At the request of the Office of Management and Budget, provide comments and advice regarding specific Federal health information technology programs.

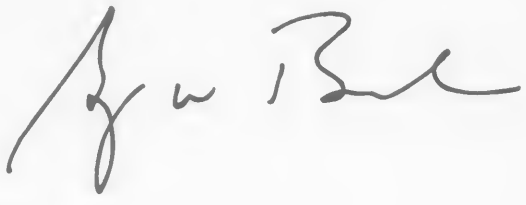
Sec. 4. *Reports.* To facilitate the development of interoperable health information technologies, the Secretary of Health and Human Services shall report to the President within 90 days of this order on options to provide incentives in HHS programs that will promote the adoption of interoperable health information technology. In addition, the following reports shall be submitted to the President through the Secretary:

(a) The Director of the Office of Personnel Management shall report within 90 days of this order on options to provide incentives in the Federal Employee Health Benefit Program that will promote the adoption of interoperable health information technology; and

(b) Within 90 days, the Secretary of Veterans Affairs and the Secretary of Defense shall jointly report on the approaches the Departments could take to work more actively with the private sector to make their health information systems available as an affordable option for providers in rural and medically underserved communities.

Sec. 5. *Administration and Judicial Review.* (a) The actions directed by this order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its agencies, its entities or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
April 27, 2004.

[FR Doc. 04–10024
Filed 04–29–04; 8:45 am]
Billing code 3195–01–P

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  - Multispecies fishery; published 4-27-04
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  - Seafood dealer reporting requirements; published 3-23-04

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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S. 2057/P.L. 108–220

To require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel. (Apr. 22, 2004; 118 Stat. 618)

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