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WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
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(3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Executive Order 13181 of December 20, 2000

To Protect the Privacy of Protected Health Information in Oversight Investigations

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. *Policy.*

It shall be the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual that is discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations of a non-health oversight matter, except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. Protecting the privacy of patients' protected health information promotes trust in the health care system. It improves the quality of health care by fostering an environment in which patients can feel more comfortable in providing health care professionals with accurate and detailed information about their personal health. In order to provide greater protections to patients' privacy, the Department of Health and Human Services is issuing final regulations concerning the confidentiality of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA applies only to ''covered entities,'' such as health care plans, providers, and clearinghouses. HIPAA regulations therefore do not apply to other organizations and individuals that gain access to protected health information, including Federal officials who gain access to health records during health oversight activities.

Under the new HIPAA regulations, health oversight investigators will appropriately have ready access to medical records for oversight purposes. Health oversight investigators generally do not seek access to the medical records of a particular patient, but instead review large numbers of records to determine whether a health care provider or organization is violating the law, such as through fraud against the Medicare system. Access to many health records is often necessary in order to gain enough evidence to detect and bring enforcement actions against fraud in the health care system. Stricter rules apply under the HIPAA regulations, however, when law enforcement officials seek protected health information in order to investigate criminal activity outside of the health oversight realm.

In the course of their efforts to protect the health care system, health oversight investigators may also uncover evidence of wrongdoing unrelated to the health care system, such as evidence of criminal conduct by an individual who has sought health care. For records containing that evidence, the issue thus arises whether the information should be available for law enforcement purposes under the less restrictive oversight rules or the more restrictive rules that apply to non-oversight criminal investigations.

A similar issue has arisen in other circumstances. Under 18 U.S.C. 3486, an individual's health records obtained for health oversight purposes pursuant to an administrative subpoena may not be used against that individual patient in an unrelated investigation by law enforcement unless a judicial officer finds good cause. Under that statute, a judicial officer determines

whether there is good cause by weighing the public interest and the need for disclosure against the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. It is appropriate to extend limitations on the use of health information to all situations in which the government obtains medical records for a health oversight purpose. In recognition of the increasing importance of protecting health information as shown in the medical privacy rule, a higher standard than exists in 18 U.S.C. 3486 is necessary. It is, therefore, the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual, discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations, against that indi vidual except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

Sec. 2. *Definitions.*

(a) ''Health oversight activities'' shall include the oversight activities enumerated in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended.

(b) ''Protected health information'' shall have the meaning ascribed to it in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended.

(c) ''Injury to the patient'' includes injury to the privacy interests of the patient.

Sec. 3. *Implementation.*

(a) Protected health information concerning an individual patient discovered during the course of health oversight activities shall not be used against that individual patient in an unrelated civil, administrative, or criminal investigation of a non-health oversight matter unless the Deputy Attorney General of the U.S Department of Justice, or insofar as the protected health information involves members of the Armed Forces, the General Counsel of the U.S. Department of Defense, has authorized such use.

(b) In assessing whether protected health information should be used under subparagraph (a) of this section, the Deputy Attorney General shall permit such use upon concluding that the balance of relevant factors weighs clearly in favor of its use. That is, the Deputy Attorney General shall permit disclosure if the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

(c) Upon the decision to use protected health information under subparagraph (a) of this section, the Deputy Attorney General, in determining the extent to which this information should be used, shall impose appropriate safeguards against unauthorized use.

(d) On an annual basis, the Department of Justice, in consul tation with the Department of Health and Human Services, shall provide to the President of the United States a report that includes the following information:

(i) the number of requests made to the Deputy Attorney General for authorization to use protected health information discovered during health oversight activities in a non-health oversight, unrelated investigation;

(ii) the number of requests that were granted as applied for, granted as modified, or denied;

(iii) the agencies that made the applications, and the number of requests made by each agency; and

(iv) the uses for which the protected health information was authorized.

(e) The General Counsel of the U.S. Department of Defense will comply with the requirements of subparagraphs (b), (c), and (d), above. The General Counsel also will prepare a report, consistent with the requirements of subparagraphs (d)(i) through (d)(iv), above, and will forward it to the Department of Justice where it will be incorporated into the Department's annual report to the President.

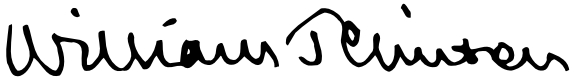
Sec. 4. *Exceptions.*

(a) Nothing in this Executive Order shall place a restriction on the derivative use of protected health information that was obtained by a law enforcement agency in a non-health oversight investigation.

(b) Nothing in this Executive Order shall be interpreted to place a restriction on a duty imposed by statute.

(c) Nothing in this Executive Order shall place any additional limitation on the derivative use of health information obtained by the Attorney General pursuant to the provisions of 18 U.S.C. 3486.

(d) This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the officers and employees, or any other person.



THE WHITE HOUSE,
December 20, 2000.

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Rules and Regulations

Federal Register
Vol. 65, No. 248
Tuesday, December 26, 2000

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

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

OFFICE OF SPECIAL COUNSEL

5 CFR Parts 1800, 1820, 1830 and 1850

Change of Official Mailing Address

AGENCY: Office of Special Counsel.

ACTION: Final rule; Technical amendments.

SUMMARY: The Office of Special Counsel (OSC) is updating the suite number to be used when sending correspondence to the agency headquarters office in Washington, DC. OSC's mailing address will be: 1730 M Street, NW, Suite 201, Washington, DC 20036–4505. Technical amendments are needed to update the mailing address shown in certain sections of OSC regulations, conforming those sections to others involved in recent revisions.

DATES: This rule is effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Attorney, Planning and Advice Division, by telephone at (202) 653–8971, or by fax at (202) 653–5161.

SUPPLEMENTARY INFORMATION: This action is directed to the public in general, and to current and former Federal employees and applicants for Federal employment in particular, who may want to contact OSC by mail, including to: (a) Allege a prohibited personnel practice or other violation of civil service law, rule, or regulation by a Federal agency; (b) submit a whistleblower disclosure; or (c) request an advisory opinion on political activity under the Hatch Act.

OSC recently moved the agency mailroom to Suite 201 at its headquarters office. OSC also recently revised its regulations at 5 CFR part 1800 for other purposes. *See* 65 FR 64881 (Oct. 31, 2000). As part of that regulatory revision, OSC updated the official mailing address shown in certain sections of part 1800 (dealing with the filing of complaints and whistleblower disclosures) to change the suite number shown, from Suite 300 to Suite 201. OSC is now publishing technical amendments to other sections of agency regulations at 5 CFR Chapter VIII, updating the official mailing address shown in those sections. (Suite 300, formerly used in the mailing address, will continue to appear in OSC's official agency address, and to serve as the reception point for agency visitors.)

This action is taken under the Special Counsel's authority, at 5 U.S.C. 1212(e), to publish regulations in the **Federal Register**. Under the Administrative Procedure Act, at 5 U.S.C. 553(b)(3)(B), statutory procedures for agency rulemaking do not apply ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' OSC finds that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest, on the grounds that: (1) These amendments are technical and non-substantive; and (2) the public benefits from early correction of an incorrect address, and further delay is unnecessary and contrary to the public interest.

OSC will submit this final rule to Congress and the General Accounting Office pursuant to the Congressional Review Act. The rule is effective upon publication, as permitted by 5 U.S.C. 808. Pursuant to 5 U.S.C. 808(2), OSC finds that good cause exists for this effective date, based on the reasons cited in the preceding paragraph for the § 553(b)(3)(B) determination.

List of Subjects in 5 CFR Part 1800, 1820, 1830 and 1850

Administrative practice and procedure, Civil rights, Freedom of information, Government employees, Individuals with disabilities, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Office of Special Counsel is amending title 5, chapter VIII as follows:

CHAPTER VIII—OFFICE OF SPECIAL COUNSEL

PART 1800—[AMENDED]

1. Authority citation for Part 1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

PART 1820—[AMENDED]

2. The authority citation for Part 1820 continues to read as follows:

Authority: 5 U.S.C. 552(a)(3), 552(a)(4), 1212(g), 1219.

PART 1830—[AMENDED]

3. The authority citation for Part 1830 continues to read as follows:

Authority: 5 U.S.C. 552a(f), 1212(g).

PART 1850—[AMENDED]

4. The authority citation for Part 1850 continues to read as follows:

Authority: 29 U.S.C. 794.

§§ 1800.3, 1820.1, 1820.2, 1820.8, 1830.1, 1830.3, and 1850.17 [Amended]

5. In §§ 1800.3, 1820.1(b), 1820.2, 1820.8, 1830.1, 1830.3, and 1850.170(c), revise the reference ''Suite 300'' to read ''Suite 201''.

Dated: December 19, 2000.

Elaine Kaplan,

Special Counsel.

[FR Doc. 00–32834 Filed 12–22–00; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AF78

Farm Loan Programs Account Servicing Policies—Servicing Shared Appreciation Agreements

AGENCY: Farm Service Agency.

ACTION: Correction to final rule.

SUMMARY: On August 18, 2000, (65 FR 50401) the Agency published a final

rule, which reduced the term of future Shared Appreciation Agreements (SAA), lowered the interest rate on amortized SAA recapture, and deducted the value of certain capital improvements from the shared appreciation calculation. This document contains a correction to that rule.

DATES: Effective December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, telephone (202) 690–4014; electronic mail: mike_cumpton@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: The Farm Service Agency published a document amending part 1951 in the **Federal Register** on August 18, 2000, (65 FR 50401). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 00–20679, the Agency is correcting § 1951.914(c)(1)(A) to clarify that the increase in square footage that is being considered is ''living area'' square footage.

In rule FR Doc. 00–20679 published on August 18, 2000, make the following correction:

PART 1951—[CORRECTED]

§ 1951.914 [Corrected]

1. On page 50404, in the third column, in § 1951.914(c)(1)(iii)(A), the second sentence is removed and two new sentences are added in its place to read as follows:

§ 1951.914 Servicing shared appreciation agreements.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) * * * If the new residence is affixed to the real estate security as a replacement for a home which existed on the security property when the Shared Appreciation Agreement was originally executed, or the living area square footage of the original dwelling was expanded, only the value added to the real property by the new or expanded portion of the original dwelling (if it added value) will be deducted from the current market value. Living area square footage will not include square footage of patios, porches, garages, and similar additions.

* * * * *

Signed in Washington, DC, on December 18, 2000.

August Schumacher, Jr.

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 00–32712 Filed 12–22–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Chapter XVII

RIN 2550–AA14

Reorganization of the Office of Federal Housing Enterprise Oversight Regulations

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is reorganizing and renumbering its regulations. The effect is to achieve a more logical and efficient presentation of current regulations and to provide a framework for new regulations. In promulgating this reorganizational regulation, OFHEO finds that notice and public comment are not necessary. Accordingly, this final regulation is effective upon publication in the **Federal Register**.

EFFECTIVE DATE: This regulation is effective December 26, 2000.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G. Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414–6924 (not a toll free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 27, 2000, the Office of Federal Housing Enterprise Oversight (OFHEO) published a notice of its intention to undertake a regulatory project to ensure the adoption and implementation of various written policies and procedures for the supervision of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. *See* 65 FR 46119 (July 27, 2000). This final regulation makes technical and organizational changes to the numbering of existing regulations so they will fit logically within a new framework of the regulatory project that will incorporate additional rulemaking. Section 553(b)(3)(A) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish regulations in final form and that a delayed effective date is unnecessary. 5 U.S.C. 553(d).

The final regulation adds three new subchapter headings, amends one subchapter heading, redesignates existing parts and conforms internal cross-references therein. The following derivation table shows the origin of the material that is contained in each of the newly designated subchapters and parts.

Subchapter A—OFHEO Organization and Functions

New part	Subject matter	Old part
1700	Organization and Functions.	1700
1702	Privacy Act of 1974	1720
1703	Release of Information.	1710
1704	Debt Collection	1730
1705	Equal Access to Justice Act Amendment.	1735

Subchapter B—[Reserved]

Subchapter C—Safety and Soundness

Part	Subject matter	Part
1750	Capital	1750

Subchapter D—Rules of Practice and Procedure

Part	Subject matter	Part
1780	Rules of Practice and Procedure.	1780

With the renumbering of OFHEO's regulations, the section reference and internal cross-references to old part and section numbers must also be changed. As such, each new part addresses amendatory cross-references in a table reflecting the new sections, the cross-sections to be deleted, and the new cross-sections to be added.

Regulatory Impact

This is a technical rule that reorganizes OFHEO's regulations without substantive change to the rule and will not impose any substantive regulatory requirements. It is not a significant regulatory action under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), or a ''rule'' under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, or the Small Business Regulatory Enforcement Act, 5 U.S.C. 804(3)(C). Consequently, no regulatory impact assessment is required, no regulatory flexibility analysis is required, and no report to Congress or GAO is required.

OFHEO has determined that there is good cause for issuing this rule without notice and public comment. Section 553(b)(3) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish regulations in final form. Additionally, OFHEO finds that there is

good cause for having this rule take effective immediately pursuant to 5 U.S.C. 553(d).

List of Subjects in 12 CFR Parts 1700 Through 1790

Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, OFHEO is amending 12 CFR chapter XVII as follows:

1. Revise the heading of subchapter A to read ''OFHEO Organization and Functions.''

2. Redesignate part 1720 as new part 1702.

PART 1702—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

3. The authority citation for new part 1702 continues to read as follows:

Authority: 5 U.S.C. 552a; 12 U.S.C. 4513(b).

4. Amend cross-references in new part 1702 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1702.1(a)	part 1720 (twice)	part 1702 (twice)
1702.2	part 1720	part 1702
1702.4(a)	§ 1720.3(b)(3)	§ 1702.3(b)(3)
1702.4(a)(2)	§ 1720.5	§ 1702.5
1702.4(b)(1)	§ 1720.3(b)(3)	§ 1702.3(b)(3)
1702.4(d)	§ 1720.9	§ 1702.9
1702.7(b)	§ 1720.6	§ 1702.6
1702.8(b)	§ 1720.12(b)	§ 1702.12(b)
1702.8(c)	§ 1720.9	§ 1702.9
1702.9(a)	§ 1720.3(b)(3)	§ 1702.3(b)(3)
1702.9(a)	§ 1720.7	§ 1702.7
1702.10(b)	§ 1720.12(b)	§ 1702.12(b)
1702.10(d)(2)	§ 1720.12(b)	§ 1702.12(b)
1702.11(a)(4)	§ 1720.2	§ 1702.2
1702.11(b)	§ 1720.6	§ 1702.6
1702.12(a)	§ 1720.11	§ 1702.11
1702.12(a)	§ 1720.11(a)(3)	§ 1702.11(a)(3)
1702.13(a)	§ 1720.12(a)	§ 1702.12(a)
1702.13(a)	§ 1720.6	§ 1702.6
1702.13(b)	§ 1720.12	§ 1702.12
1702.13(b)	§ 1720.11(a)(6)(v)	§ 1702.11(a)(6)(v)

5. Redesignate part 1710 as new part 1703 and revise the heading to read as follows:

PART 1703—RELEASE OF INFORMATION

6. The authority citation for new part 1703 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 4513, 4522, 4639; E.O. 12600; 3 CFR, 1987 Comp., p. 235.

7. Amend cross-references in new part 1703 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1703.1	§ 1710.2	§ 1710.2
1703.1	part 1710	part 1703
1703.12(a)(1)	§ 1710.9	§ 1703.9
1703.12(b)	§ 1710.11(b)	§ 1703.11(b)
1703.13(a)	§ 1710.17(a)	§ 1703.17(a)
1703.15(b)(2)	§ 1710.11(b)	§ 1703.11(b)
1703.15(b)(4)	§ 1710.16	§ 1703.16
1703.16(b)	§ 1710.13	§ 1703.13
1703.16(b)	§ 1710.17(b)	§ 1703.17(b)
1703.17(b)	§ 1710.16	§ 1703.16
1703.18(b)(1)	§ 1710.11(b)(4)	§ 1703.11(b)(4)
1703.18(c)	§ 1710.11(b)(4)	§ 1703.11(b)(4)
1703.18(d)(2)	§ 1710.11(b)(4)	§ 1703.11(b)(4)
1703.18(e)(1)	§ 1710.11(b)(4)	§ 1703.11(b)(4)
1703.21(b)	§ 1710.22(b)(1)(i)	§ 1703.22(b)(1)(i)
1703.21(b)	§ 1710.22(b)(1)(ii)	§ 1703.22(b)(1)(ii)
1703.22(a)	§ 1710.23	§ 1703.23
1703.23(a)	§ 1710.24	§ 1703.24
1703.23(b)	§ 1710.22	§ 1703.22
1703.23(e)	§ 1710.22	§ 1703.22
1703.23(g)	§ 1710.22	§ 1703.22
1703.24(a)	§ 1710.23	§ 1703.23
1703.24(c)(5)	§ 1710.16	§ 1703.16
1703.34(c)	§ 1710.33	§ 1703.33
1703.38(a)	§ 1710.22(b)(1)(i)	§ 1703.22(b)(1)(i)

New Section	Remove Cross-Reference	Add Cross-Reference
1703.40(b)	§ 1710.33	§ 1703.33
1703.40(b)	§ 1710.34	§ 1703.34
1703.40(b)	§ 1710.37	§ 1703.37

8. Redesignate part 1730 as new part 1704.

PART 1704—DEBT COLLECTION

9. The authority citation for new part 1704 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402(d); 31 U.S.C. 3701–3720A.

10. Amend cross-references in new part 1704 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1704.1(a)	part 1730	part 1704
1704.1(b)(1)	part 1730	part 1704
1704.1(b)(2)	part 1730	part 1704
1704.1(b)(3)	part 1730	part 1704
1704.1(b)(4)	part 1730 (twice)	part 1704 (twice)
1704.2	part 1730 (twice)	part 1704 (twice)
1704.2(c)	part 1730	part 1704
1704.3(a)	part 1730 (twice)	part 1704 (twice)
1704.21(b)(9)	§ 1730.23	§ 1704.23
1704.21(b)(12)(ii)	U.S.C. 3729–3731	U.S.C. 3729—3731
1704.23(a)(4)	§ 1730.21(b)	§ 1704.21(b)
1704.29(a)(1)(ii)	§ 1730.21	§ 1704.21
1704.29(a)(1)(iii)	§ 1730.23(b)	§ 1704.23(b)
1704.29(a)(1)(iv)	§ 1730.24(b)	§ 1704.24(b)
1704.29(a)(2)	§§ 1730.24—1730.26	§§ 1704.24—1704.26
1704.29(a)(2)(iii)	§ § 1730.24—1730.26	§§ 1704.24–1704.26
1704.32(a)	when—	when—
1704.41	§ 1730.42 (three times)	§ 1704.42 (three times)
1704.42	§ 1730.41	§ 1704.41
1704.51(c)	§ 1730.53	§ 1704.53

11. Redesignate part 1735 as new part 1705.

PART 1705–IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

12. The authority citation for new part 1705 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1).

13. Amend cross-references in new part 1705 as indicated in the table below. For each new designated section indicated in the left column, remove the cross-reference indicated in the middle column and, in its place, add the new cross-reference indicated in the right column:

New Section	Remove Cross-Reference	Add Cross-Reference
1705.3(a)	§ 1735.4(a)	§ 1705.4(a)
1705.3(b)(1)	§ 1735.5(b)	§ 1705.5(b)
1705.5(a)	§ 1735.6	§ 1705.6
1705.10(a)	§ 1735.4(a)	§ 1705.4(a)
1705.10(a)	§ 1735.4(b)	§ 1705.4(b)
1705.10(a)(3)	§ 1735.12	§ 1705.12
1705.10(b)	§ 1735.4(a)	§ 1705.4(a)
1705.10(c)	§ 1735.4(b)	§ 1705.4(b)
1705.11(a)	§ 1735.10(c)(4)(i)	§ 1705.10(c)(4)(i)
1705.21(a)	§ 1735.25	§ 1705.25
1705.22	§ 1735.25	§ 1705.25
1705.25	§ 1735.27	§ 1705.27
1705.26(a)	§ 1735.25	§ 1705.25
1705.26(b)	§ 1735.27	§ 1705.27
1705.26(d)	§ 1735.4(a)	§ 1705.4(a)
1705.26(e)	§ 1735.4(b)	§ 1705.4(b)
1705.27	§ 1735.26	§ 1705.26
1705.27	§ 1735.25	§ 1705.25

14. Add and reserve subchapter heading B after new part 1705 as follows:

Subchapter B—[Reserved]

15. Add subchapter heading C before part 1750 as follows:

Subchapter C—Safety and Soundness

16. Add subchapter heading D before part 1780 as follows:

Subchapter D—Rules of Practice and Procedure

Dated: December 19, 2000.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–32779 Filed 12–22–00; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–326–AD; Amendment 39–12046; AD 2000–25–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires repetitive inspections to detect fatigue cracking of the longeron splice fittings at stringer 11 on the left and right sides at body station 2598, and various follow-on actions. The actions specified by this AD are necessary to detect and correct fatigue cracking of the longeron splice fittings and subsequent damage to adjacent structure. Such damage could result in the inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

DATES: Effective January 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, 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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

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 747–400 series airplanes was published in the **Federal Register** on June 28, 2000 (65 FR 39828). That action proposed to require repetitive inspections to detect fatigue cracking of the longeron splice fittings at stringer 11 on the left and right sides at body station 2598, and various follow-on actions.

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.

Support for the Proposed Rule

One commenter supports the proposed rule.

Request to Reference New Service Bulletin

One commenter requests that the FAA revise the proposed rule to reference a new service bulletin, Boeing Alert Service Bulletin 747–53A2419, Revision 1, dated September 21, 2000. (The proposed rule referenced Boeing Alert Service Bulletin 747–53A2419, dated December 17, 1998, as the appropriate source of service information for certain proposed actions.) The commenter provides no justification for its request.

The FAA concurs with the commenter's request. Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 1 of the service bulletin, including Appendix A. Revision 1 clarifies certain instructions and revises the effectivity listing to show changes in airplane operators. (No additional airplanes are added to the effectivity listing of Revision 1.) Therefore, the FAA has revised the applicability statement and paragraphs (a), (b)(1), (b)(2), and (c) of this final rule to reference Revision 1 of the service bulletin as the appropriate source of service information for the actions required by those paragraphs. The FAA also has added a new Note 2 to this AD (and reordered subsequent notes accordingly) to state that accomplishment of the actions required by this AD in accordance with the original issue of the service bulletin is acceptable for compliance with this AD.

Request To Follow Service Bulletin Instructions

One commenter requests that the FAA revise the proposed AD to reflect the service bulletin instructions for removal and replacement of the longeron splice fittings. The commenter notes that the service bulletin allows for removal and replacement of only those splice fittings that are cracked, provided that repetitive inspections of the remaining, uncracked, fittings continue. The proposed AD would require removal and replacement of all four fittings on the affected side if a single fitting is found to be cracked.

The FAA does not concur with the commenter's request. As explained in the ''Differences Between Proposed Rule and Alert Service Bulletin'' section of the proposal, the FAA finds it appropriate to mandate replacement of all longeron splice fittings on the affected side of the airplane if one fitting is found to be cracked. As pointed out in that same section of the proposal, the service bulletin recommends replacement of all four fittings on one side of the airplane at the same time (see Flag Note 1 of Figure 1 of the service bulletin). No change to the final rule is necessary in this regard.

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 490 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours (1 hour per each side) per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $7,080, or $120 per airplane, per inspection cycle.

It will take approximately 12 work hours (6 hours per each side) per airplane to accomplish the required rework or replacement, at an average labor rate of $60 per work hour. Required parts will cost between $731 and $7,906 per airplane. Based on these figures, the cost impact of this rework or replacement on U.S. operators is estimated to be between $1,451 and $8,626 per airplane.

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:

2000–25–11 Boeing: Amendment 39–12046. Docket 99–NM–326–AD.

Applicability: Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2419, Revision 1, dated September 21, 2000; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the longeron splice fittings and subsequent damage to adjacent structure, which could result in the inability of the structure to carry horizontal stabilizer flight loads, and consequent reduced controllability of the horizontal stabilizer; accomplish the following:

Initial Detailed Visual Inspection

(a) Perform a detailed visual inspection to detect cracking of the longeron fittings at stringer 11, on the left and right sides at body station 2598, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2419, Revision 1, including Appendix A, dated September 21, 2000.

(1) Inspect prior to the accumulation of 17,000 total flight cycles or 63,000 total flight hours, whichever occurs first.

(2) Inspect within 24 months after the effective date of this AD.

Note 2: Inspections, rework, and replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2419, dated December 17, 1998, are considered acceptable for compliance with the applicable action specified in this amendment.

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

Note 4: For the purposes of this AD, a detailed visual 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.''

Rework/Replacement/Repetitive Inspections

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, accomplish the requirements of either paragraph (b)(1), (b)(2), or (b)(3) of this AD.

(1) Prior to further flight, rework all four longeron splice fittings on the left and right sides at body station 2598, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2419, Revision 1, including Appendix A, dated September 21, 2000. Repeat the inspection required by paragraph (a) of this AD one time at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD, and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(i) For airplanes on which the rework is accomplished prior to the accumulation of 7,000 total flight cycles and prior to the accumulation of 25,000 total flight hours: Inspect within 20,000 flight cycles or 72,000 flight hours after rework, whichever occurs first.

(ii) For airplanes on which the rework is accomplished at or after the accumulation of 7,000 total flight cycles, or 25,000 total flight hours: Inspect within 10,000 flight cycles or 36,000 flight hours after rework, whichever occurs first.

(2) Prior to further flight, replace all four longeron splice fittings on the left and right sides at body station 2598 with new fittings, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2419, Revision 1, including Appendix A, dated September 21, 2000. Repeat the inspection required by paragraph (a) of this AD one time within 20,000 flight cycles or 72,000 flight hours after the replacement, whichever occurs first; and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(3) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

Corrective Action/Repetitive Inspections

(c) If any cracking is detected during any inspection required by paragraph (a) or (b)(3) of this AD, prior to further flight: Replace all four longeron splice fittings on the affected side in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2419, Revision 1, including Appendix A, dated September 21, 2000. Repeat the inspection on the affected side as required by paragraph (a) of this AD one time within 20,000 flight cycles or 72,000 flight hours after the replacement,

whichever occurs first; and thereafter at intervals not to exceed 3,000 flight cycles or 18,000 flight hours, whichever occurs first.

(d) If any cracking is detected during any inspection required by paragraph (b)(1), (b)(2), or (c) of this AD, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Note 5: There is no terminating action currently available for the inspections required by 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 ACO. 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 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2419, Revision 1, including Appendix A, dated September 21, 2000. 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 Airplane Group, P.O. 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

(h) This amendment becomes effective on January 30, 2001.

Issued in Renton, Washington, on December 14, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32406 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–134–AD; Amendment 39–12047; AD 2000–25–12]

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, that requires inspections to detect cracking of the front spar web of the wing, and corrective action, if necessary. The actions specified by this AD are necessary to detect and correct fatigue cracking of the front spar web, which could result in fuel leaking onto an engine and a consequent fire. This action is intended to address the identified unsafe condition.

DATES: Effective January 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, 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: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

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 July 31, 2000 (65 FR 46672). That action proposed to require inspections to detect cracking of the front spar web of the wing, 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 Provide for Airplanes With Replaced Front Spar Web

One commenter states that the airplane manufacturer informed it that inspections by Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000, are not necessary at this time for airplanes modified by Boeing Service Bulletin 747–57A2303. (In a separate comment, addressed below, the airplane manufacturer notes that the original issue of Boeing Alert Service Bulletin 747–57A2311 will be revised to, among other things, extend the compliance threshold for inspection of certain airplanes modified by Boeing Service Bulletin 747–57A2303.)

The commenter makes no specific request for a change to the proposed rule. The FAA infers that the commenter is requesting that the FAA revise the proposed rule to extend the compliance time for the inspections required by paragraph (a) of this AD for airplanes that have been modified by Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997. The FAA concurs with this request. The modification to which the commenter refers involves replacement of the front spar web of the wing with a new shot-peened front spar web, and it is provided as an optional terminating action in paragraph (c) of AD 99–10–09, amendment 39–11162 (64 FR 25194, May 11, 1999). The FAA finds that, if this optional terminating action has been done, operators are not required to inspect the new section of the front spar web that overlaps with the inspection area specified in this AD (the area between FSSI 668 and FSSI 684) until 13,000 flight cycles or 30,000 flight hours after the accomplishment of the replacement. A new paragraph (b) has been added to this AD to specify this, and subsequent paragraphs have been reordered accordingly.

Request To Specify Method of Compliance for Modified Airplanes

One commenter requests that the FAA revise the proposed rule to provide special inspection instructions for airplanes modified in accordance with Boeing Service Bulletin 747–57A2303. The commenter points out that if the modification in that service bulletin is installed, it is not possible to accomplish the ''Part 2 optional web inspection'' given as one option for

compliance with paragraph (a) of the proposed AD, due to the proximity of a new web splice on the aft face of the front spar web. Thus, airplanes modified per Boeing Service Bulletin 747–57A2303 can only be inspected using the ''Part 1 external web inspection'' in paragraph (a) of this AD.

The FAA partially concurs with the commenter's request. The FAA does not find it necessary to revise this AD to include special instructions for airplanes modified with another AD. Operators should note that most AD actions address modifications affecting the subject area of the AD using the note that appears as Note 1 of this AD, which states, ''For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.'' However, to be clear, the FAA finds that it is appropriate in this case to clarify that operators of airplanes modified by Boeing Service Bulletin 747–57A2303, Revision 1, must apply for an alternative method of compliance, in accordance with paragraph (d) of this AD, if they choose to comply with this AD using the Part 2 optional web inspection. Note 3 has been added to this AD accordingly.

Request to Delay Issuance of Final Rule

One commenter, the airplane manufacturer, requests that the FAA delay issuance of the proposed AD until a new revision of Boeing Alert Service Bulletin 747–57A2311 is issued. The commenter describes several changes that will be made to this service bulletin, which is referenced as the appropriate source of service information in the proposed rule. These changes include:

- For certain airplanes modified by Boeing Service Bulletin 747–57A2303, the compliance threshold for inspecting certain areas will be extended. (See ''Request to Provide for Airplanes With Replaced Front Spar Web,'' above.)
- The type of inspection will be revised for certain airplanes on which web splice plates have been installed by Boeing Service Bulletin 747–57A2303. (See ''Request to Specify Method of Compliance for Modified Airplanes,'' above.)
- The inspection area will be expanded.
- Instructions for terminating action and post-modification inspections will be included.

The FAA does not concur with the commenter's request to delay the issuance of this final rule. The FAA finds that, in view of the criticality of the unsafe condition addressed in this AD, it would be inappropriate to delay issuance of this AD pending receipt of a new service bulletin. Once the new service bulletin has been approved, the FAA may consider further rulemaking to mandate the actions in that bulletin. However, note that, based on the requests of another commenter, changes have been made to this AD related to the first two items listed by the commenter. See ''Request to Provide for Airplanes With Replaced Front Spar Web'' and ''Request to Specify Method of Compliance for Modified Airplanes,'' above, for more information on these changes.

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 478 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 97 airplanes of U.S. registry will be affected by this AD.

The external inspections that are one option for compliance with this AD will take approximately 48 work hours per airplane (not including access and close-up), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the external inspections on U.S. operators is estimated to be $2,880 per airplane, per inspection cycle.

In lieu of accomplishment of the external inspections, this AD provides an optional web inspection that takes approximately 50 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional web inspection on U.S. operators is estimated to be $3,000 per airplane, per inspection cycle.

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:

2000–25–12 Boeing: Amendment 39–12047. Docket 2000-NM–134-AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the front spar web of the wing, which could result in fuel leaking onto an engine and a consequent fire, accomplish the following:

Repetitive Inspections

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, except as provided by paragraph (b) of this AD, perform the Part 1 external web inspection—including detailed visual, ultrasonic, and high frequency eddy current (HFEC) inspections—to detect cracking of the front spar web of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000. In lieu of the Part 1 external web inspection, accomplishment of the Part 2 optional web inspection to detect cracking—which also includes detailed visual, ultrasonic, and HFEC inspections—in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000, is acceptable for compliance with this paragraph. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles.

Note 2: For the purposes of this AD, a detailed visual 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.''

(1) Prior to the accumulation of 13,000 total flight cycles or 30,000 total flight hours, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

Note 3: Operators of airplanes modified by Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997; as allowed by paragraph (c) of AD 99–10–09, amendment 39–11162; must apply for an alternative method of compliance, in accordance with paragraph (d) of this AD, if they choose to use the Part 2 optional web inspection to comply with paragraph (a) of this AD.

Exception for Modified Airplanes

(b) For airplanes on which the front spar web between front spar station inboard (FSSI) 668 and FSSI 692 has been replaced with a shot-peened front spar web in accordance with AD 99–10–09, amendment 39–11162: Within 13,000 flight cycles or 30,000 flight hours after the replacement, whichever occurs first, inspect the new section of the front spar web that overlaps with the inspection area specified in Boeing Alert Service Bulletin 747–57A2311 (the area between front spar station inboard (FSSI) 668 and FSSI 684), dated January 27, 2000, and repeat the inspections thereafter, in accordance with paragraph (a) of this AD.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2311, dated January 27, 2000. 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 Airplane Group, P.O. 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 January 30, 2001.

Issued in Renton, Washington, on December 14, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32407 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Extension of Time To File Annual Reports for Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is adopting amendments to its rules to permit commodity pool operators (''CPOs'') to file a claim for an extension of time to file a pool's annual report where the pool is invested in other collective investment vehicles, and the CPO cannot obtain the information its accountant requires about the collective investment vehicles in time for the pool's Annual Report to be prepared, audited, and distributed by the due date.

EFFECTIVE DATE: December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin P Walek, Assistant Director, (202) 418–5463, electronic mail: ''*kwalek@cftc.gov,*'' Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On November 7, 2000, the Commission proposed to amend its Rule 4.22 to permit CPOs to file a claim for an extension of time to file a pool's annual report where the pool is invested in other collective investment vehicles, and the CPO cannot obtain the information its accountant requires about the collective investment vehicles in time for the pool's Annual Report to be prepared, audited, and distributed by the due date.[1]

The 30-day comment period expired on December 7, 2000. The Commission received four comment letters, which generally supported the proposed rulemaking.

Two commenters expressed the concern that a CPO that has filed a notice claiming an extension of time to file should not be unnecessarily burdened by having to make the same

[1] 65 FR 66663 (November 7, 2000).

claim in future years. One of these commenters suggested that, in the alternative, the Commission use language contained in prior staff no-action letters, which indicated that the Commission staff should be notified if there is a change in circumstances relating to the relief criteria. The Commission considered this approach in the proposed rule, recognizing the need to balance the burden of notification with the need to ensure that the entity still qualified for the relief. The rule does not require that the same claim be made in future years. Rather, the rule requires that the CPO simply confirm that the circumstances necessitating the relief continue to apply by restating the representations required by Rule 4.22(f)(2)(iv). Permitting the CPO to file the statement at the same time as the annual report minimizes the burden.

Two of the commenters requested that the Commission provide clarification of the procedure by which a CPO needing more than 150 days to complete an annual report could request an extension of time. A third commenter requested that the Commission consider increasing the permitted extension to 120 days, or 210 days following the fiscal year end.

Commission staff have reviewed past extension requests and found that a substantial majority of the requesters have indicated that they can complete their Annual Reports within 150 days of the end of the commodity pool's fiscal year. The new extension provisions in Rule 4.22(f)(2) are intended to provide a standardized and simplified extension procedure for this group of CPOs. Only a small number of past requests have exceeded the 150-day period. Therefore, in the unusual event that a CPO is not able to meet the requirements for this streamlined procedure, the CPO may request an extension of time pursuant to Rule 4.22(f)(1). In contrast to the procedures of Rule 4.22(f)(2), under which relief may be obtained automatically upon the filing of the required notice and representations, a request under Rule 4.22(f)(1) is not granted automatically, and must include detailed supporting documentation to justify the need for the extension. Additionally, Section 140.99 of the Commission's regulations provides a mechanism for obtaining relief in those cases that do not fall within the bounds set by Rule 4.22(f)(1) or (f)(2).

Finally, one commenter suggested that the Commission clarify that a CPO's claim for an extension of time is effective upon receipt of the claim by the CFTC. The word ''claim'' in the rule indicates that, if all the relevant criteria apply, the CPO needs only to file the specified notice to obtain the relief. Thus, a claim made pursuant to Rule 4.22(f)(2) is effective upon receipt.

The rule will be effective upon publication in the **Federal Register**.[2] It is the Commission's intention that CPOs may follow this revised rule in filing Annual Reports due to be filed in calendar year 2001 for fiscal years ending in 2000.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[3] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[4] In this regard, the Commission notes that it did not receive any comments regarding the RFA implications of the amendment to Rule 4.22(f).

B. Paperwork Reduction Act

This rule (Section 4.22(f)) contains information collection requirements. As required by the Paperwork Reduction Act of 1995,[5] the Commission has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review.[6] In response to the Commission's invitation in the proposed rulemaking to comment on any potential paperwork burden associated with this regulation, no comments were received.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

[2] This rule amendment establishes a mechanism to obtain an exemption from the current temporal requirements of Rule 4.22(f). Accordingly, this rule amendment may be made effective less than 30 days after its publication herein. *See* 5 U.S.C. 553(d)(1).

[3] 47 FR 18618–18621 (April 30, 1982).

[4] 47 FR 18619–18620.

[5] Pub. L. 104–13 (May 13, 1995).

[6] 44 U.S.C. 3504(h).

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.22 is amended by:

a. Redesignating paragraphs (f)(1) introductory text, (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), and (f)(1)(v) as (f)(1)(i) introductory text, (f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(C), (f)(1)(i)(D), and (f)(1)(i)(E);

b. Redesignating paragraphs (f)(2) introductory text, (f)(2)(i), and (f)(2)(ii) as (f)(1)(ii) introductory text, (f)(1)(ii)(A), and (f)(1)(ii)(B);

c. Redesignating paragraphs (f)(3) introductory text, (f)(3)(i), and (f)(3)(ii) as (f)(1)(iii) introductory text, (f)(1)(iii)(A), and (f)(1)(iii)(B); and

d. Adding a new paragraph (f)(2) to read as follows:

§ 4.22 Reporting to pool participants.

* * * * *

(f) * * *

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare certified financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or § 4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with National Futures Association and the Commission, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the ''Extended Date''), which must be no more than 150 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has investments in one or more collective investment vehicles (the ''Investments'');

(B) The commodity pool operator has been informed by the certified public accountant selected to audit the commodity pool's financial statements that specified information establishing the value of the Investments is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, the commodity pool operator may claim the extension of time by filing a statement containing the representations specified in paragraph (f)(2)(iv) of this section, at the same time as the pool's Annual Report.

(vi) Any notice or statement filed pursuant to paragraph (f)(2) of this section must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

* * * * *

Issued in Washington, D.C., on December 20, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–32856 Filed 12–22–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 352, 357, and 385

[Docket No. RM99–10–000; Order No. 620]

Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts

Issued December 13, 2000.

AGENCY: Federal Energy Regulatory Commission, DEO.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending of its regulations. The Commission is revising Form 6 schedules and instructions to better meet current and future regulatory requirements and industry needs; updating Uniform Systems of Accounts (USofA) requirements to be more consistent with current Generally Accepted Accounting Principles (GAAP), and amending its regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission has tested the software and related elements of the electronic filing.

EFFECTIVE DATE: This final rule is effective January 25, 2001.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Mary C. Lauermann (Technical Information), Office of the Executive Director, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0087.

Julia A. Lake (Legal Information), Office of General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2019.

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Appendix A—FERC Form No. 6: Annual Report of Oil

Pipeline Companies Schedules

I. Introduction

The Federal Energy Regulatory Commission (Commission or FERC) is revising Parts 352, 357, and 385 of its regulations to revise its FERC Form No. 6: Annual Report of Oil Pipeline Companies (Form 6) schedules and instructions to better meet current and future regulatory requirements and industry needs; update Uniform Systems of Accounts (USofA) requirements to be more consistent with current Generally Accepted Accounting Principles (GAAP); and amend its regulations to provide for the electronic filing of Form 6 commencing with reporting year 2000, due on or before March 31, 2001. The Commission has tested the software and related elements of the electronic filing mechanism. This rule is part of the Commission's ongoing program to update and eliminate burdensome and unnecessary accounting and reporting requirements. These changes will reduce, by about 25 percent, the burden on regulated companies for maintaining and reporting information under the Commission's regulations.

II. Background

In 1977, the responsibility to regulate oil pipeline companies was transferred to the Commission from the Interstate Commerce Commission (ICC).[1] In accordance with the transfer of authority, the Commission was delegated the responsibility under section 1 of the Interstate Commerce Act (49 U.S.C. 1) to regulate the rates and charges for transportation of oil by pipeline and establish valuation of those pipelines, and under section 20 of that Act to require pipelines to file annual reports of information necessary for the Commission to exercise its statutory responsibilities.[2]

The ICC developed the Form P to collect information on an annual basis to enable it to carry out its regulation of oil pipeline companies under the Interstate Commerce Act. A comprehensive review of the reporting requirements for oil pipeline companies

[1] Section 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7172, provides that: ''[t]here are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer of component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or established the valuation of any such pipeline.''

[2] The Secretary of Energy delegated to the Commission the authority under the Interstate Commerce Act which was formerly vested in the ICC, as that statute relates ''to the transportation of oil pipeline to the extent that such * * * [statute is] not transferred to, and vested in, FERC by Section 402(b) of the DOE Act * * *'' (Delegation Order No. 0204–1, Oct. 1, 1977).

was performed on September 21, 1982, when the Commission issued Order No. 260[3] revising the former ICC Form P, ''Annual Report of Carriers by Pipeline'' and redesignating it as FERC Form No. 6, ''Annual Report of Oil Pipeline Companies.'' In 1994, the Commission addressed additional revisions to the Form 6 in Order Nos. 571 and 571–A,[4] including adding a new page 700. The information included in the Form 6 was determined at that time to be the minimum necessary for Shippers to assess filed rate changes under Order No. 561.[5]

In Order No. 561, the Commission adopted an indexing methodology to regulate oil pipeline rate changes as well as certain alternative rate-changing methodologies where a Pipeline or a Shipper could justify a departure from the indexing methodology. The Commission found that this indexing methodology would simplify and thereby expedite the process of changing rates. Under the Commission's indexing methodology, oil pipeline Shippers play a more active role in monitoring the application of the Commission's rate indexing methodology. Unlike Shippers in the natural gas and electric industries regulated by the Commission, oil pipeline Shippers bear a greater burden in proving that proposed indexed rate changes are unjust and unreasonable. Moreover, when a Shipper attempts to justify a complaint against an existing or grandfathered rate, it must satisfy a substantial evidentiary burden before a hearing and formal discovery rights are granted. This burden requires an in-depth analysis of oil pipelines' cost and revenue data.

As a result of the shift in responsibilities and the specific information requirements outlined in Commission Rule 206[6] for a protest or complaint, the Commission makes the following changes to Form 6 information collection in this final rule.

On July 27, 2000, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM99–10–000.[7] The Commission received six comments on the NOPR representing oil pipeline companies and oil pipeline shippers.[8]

III. Discussion

The Commission is revising Part 357—Annual Special or Periodic Reports: Carriers Subject to Part I of the Interstate Commerce Act for pipeline carriers subject to the provisions of section 20 of the Interstate Commerce Act. For the most part, these revisions amend the annual filing requirements and raise the minimal filing threshold for the Form 6. The Commission is also revising the Form 6 instructions and schedules to clarify definitions and general instructions, eliminate duplicate reporting requirements, remove and consolidate schedules, update current schedules, and revise current schedules. Therefore, the final rule lowers the reporting burden on relatively small companies and clarifies the Form 6 reporting requirements which promotes consistent reporting practices among pipeline carriers. Since the Form 6 is intended to be both a financial and ratemaking document,[9] the final rule ensures that the Commission has the financial, operational, and ratemaking information needed to carry out its regulatory responsibilities to monitor the oil pipeline industry in a dynamically changing environment. Respondents to the NOPR commended the Commission's efforts in generally reducing the burden to the pipeline industry while providing a balanced approach to the need for information by oil pipeline shippers and providing for electronic submissions of the Form 6. However, several respondents had differing opinions on the necessity for additional information requirements on several of the Form 6 pages and several definitions and thresholds. Topics addressed in the NOPR that were agreed to or accepted by industry are not commented upon in this final rule. Specific topics requiring a Commission response to industry's comments are addressed below.

A. Changes to the Form 6 Reporting Threshold

Sinclair Oil Corporation (Sinclair) argued that raising the reporting threshold for submission of a complete Form 6 from $350,000 to $1,000,000 would be excessive and contribute to distortions in the data. Sinclair believes that a reporting threshold of $1,000,000 is too high and eliminates too many companies. Sinclair recommends raising the reporting threshold to $500,000 in order to reduce the reporting burden for smaller companies and prevent inconsistencies in data reported.

Upon further review, the Commission believes that Sinclair's statement has merit and grants its request to raise the reporting threshold to $500,000 rather than the proposed $1,000,000. In this final rule, the Commission is requiring jurisdictional oil pipeline companies with annual jurisdictional operating revenues greater than $350,000 but less than $500,000 for each of the three previous calendar years to prepare and file pages 1—''Identification and Attestation,'' 301—''Operating Revenue Accounts (Account 600),'' and 700—''Annual Cost of Service Based Analysis Schedule'' of the Form 6 on or before March 31 of each year. Also, the Commission requires those jurisdictional oil pipeline companies with annual jurisdictional operating revenues of $350,000 or less for each of the three previous calendar years are required to prepare and file with the Commission pages 1—''Identification and Attestation'' and 700—''Annual Cost of Service Based Analysis Schedule'' of FERC Form No. 6 on or before March 31 of each year for the previous calendar year.

B. Form 6 Revisions.

1. General Instructions (Page i–ii).[10]

Williams Pipeline Company (Williams) questioned the requirement to report in whole dollar amounts rather than rounding to the nearest thousand. Williams claims that ''reporting dollars below the thousand dollar threshold provides no incremental benefit,'' and that companies small enough to fall below the $500 threshold would also be below the Form 6 reporting threshold.

The Commission believes that rounding dollars to the nearest thousand may inaccurately reflect the operations of smaller companies. If oil pipeline companies are permitted to round to the nearest thousand the Commission will not know whether a number is not

[3] Order No. 260, 47 FR 42327 (Sept. 27, 1982); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,397 (Sept. 21, 1982).

[4] Order No. 571, 59 FR 59137 (Nov. 16, 1994); FERC Stats. & Regs. [Regulations Preambles January 1991—June 1996] ¶ 31,006 (Oct. 28, 1994). Order No. 571–A, 60 FR 356 (Jan. 4, 1995); FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 31,012 (Dec. 28, 1994).

[5] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, 58 FR 58753 (Nov. 4, 1993) FERC Stats. & Regs. [Regulations Preambles January 1991–June 1996] ¶ 30,985 (Oct. 22, 1993); Order No. 561–A, 59 FR 40243 (Aug. 8, 1994) FERC Stats. & Regs. [Regulations Preambles, January 1991–June 1996] ¶ 31,000 (1994), *affirmed, Association of Oil Pipelines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[6] 18 CFR 385.206.

[7] 65 FR 50376 (Aug. 17, 2000).

[8] Association of Oil Pipe Lines (AOPL), Marathon Ashland Pipe Line LLC (Marathon), Equilon Pipeline Company LLC (Equilon), Williams Pipeline Company (Williams), Sinclair Oil Corporation (Sinclair), The Society for the Preservation of Oil Pipeline Shippers (SPOPS).

[9] Cost of Service Reporting and Filing Requirements for Oil Pipelines, FERC Stats., & Regs. [Regs. Preambles, 1991–1996] ¶ 31,006 at 31,169 and FERC Form No. 6, p. i, Roman Numeral I.

[10] **Note:** The page numbers referred to throughout the final rule reference the page numbers in the revised Form 6.

reported because the value is zero or the value is rounded down to zero. In addition, rounding to whole dollar amounts ensures consistency with other Commission filings, including FERC Forms 1 and 2. Therefore, Williams suggested revision to the whole dollar reporting requirement is denied.

2. Definitions (Page iii)

The Association of Oil Pipe Lines (AOPL), Equilon Pipeline Company, LLC (Equilon), Marathon Ashland Pipe Line Company, LLC (Marathon), and Williams stated that the definition of an ''undivided joint interest pipeline'' as ''a common carrier by pipeline controlled by more than one common carrier'' was inconsistent with the meaning of the term in the industry and would apply to all joint interest pipelines, not just those that are ''undivided'' joint interest. AOPL stated that an undivided joint interest pipeline was not a legal entity. Rather it was a ''legal fiction'' created to cover situations where several common carrier pipelines had ''a separate and distinct property interest, as opposed to shareholder interest, in a single physical pipeline.'' Marathon proposed defining an ''undivided joint interest pipeline'' as ''physical pipeline property owned in undivided joint interest by more than one person/entity.'' The Commission agrees with Marathon and adopts the recommended definition.[11]

3. Instructions for Schedules 212–215 (New Title—Instructions for Schedules 212–217 (Page 211)

Marathon does not support excluding undivided joint interest pipelines from schedules 212 and 213. Marathon argues that the schedules should reflect carriers' total company activity within the property accounts. The Commission believes that total company data can be obtained by adding the data on pages 212–213 to the data on pages 214–215. Shippers that want to contest a rate need the undivided joint interest pipeline information separated from the total carrier property information. The Commission maintains its position to require separate reporting of undivided joint interest pipeline information.

4. Carrier Property (Pages 212–213)

AOPL, Williams, and Equilon believe that accounting for carrier property by gathering, trunk and general facilities is ''an undue burden and unwarranted.'' AOPL disagrees with the Commission's stated purpose for requiring such a breakout.[12] AOPL states that few depreciation studies are requested and that the ''benefit to be gained by breaking these costs out by gathering, trunk and general facilities * * * is small and * * * not enough to offset the burden.'' AOPL argues that the requested breakout for depreciation purposes can be readily obtained after a depreciation study is requested. Additionally, AOPL states that shippers participating in the rulemaking stated that they did not need such information.

Marathon, on the other hand, had no objection to breaking out carrier property by gathering, trunk and general facilities, and Sinclair endorsed maintaining the distinctions between gathering, trunk and delivery lines. Sinclair stated that the information is invaluable to shippers in understanding and analyzing the financial data reported by pipeline companies.

The Commission believes that the carrier property information broken out by gathering, trunk and general facilities is vital in order to determine whether a full depreciation study should be requested, and to assist the shipper in meeting its burden to show that a rate should be set for full hearing and investigation. Therefore, the Commission maintains the requirement to provide carrier property information by gathering, trunk, and general facilities.

5. Depreciation Base and Rates

Undivided Joint Interest Property) (Pages 214–215).

Accrued Depreciation-Carrier Property (Page 216).

Accrued Depreciation—Undivided Joint Interest Property) (Page 217).

AOPL, Williams, Equilon, Marathon believe that undivided joint interest property should only be reported separately if the depreciation rates differ from that of the carrier's other assets. AOPL states that if the undivided joint interest property is depreciated at the same rate as the carrier's other assets the carrier should only be required to make a statement to that effect. AOPL contends that the Commission's assertion that depreciation rates vary among the classes of property[13] is rarely true. In addition, Marathon believes that there should be a carrier property threshold of $10 million for any undivided joint interest property that must be reported separately.

The Commission believes that even if the depreciation rate is the same for both carrier property and undivided joint interest property, the breakout of undivided joint interest pipeline base information is needed in its own right. Carrier property and accrued depreciation data is used not only for depreciation studies, but is needed to calculate a rate base to determine items such as rate of return and income taxes in a cost of service analysis. The Commission believes that even if depreciation rates rarely vary among the different classes of property, that is hardly a reason not to require the numbers to be shown separately. As to Marathon's suggested threshold of $10 million in undivided joint interest property before reporting that information separately, the Commission believes that a $10 million threshold would render the data on undivided joint interest pipelines useless. The Commission, therefore, maintains the requirement to identify undivided joint interest property separately, and denies the request to require such identification only when the depreciation rate is different than the carrier property or more than $10 million.

6. Noncarrier Property (Page 220)

Williams requests that the Commission abandon the requirement to report detailed cost information of noncarrier property and income from noncarrier property. Williams states that the Commission is concerned with activities related to the transportation of oil in interstate commerce and that nonjurisdictional activities of a pipeline are of no concern to the Commission or shippers. Williams also states that it is inappropriate to require companies to divulge nonjurisdictional information to competitors.

The Commission needs information related to noncarrier property for ratemaking proceedings, settlements, and discovery. Additionally, the Commission uses the information to ascertain whether joint costs have been allocated properly between carrier and noncarrier property. In order to reduce the burden to jurisdictional companies, the Commission has raised the reporting threshold from $250,000 to $1,000,000. Therefore, the Commission denies Williams' request to abandon the reporting requirement for noncarrier property.

7. Operating Revenue Accounts (Account 600) (Page 301)

AOPL, Williams, and Equilon disagree with the Commission's requirement to distinguish between crude oil and product movements, stating that this distinction is without relevance. AOPL argues that companies that operate both crude and product lines do not break their costs down

[11] FERC Form No. 6, p. iii, New Instruction No. 13.

[12] 65 FR 50376 (Aug. 17, 2000), IV FERC Stats. & Regs. ¶ 32,553 at 33,949 (July 27, 2000).

[13] 65 FR 50376 (Aug. 17, 2000), IV FERC Stats. & Regs. ¶ 32,553 at 33,949 (July 27, 2000).

between the two commodities. AOPL believes that the Commission's assertion that companies must maintain such an accounting distinction under Statements of Financial Accounting Standards (SFAS) No. 131—Disclosures about Segments of an Enterprise and Related Information is misguided. AOPL states that many of the carriers reporting to FERC are not publicly held and do not report to the Securities and Exchange Commission so they are not covered under SFAS 131. AOPL recommends that if the Commission continues to require cost allocation between crude and product systems, the burden should only be imposed on pipelines that carry more than 10 percent of the other commodity.

In addition, AOPL believes that pipelines should not be required to allocate revenues among gathering, trunk and delivery systems. AOPL states that when the Commission examines function for purposes of cross-subsidization it obtains the information it needs directly from the carrier, making mandatory Form 6 reporting an unwarranted burden.

Marathon, however, does not oppose the reporting of revenue data by crude oil and product movements or by gathering, trunk and delivery systems. Sinclair approves of reporting the distinctions between crude oil and product lines by gathering, trunk and delivery lines. Sinclair states that the separate reports are invaluable for analyzing financial data and vital to the analysis of the performance of the ceiling price index.

AOPL recommends the Commission reconsider its NOPR decision not to revise page 301 to include prior year information.[14] AOPL states that adding prior year information would bring page 301 into alignment with other Form 6 schedules and would facilitate review of revenue data.

The Commission finds that there are significant differences between crude and product lines in the way they operate, the markets they serve, and the costs they incur, necessitates the reporting of such revenues separately. Pipelines, also, recognize these differences in their oil pipeline tariffs which clearly distinguish between services and rates for crude or product transportation. The Commission believes that it is essential for a shipper who is trying to allocate costs and revenues to specific facilities, and match those facilities with a pipeline's different services (gathering, trunk or delivery, crude or product), to know what functions the facilities serve. The Commission believes that a proper allocation is important to the shipper regardless of the percentage of crude or product transported. Therefore, the Commission denies the request to eliminate the distinctions between crude oil or product lines and gathering, trunk or delivery lines. Additionally, the Commission denies the request to require only those companies that carry more than 10 percent of either crude oil or product to allocate their costs between the different product lines. However, the Commission agrees with AOPL that requiring carriers to report prior year revenues will facilitate review of revenue data while not adding an additional burden to the industry and has revised page 301 to include this requirement.

8. Operating Expense Accounts (Account 610) (Pages 302–304)

AOPL, Williams, and Equilon argue that separate crude and product service accounting should not be required of companies that carry less than 10 percent of either commodity. AOPL also objects to the requirement to allocate costs by gathering, trunk or delivery, stating that this information is not needed to functionalize costs or analyze rates.

As stated in our response to Operating Revenue Accounts above, the Commission believes that it is essential for a shipper who is trying to allocate costs and revenues to specific facilities, and match those facilities with a pipeline's different services (gathering, trunk or delivery, crude or product), to know what functions the facilities serve. The Commission believes that a proper allocation is important to the shipper regardless of the percentage of crude or product transported. Therefore, the Commission maintains the requirement to distinguish between crude oil or product lines and gathering, trunk or delivery lines, and denies the request to allow companies that carry less than 10 percent of either crude oil or product to be relieved of the separate reporting requirement.

Sinclair states that two new subcategories consisting of ''direct'' and ''indirect'' expenses be created within the operations and maintenance accounts. Sinclair argues that it needs this more precise information to determine if there is a need for a further evaluation of proposed tariff changes. The Commission sees no benefit and Sinclair has provided no compelling arguments for further burdening pipelines with the additional requirement of subdividing the operations and maintenance accounts into ''direct'' and ''indirect'' expenses. Pipelines are already required to aggregate significant indirect costs such as employee benefits and taxes in separate accounts in the general expense group of accounts. This information should be sufficient to determine if there is a need for a further evaluation of proposed tariff changes. Therefore, the Commission denies Sinclair's request.

9. Statistics of Operations (Pages 600–601) and Miles of Pipeline Operated at End of Year (Pages 602–603)

AOPL, Williams, and Equilon state that the Commission should not change the reporting of volumes moved on undivided joint interest pipelines as the operator of an undivided joint interest pipeline is not privy to company tariffs and volumes shipped under those tariffs. AOPL states that if the Commission wants to be able to track the volumes shipped on an undivided joint interest pipeline, that information must be provided by each of the individual owners.

The Commission believes that the changes to the instructions for reporting volumes moved are appropriate but agrees with AOPL that they have not clearly indicated the Commission's intentions. Therefore, the instructions are revised to ensure that volumes moved on undivided joint interest pipelines operated by others are reported. The last sentence in Instruction No. 2 is revised to read ''Any barrels received into a pipeline owned by the respondent, but operated by others, should be reported separately on additional pages (For example 600a–601a, 600b–601b, etc.),'' and Instruction No. 3 has been reorganized and the final sentence revised to read ''Any barrels delivered out of a pipeline owned by the respondent, but operated by others, should be reported separately on additional pages (For example 600a–601a, 600b–601b, etc.).''

In order to be consistent in the reporting of mileage and volumes reported for undivided joint interest property operated by others, pages 602 and 603 have been revised to include a reporting category for undivided joint interest property owned by respondents, but operated by others.

10. Annual Cost of Service Based Analysis Schedule (Page 700)

AOPL, Williams, Equilon, and Marathon opposed requiring pipelines to file additional cost of service information as proposed in the NOPR, specifically lines 1 through 8 on Form 6, page 700. AOPL suggests shippers have several sources of information,

[14] 65 FR 50376 (Aug. 17, 2000), IV FERC Stats. & Regs. ¶ 32,553 at 33,955 (July 27, 2000).

such as a pipeline's tariff and the existing Form 6, that provides sufficient information. On the other hand, Sinclair and the Society for the Preservation of Oil Pipeline Shippers (SPOPS) supports the NOPR proposal to require a breakdown of the total cost of service, but urges the Commission to require additional cost of service reporting not only by the company as a whole, but also for each system. SPOPS also urges the Commission to require pipelines to report ''Return on Equity,'' which the Commission's NOPR does not propose to collect.

Sinclair urges the Commission to augment the current reporting requirements of page 700 by requiring pipelines to report total cost of service, operating revenues, throughput in barrels, and throughput in barrel miles on a system-by-system basis. In addition to requesting cost of service reporting by system, Sinclair asks the Commission to require those companies with multiple forms of rate regulation to report separate cost of service, revenue, expense and throughput data on the portion of operations still subject to the indexing methodology.

The Commission believes that the proposed page 700 breakdown is a reasonable compromise in this instance. Therefore, the Commission adopts revised page 700 data requirements identified on Line Nos. 1 through 8 in order to balance the competing needs of pipelines and shippers in the regulation of oil pipelines.

The stated purpose of page 700 is to provide a means whereby a shipper can determine whether a pipeline's cost of service or per-barrel/mile costs is so substantially divergent from the revenues produced by its cost of service rates to warrant a challenge that requires the pipeline to justify its rates.[15] In Order No. 571, the Commission rejected requests that the data reported on page 700 include separate cost of service information for each individual system,[16] and stated that page 700 was not intended to require a pipeline to demonstrate with precision its cost of service attributable to each individual system it operates.[17] Consistent with our decision in Order No. 571, the Commission denies suggestions by shippers that pipelines be required to file separate cost of service information for each individual system and additional information specifying debt and equity components.

Form 6, page 700, Instruction 2 requires that values for the components of the existing data requirements (Total Cost of Service on Line No. 9) be computed on a total company basis consistent with Commission Opinion No. 154–B *et al.* methodology. Instruction 3 requires the reporting of total company revenue (Total Interstate Operating Revenue) on Line No. 10.

AOPL states that current total cost of service under Opinion No 154–B does not equate to total company costs, asserting that cost of service consists of those costs related to the pipeline's jurisdictional services. AOPL argues that respondents' values on page 700 should only reflect jurisdictional cost of service and revenues. AOPL does not object to providing total revenue information, but states total revenue information is not identical to Opinion No. 154–B cost of service.

SPOPS asserts that the Commission can only address jurisdictional rates in its determinations and, therefore, it should be matching total company costs with total company revenues. SPOPS argues that the numbers on page 700 are understated since the current page 700 compares total cost of service and only pipeline revenues. SPOPS also argues that pipelines could manipulate the jurisdictional cost of service to fit revenues by including nonjurisdictional revenues. SPOPS recommends the Commission, as proposed in the NOPR, require pipelines to report total company revenues along with total company cost of service.

The Commission agrees that revenues reported on Line No. 10 of page 700 should reflect only jurisdictional revenues, not nonjurisdictional revenues. Therefore, Line 10 of page 700 is revised to require pipelines to report ''Total Interstate Operating Revenues,'' as reported on page 301, bringing it in sync with the reporting requirements specified in Instruction 2.

SPOPS states that the Commission cannot call upon shippers to prove a particular rate is not just and reasonable without the information necessary to ascertain the cost of service allocated to that rate. Form 6, page 700, Instruction 7 requires a pipeline to make its cost of service workpapers available for inspection when requested by the Commission or its staff. Commission Order No. 571 stated that the use of page 700 should be limited and should not be misleading.[18] The information on page 700 was intended to be a preliminary screening tool for pipeline rate filings. As such, page 700 provides a means whereby a shipper can determine whether a pipeline's cost of service is so substantially divergent from the revenues produced by its rates to warrant a challenge that requires the pipeline to justify its rates. The Commission clarifies the circumstances under which a pipeline is required to provide supporting workpapers for data reported on page 700. The workpapers must fully support all amounts reported on page 700 including but not limited to the total company Opinion 154–B calculations and all of its associated components, total company revenues, including allocations of costs and revenues between jurisdictional and nonjurisdictional facilities/services, and between interstate and intrastate services, and all assumptions made for the Opinion 154–B calculations and cross-references to underlying source documents. Additionally, the Commission revises Instruction 7 to state that ''A respondent may be requested by the Commission or its staff to provide its workpapers which support the data reported on page 700.''

SPOPS urges the Commission to require the filing of total company cost of service as proposed in the NOPR, and to reconsider its stated position to play a less active role in monitoring and overseeing pipeline rates and practices.[19] The NOPR raised the Commission's recently adopted complaint procedures as well as recent interpretations of the ''changed circumstances'' requirements of the EPAct as reasons to expand page 700 reporting.

AOPL disagrees with shippers' need for adequate information in complaint proceedings and notes that since the new, more stringent complaint procedures became effective, eight complaints have been set for hearing.[20] Further, AOPL argues that nothing has changed since Order Nos. 561 and 571 were issued. Specifically, AOPL asserts the number of recent complaints suggests that shippers don't need better information; and that total volume, cost and revenue information currently available to shippers is sufficient to meet the Commission's ''changed circumstances'' tests.

As stated previously, page 700 was designed as a preliminary screening tool for pipeline rate filings. It provides a

[15] FERC Stats. & Regs. ¶ 31,006 at 31,168 (1991–1996).

[16] *Id.* at 31,169.

[17] *Id.* at 31,168.

[18] FERC Stats. & Regs. ¶ 31,006 at 31,169 (1991–1996).

[19] 65 FR 50376 (Aug. 17, 2000), IV FERC Stats. & Regs. ¶32,553 at 33,943–4 (July 27, 2000).

[20] The Commission notes that more than half of these complaints were filed by various shippers against SFPP, LP which were virtually identical in the issues raised in their complaints. Consequently, these complaints are not good examples of why shippers do not need better, more complete information.

means for a shipper to determine whether a pipeline's cost of service or per-barrel/mile cost is so substantially divergent from the revenues produced by its rates to warrant a challenge that requires the pipeline to justify its rates. The Commission believes that the additional information provided on the new page 700 provides the information necessary to monitor the reasonableness of a pipeline's filed rates and will further enable a shipper to challenge a pipeline's rates.

11. Miscellaneous Items

a. *Electronic Filing of Form 6*. In the NOPR, the Commission proposed requiring electronic filing of the Form 6 with conforming paper copies commencing with the report for calendar year 2000, due on or before March 31, 2001. No industry comments were received in opposition to this proposal. Therefore, the Commission implements the Form 6 electronic filing requirement with issuance of this final rule. Additionally, respondents should identify an electronic filing technical contact and inform the Secretary of the contact's name, telephone number and e-mail address by the effective date of this final rule. Any changes to this information should be submitted to the Secretary.

b. *Form 6 Reporting Alternatives*. Williams expressed its disappointment that the Commission ignored industry's initiative to shift to GAAP financial statements, and encouraged the Commission to continue exploring a shift to a reporting format that is consistent with other financial reviews. AOPL and Marathon support the Commission's efforts to align the Uniform System of Accounts (USofA) with GAAP requirements, but feel that uniformity of accounting systems among oil pipeline companies is more important to the industry than the filing format for the information.

As stated in the NOPR, this final rule updates the USofA regulations to reflect Statements of Financial Accounting Standards.[21] The Commission believes these changes simplify the Form 6, reduce the overall reporting burden on pipeline companies, and result in more consistent industry reporting while providing the Commission the information it needs to regulate the oil industry. The Commission will consider future changes to the Form 6 based on changes to the Statements of Financial Accounting Standards.

12. Miscellaneous Corrections

After issuance of the NOPR, it was noted that a change was proposed to the regulatory text under the Instructions for Carrier Property Accounts for Instruction 3–3. This was done inadvertently. No changes to this instruction are planned at this time.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[22] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended,[23] and also for information gathering, analysis, and dissemination.[24] The final rule does not substantially change the effect of the underlying legislation. However, the final rule makes changes to Form 6, and also impacts information gathering. Accordingly, no environmental considerations are necessary.

V. Regulatory Flexibility Act

The Commission received no comments on its certification, in the NOPR, that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an initial Regulatory Flexibility Act (RFA)[25] analysis is not required.

In *Mid-Tex Elect. Coop.* v. *FERC,* 773 F. 2d 327 (D. C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration ''to small entities that would be directly regulated'' by proposed rules. *Id.* at 342. The court further concluded that ''the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'' *Id.* at 342.

This final rule will not have an adverse impact on small entities, nor will it impose upon them any significant costs of compliance. Rather, this rule will significantly reduce the reporting burden on relatively small companies by raising the reporting threshold, and promote consistent reporting practices among pipeline carriers. Most filing entities regulated by the Commission do not fall within the RFA's definition of a small entity.[26] Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Information Collection Statement

The following collection of information contained in this final rule was submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[27] FERC identifies the information provided under Part 352 and § 357.2 as FERC Form No. 6.

Public Reporting Burden: Estimated Annual Burden.

The final rule establishes new reporting requirements, modifies existing reporting requirements and eliminates those requirements that are no longer applicable. The burden for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC Form 6	129	1	119	15,351
(Pages 1 & 700)	11	1	10	110
(Pages 1, 301 & 700)	19	1	11	209
Totals	159	1	99	15,670

[21] 65 FR 50376 (Aug. 17, 2000), IV FERC Stats. & Regs. ¶32,553 at 33,964 (July 27, 2000).

[22] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶30,783 (Dec. 10, 1987).

[23] 18 CFR 380.4(a)(2)(ii).

[24] 18 CFR 380.4(a)(5).

[25] 5 U.S.C. 601–612.

[26] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[27] 44 U.S.C. 3507(d).

Total Annual Hours for collections (Reporting + Record keeping, (if appropriate)) = 15,670 hours.

The simplified filing requirements under the final rule and the reduced number of filings per year result in a reduction of 5,141 hours per year from the revised OMB burden inventory for the above data collection.

Information Collection Costs: The Commission projected the average annualized costs for all respondents to comply with these requirements to be:

Data collection	Annualized capital/start-up costs	Annualized costs (operations & maintenance)	Total annualized costs
FERC Form No. 6	$0.00	$840,341	$840,341

(For 129 respondents completing the FERC Form No. 6, the cost per company would be $6,382, pages 1 & 700 = $536 and pages 1, 301 & 700 = $590).

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[28] Accordingly, pursuant to OMB regulations, the Commission has provided notice of information collections to OMB.

Title: FERC Form No. 6, Annual Report of Oil Pipeline Companies.

Action: Proposed Data Collection.

OMB Control No.: 1902–0022.

The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Businesses or other for profit.

Frequency of Responses: Annually.

Necessity of Information: The final rule revises the Commission's requirements contained in 18 CFR Parts 352, 357, and 385. This rule revises Form 6 schedules and instructions to better meet current and future regulatory requirements and industry needs; updates the USofA requirements to be more congruent with current GAAP accounting; and amends regulations to provide for the electronic filing of Form 6 commencing with reporting years 2000, due on or before March 31, 2001. The Commission uses the information for administration of the Interstate Commerce Act and in various rate proceedings.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's staff uses the data for compliance reviews on the financial conditions of regulated companies. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the oil pipeline industry. Data will contribute to well-informed decision-making and streamlined workload processing. Interested persons may obtain information on the reporting requirements by contacting the following:

Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, email: *mike.miller@ferc.fed.us.*

For submitting comments concerning the collection of information and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7318, fax: (202) 395–7285].

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.fed.us)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect January 25, 2001. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[29] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[30]

List of Subjects

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

[28] 5 CFR 1320.11.

[29] 5 U.S.C. 804(2).

[30] 5 U.S.C. 801(a)(1)(A).

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 352, 357 and 385 Chapter I, Title 18 of the *Code of Federal Regulations,* as follows:

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

1. The Authority citation for Part 352 is revised to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2–4. In Part 352, in List of Instructions and Accounts, Definitions, Definition 30, paragraphs (e) through (h) and paragraph (j) are revised to read as follows:

Definitions.

* * * * *

30. * * *

(e) ''Temporary difference'' means a difference between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years when the reported amount of the asset or liability is recovered or settled, respectively. Some events recognized in financial statements do not have tax consequences. Certain revenues are exempt from taxation and certain expenses are not deductible. Events that do not have tax consequences do not give rise to temporary differences.

(f) ''Deductible temporary difference'' means temporary differences that result in deductible amounts in future years when the related asset or liability is recovered or settled, respectively.

(g) ''Deferred tax asset'' means the deferred tax consequences attributable to deductible temporary differences and carryforwards. A deferred tax asset is measured using the applicable enacted tax rate and provisions of the enacted tax law. A valuation allowance should be recognized if it is more likely than not (a likelihood of more than 50 percent) that some portion or all of the deferred tax asset will not be realized.

(h) ''Deferred tax liability'' means the deferred tax consequences attributable to taxable temporary differences. A deferred tax liability is measured using the applicable enacted tax rate and provisions of the enacted tax law.

* * * * *

(j) ''Tax allocation within a period'' means the process of allocating income tax expense applicable to a given period among continuing operations, discontinued operations, extraordinary items, and items charged or credited directly to shareholders' equity.

* * * * *

5. In General Instructions, Instruction 1–6, paragraph (d) is revised as follows:

1–6 *Extraordinary, unusual or infrequent items, prior period adjustments, discontinued operations and accounting changes.*

* * * * *

(d) *Prior Period Adjustments.* The correction of an error in the financial statements of a prior period and adjustments that result from realization of income tax benefits of preacquisition loss carryforwards of purchased subsidiaries shall be accounted for as prior period adjustments and excluded from the determination of net income from the current year. All other revenues, expenses, gains, and losses recognized during a period shall be included in the net income of that period.

* * * * *

6. In General Instructions, Instruction 1–12, paragraph (a) is amended by removing the words ''where material timing differences (see definition 30(e)) occur between pretax accounting income and taxable income'' and inserting, in their place, the words ''to all material temporary differences (see definition 30(e)) between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years''.

7. In General Instructions, Instruction 1–12, paragraphs (b) and (c) are revised to read as follows:

1–12 *Accounting for income taxes.*

* * * * *

(b) Under the interperiod tax allocation method of accounting a deferred tax liability or asset is to be recognized for all temporary differences (see definition 30(e)) that result in taxable amounts in future years when the related asset or liability is recovered or settled. Deferred taxes are classified as current or noncurrent based on the classification of the related asset or liability. A carrier shall apply the applicable enacted tax rate in determining the amount of deferred taxes. The carrier shall adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted. The adjustment shall be recorded in the proper deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.

(c) An entity shall record the income tax effects of a net operating loss carryforward or a tax credit carryforward as a deferred tax asset in the year the loss occurs. In the event that it is more likely than not (a likelihood of more than 50 percent) that some portion of its deferred tax assets will not be realized, a carrier shall reduce the asset by a valuation allowance. The valuation allowance should be recorded in a separate subaccount of the deferred tax asset account. The carrier shall disclose full particulars as to the nature and amount of each type of operating loss and tax credit carryforward in the notes to its financial statements.

8. In General Instructions, Instruction 1–12, paragraph (e) is amended by removing the words ''Accumulated deferred income tax credits'' and adding, in their place, the words ''Accumulated Deferred Income Tax Liabilities''.

9. In Instructions for Balance Sheet Accounts, Instruction 2–7 is revised to read as follows:

Instructions for Balance Sheet Accounts

* * * * *

2–7 *Contingent assets and liabilities.*

(a) A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to possible gain or loss to a carrier that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

(b) An estimated loss from a contingent liability shall be charged to income if it is probable that an asset had been impaired or a liability had been incurred and the amount of the loss can be reasonably estimated. The carrier shall disclose in a footnote in its annual report any accrued contingent liabilities, along with any contingent liabilities not meeting both conditions for accrual if there is a reasonable possibility that a liability may have been incurred.

(c) Contingent assets should not be reflected in the accounts. The carrier

shall disclose in a footnote in its annual report any contingencies that might result in an asset.

10. In Instructions for Carrier Property Accounts, Instruction 3–5, paragraph (a) is amended by removing the words ''except that the related labor expense shall be charged to the maintenance expense account''.

11. In Instructions for Operating Revenues and Operating Expenses, Instruction 4–4, paragraph (a) is revised, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b) to read as follows:

Instructions for Operating Revenues and Operating Expenses

4–4 *Expense classification.* * * *

(a) *Operations and maintenance expense.* This group of accounts includes all costs directly associated with the operation, repairs and maintenance of property devoted to pipeline operations including scheduling, dispatching, movement, and delivery of crude oil, oil products and other commodities.

* * * * *

12. In Balance Sheet Accounts, a new Account 14–5 is added to read as follows:

Balance Sheet Accounts

14–5 *Accumulated provision for uncollectible accounts.*

This account shall be credited with amounts provided for losses on notes and accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. This account shall be charged with any amounts which have been found to be impractical of collection.

13. In Balance Sheet Accounts, Account 19–5 is revised to read as follows:

Balance Sheet Accounts

19–5 *Deferred income tax assets.*

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net debit.

(b) A net credit balance shall be included in Account 59, Deferred income tax liabilities.

* * * * *

14. In Balance Sheet Accounts, Account 45 is revised to read as follows:

Balance Sheet Accounts

* * * * *

45 *Accumulated deferred income tax assets.*

This account shall include the amount of deferred taxes determined in accordance with instruction 1–12 and the text of Account 64, Accumulated deferred income tax liabilities, when the balance is a net debit.

* * * * *

15. In Balance Sheet Accounts, Account 59 is revised to read as follows:

Balance Sheet Accounts

* * * * *

59 *Deferred income tax liabilities.*

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net credit.

(b) A net debit balance shall be included in Account 19–5, Deferred income tax assets.

* * * * *

16. In Balance Sheet Accounts, Account 64, the title is amended by removing the word ''credits'' and adding, in its place, the word ''liabilities''; in paragraph (a), by removing the words ''material timing differences (see definitions 30 (g) and (e)) originating and reversing in'' and adding, in their place, the words ''changes in material temporary differences (see definition 30(e)) during;'' in paragraph (d), by removing the word ''unamortized'' and removing the word ''timing'' and adding, in its place, the word ''temporary''; and in Notes A and B to Account 64, by revising the text to read as follows:

Balance Sheet Accounts

64 *Accumulated deferred income tax liabilities.*

* * * * *

Note A: The portion of deferred assets and liabilities relating to current assets and liabilities should likewise be classified as current and included in Account 19–5, Deferred Income Tax Assets, or Account 59, Deferred Income Tax Liabilities, as appropriate.

Note B: This account shall include a net credit balance only. A net debit balance shall be recorded in Account 45, Accumulated deferred income tax assets.

* * * * *

17. In Operating Expenses, the title ''Operations'' is revised to read ''Operations and Maintenance'' and Accounts 300, 310, and 320 are revised and Accounts 350 and 390 are added to read as follows:

Operating Expenses

Operations and Maintenance

300 *Salaries and wages.*

This account shall include the salaries and wages (including pay for holidays, vacations, sick leave and similar payroll disbursements) of supervisory and other personnel directly engaged in transportation operations and the maintenance and repair of transportation property.

310 *Materials and supplies.*

This account shall include the cost of materials applied in the repair and maintenance of transportation property. The salvage value of materials recovered in maintenance work shall be credited to this account. This account shall also include the cost of supplies consumed and expended in operations and in support of the maintenance activity.

320 *Outside services.*

This account shall include the cost of operating and maintenance services provided by other than company forces under contract, agreement, and other arrangement. The cost of service performed by affiliated companies shall be segregated within the account.

* * * * *

350 *Rentals.*

This account shall include the cost of renting property used in the operations and maintenance of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

390 *Other expenses.*

This account shall include the expenses of aircraft, vehicles, and work equipment used in support of operations and maintenance activities; travel, lodging, meals, memberships, and other expenses of operating and maintenance employees; and other related operating and maintenance expenses that are not defined or classified in other accounts.

18. In Operating Expenses, the undesignated centerhead. ''Maintenance'' and Accounts 400, 410, 420 and 430 are removed.

19. In Operating Expenses, General, Accounts 510, 530, and 550 are revised and Account 590 is added to read as follows:

Operating Expenses

* * * * *

510 *Materials and supplies.*

This account shall include the cost of materials and supplies consumed and expended for administration and general services.

* * * * *

530 *Rentals.*

This account shall include the cost of renting property used in the administration and general operations of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

* * * * *

550 *Employee benefits.*

This account shall include the cost to the carrier of annuities, pensions, and benefits for active or retired employees,

their beneficiaries or designees. Contributions to health or welfare funds or payment for similar benefits to or on behalf of employees shall be included herein. Premiums, to the extent borne by the carrier, for group life, health, accident and other beneficial insurance for employees shall also be included in this account.

* * * * *

590 *Other expenses.*

This account shall include the cost of expenses expended for administrative and general services including, the expenses of aircraft, vehicles, and work equipment used for general purposes; travel, lodging, meals, memberships, and other expenses of general employees and officers; utilities services; and all other incidental general expenses not defined or classified in other accounts.

20. In Income Accounts, Account 671, paragraph (a) is amended by removing the words ''all material timing differences (see definitions 30 (g) and (e)) originating and reversing in,'' and adding, in their place, the words ''changes in material temporary timing differences (see definition 30(e)) during''.

21. In Income Accounts, Account 695, is amended by removing the words ''timing differences caused by recognizing an item in the account provided for extraordinary items in different periods in determining accounting income and taxable income'' and adding, in their place, the words ''temporary differences caused by recognizing an item in the account provided for extraordinary items''.

22. In Income Accounts, Account 696, is amended by removing the words ''debits or credits for the current accounting period for income taxes deferred currently, or for amortization of income taxes deferred in prior accounting periods'' and adding, in their place, the words ''the deferred tax expense or benefit related to temporary differences''.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The Authority citation for Part 357 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2. Section 357.2 is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

(a) *Who must file.* (1) Each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues has been $500,000 or more for each of the three previous calendar years must prepare and file with the Commission copies of FERC Form No. 6, ''Annual Report of Oil Pipeline Companies,'' pursuant to the General Instructions set out in that form. Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed.

(2) Oil pipeline carriers exempt from filing Form No. 6 whose annual jurisdictional operating revenues have been more than $350,000 but less than $500,000 for each of the three previous calendar years must prepare and file pages 301, ''Operating Revenue Accounts (Account 600),'' and 700, ''Annual Cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting pages 301 and 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(3) Oil pipeline carriers exempt from filing Form No. 6 and pages 301 and whose annual jurisdictional operating revenues were $350,000 or less for each of the three previous calendar years must prepare and file page 700, ''Annual Cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(b) *When to file.* This report must be filed on or before March 31st of each year for the previous calendar year.

(c) *What to submit.* (1) This report form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in the report form, and must be properly completed and verified.

(2) A copy of the report must be retained by the pipeline carrier in its files. The conformed copies may be produced by any legible means of reproduction.

(3) Filing on electronic media pursuant to § 385.2011 of this chapter will be required with report year 2000, due on or before March 31, 2001.

PART 385—RULES OF PRACTICE AND PROCEDURE

3. The Authority citation for Part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. In § 385.2011, paragraph (a)(7) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *

(7) FERC Form No. 6, Annual Report of Oil Pipeline Companies.

* * * * *

[FR Doc. 00–32382 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 178

[T.D. 01–01]

RIN 1515–AC79

Refund of Duties Paid on Imports of Certain Wool Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the proposed amendments to the Customs Regulations that provide for the refund of duties paid on imports of certain wool products. This document implements the provisions of section 505 of Title V of the Trade and Development Act of 2000, whereby U.S. manufacturers of certain wool articles are eligible to claim a limited refund of duties paid in each of calendar years 2000, 2001, and 2002 on imports of select wool products. The maximum amount eligible to be refunded in each of these claim years is limited to an amount not to exceed one-third of the amount of duties actually paid on such wool products imported in calendar year 1999. This document adds to the Customs Regulations the eligibility, documentation and procedural requirements necessary to substantiate a wool duty refund claim, and makes conforming changes to other regulatory provisions that are impacted by these requirements.

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management (202) 927–1082.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (''the Act''), Public Law 106–200, 114 Stat. 251. Title

V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On October 26, 2000, Customs published a document in the **Federal Register** (65 FR 64178) that proposed to amend the Customs Regulations to provide for the refund of duties paid on imports of certain wool products, as authorized by section 505 of Title V of the Act. In that document, Customs explained the eligibility, documentation and procedural requirements necessary to file and substantiate a wool duty refund claim. On November 6, 2000, a document was published in the **Federal Register** (65 FR 66589) that corrected several typographical errors in the proposed rulemaking.

The proposed rulemaking was intended to implement the terms of section 505 in new § 10.184 of the Customs Regulations. The proposed rules set forth the eligibility, documentation and procedural requirements necessary for a claimant to establish the amount of duties paid on eligible wool products in calendar year 1999, and to substantiate a claim for a duty refund in the years 2000, 2001 and 2002, pursuant to the terms of the statute.

Wool Duty Refunds Authorized by Section 505

Section 505 authorizes duty refunds on certain worsted wool fabrics, wool yarn and wool fiber and wool top. The wool duty refunds authorized by section 505 were set forth in § 10.184(c) of the proposed regulations.

Letter of Intent To File a Wool Duty Refund Claim

As section 505 limits the amount of duties that may be refunded to a claimant in each of calendar years 2000, 2001, and 2002 to an amount not to exceed one-third of the amount of duties paid on eligible wool products in calendar year 1999, Customs proposed that an eligible manufacturer that anticipates seeking a section 505 duty refund in calendar years 2000, 2001, and 2002, must file with Customs a letter of intent to that effect, along with documentation that substantiates, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. The procedural and documentation requirements for filing a letter of intent were set forth in § 10.184(d) of the proposed regulations.

Customs Verification Letter

Section 10.184(e) of the proposed rulemaking provided that Customs would issue a wool duty refund verification letter to each prospective claimant that timely and completely substantiates, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

Procedures for Filing a Wool Duty Refund Claim

The proposed rulemaking, at § 10.184(g), identified two classes of claimants that may file a wool duty refund claim: manufacturers who are the importers of eligible wool merchandise and manufacturers who are not the importers of worsted wool fabric. For both types of manufacturers, it was proposed that an eligible claimant be permitted to submit to Customs a request for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001 and 2002. The proposed rulemaking stated that all duty refund claims must be substantiated by relevant entry summary information and, in the case of non-importing manufacturers, the entry summary information may be submitted to Customs by the manufacturer or the importer.

Discussion of Comments

Sixteen comments from the public were received in response to the publication of the notice of proposed rulemaking. A description of the comments, together with Customs analysis thereof, is set forth below.

Comment: Filing a Letter of Intent or Claim Where the Manufacturer is Both an Importer of Worsted Wool Fabric and a Purchaser of Such Fabric in a Single Claim Year. The proposed regulations identify three types of claimants who can file a letter of intent for purposes of claiming a wool duty refund: eligible manufacturers who import eligible wool merchandise; eligible manufacturers who do not import worsted wool fabric, but who possess the relevant entry summary numbers for the imported fabric; and eligible manufacturers who do not import worsted wool fabric, and who do not possess the relevant entry summary information. The documentation these manufacturers must submit to substantiate their letters of intent was described in proposed § 10.184(d)(1), (d)(2) and (d)(3). Several commenters state that the proposed regulations suggest that a claimant can only be described by one of the three types of claimant categories, and accordingly is limited to filing one letter of intent under either proposed paragraph (d)(1), (d)(2) or (d)(3). One of these commenters suggests that as an eligible manufacturer may have been both an importer and a purchaser of eligible wool fabric in calendar year 1999, the final regulations should permit such a manufacturer to be able to file a letter of intent, with appropriate substantiating information, under any combination of proposed § 10.184(d)(1), (d)(2) and (d)(3). To this end, this commenter suggests that the final regulations should either require more than one letter of intent for such a manufacturer or, preferably, that a single letter of intent may be filed that identifies the specific classes under which an eligible manufacturer is filing, together with the attachments/affidavits required for each class of manufacturer.

Several commenters raise the same issue regarding the procedures for filing a wool duty refund claim, as set forth in proposed § 10.184(g)(3)(i) through (g)(3)(vi). They note that as a manufacturer may be both an importer of eligible wool fabric and a purchaser of such imported fabric, the final regulations should permit a manufacturer to be able to file a single claim pursuant to the documentation requirements for both categorizations.

On a related note, several commenters state that there may be instances where a non-importing manufacturer purchases worsted wool fabric from more than one importer/supplier, and some importers are willing to provide the manufacturer with the relevant entry summary information and some are only willing to provide such information directly to Customs. In these instances, these commenters suggest that the final regulations should permit a manufacturer, both for purposes of filing a letter of intent and for filing a duty refund claim, to be able to submit relevant entry summary information directly to Customs and to have such information submitted to Customs by the importer/supplier.

Customs Response: Customs agrees that the proposed regulations did not expressly state that a manufacturer may file a letter of intent under any combination of § 10.184(d)(1), (d)(2) and (d)(3). As it was Customs intent to permit this, the final regulations provide the documentation requirements for filing a letter of intent where the manufacturer is described by two or more of paragraphs (d)(1), (d)(2) or (d)(3) of this section. This is set forth in § 10.184(d)(4). Additionally, § 10.184(g)(3)(vii) is added to the final regulations to reflect the fact that, for purposes of filing a claim, a manufacturer may be both an importer

of worsted wool fabric and a purchaser of such fabric in the same claim year. The final regulations also permit, at § 10.184(d)(2)(i)(D), (d)(2)(ii), (g)(3)(iii) and (g)(3)(iv), a non-importing manufacturer to be able to submit relevant entry summary numbers directly to Customs, and to have such entry information submitted directly to Customs by the importer(s), all in conjunction with a single claim.

Comment: Changes to proposed § 10.184(d)(2)(i)(D) and § 10.184(d)(2)(ii) and (d)(3)(ii). One commenter suggests two clarifying changes to § 10.184(d). First, it is suggested that proposed § 10.184(d)(2)(i)(D)(*5*) and (D)(*6*) be redesignated in the final regulations as (d)(2)(i)(D)(*5a*) and (d)(2)(i)(D)(*5b*), respectively, so as to correlate to the itemization in the related affidavit set forth at proposed § 10.184(d)(2)(ii). Second, the commenter suggests that the heading text of the affidavits set forth at proposed § 10.184(d)(2)(ii) and (d)(3)(ii) be amended to include the following description in the parenthetical reference: ''* * * for the fabric identified in the invoices submitted with this affidavit)''.

Customs Response: The final regulations reflect, at § 10.184(d)(2)(ii) and (d)(3)(ii), the amended affidavit heading text suggested by the commenter. Customs will not redesignate § 10.184(d)(2)(i)(D)(*5*) and (d)(2)(i)(D)(*6*), in that the drafting rules prescribed by the **Federal Register** do not permit the change as suggested.

Comment: Place to File a Letter of Intent. One commenter notes that the proposed regulations did not specify where a letter of intent and related documentation should be filed.

Customs Response: Customs recognizes the omission. The final regulations create a new § 10.184(d)(7) that sets forth the place where a letter of intent must be filed.

Comment: Issuance of Verification Letters. Several commenters request clarification of the time within which Customs will send written verification letters to prospective claimants. Proposed § 10.184(e) provided that Customs will issue a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a completed letter of intent. The commenters note that Customs may not have the information it needs within 30 days of receiving a prospective claimant's letter of intent that relies on invoices to substantiate the amount of duties paid in calendar year 1999, and therefore will either have to file an amended verification letter at a later date or wait until 30 calendar days from the close of the filing date for letters of intent.

Customs Response: Customs agrees that the date by which Customs will issue a verification letter requires clarification. The proposed rule stated that, in all cases, Customs will issue a verification letter within 30 calendar days of receiving a prospective claimant's letter of intent. The verification letter sets forth the amount of wool duty refund the prospective claimant is eligible to receive and, where invoices were used to substantiate the amount claimed in the letter of intent, the percentage deducted from the invoice amounts with an accompanying explanation.

Where invoices are used to substantiate a letter of intent, Customs must wait until it has received all such letters of intent because the agency will need to compare the aggregate amount of duties being claimed for each importer, as evidenced by invoices, with the amount actually paid by each importer, as evidenced by the Automated Commercial System (ACS). In other words, in situations where invoices are used to substantiate a letter of intent, Customs will not be able to ascertain the percentage to be deducted from each invoice amount, and consequently determine the maximum refund amount that a prospective claimant is eligible to claim, until it has received all letters of intent that rely on invoices. Customs will have to receive all letters of intent that rely on invoices in order to calculate the aggregate amount of duties attributable to each importer and compare this amount with the amount paid by each importer as indicated by ACS. As a result, it will not be possible for Customs to issue a verification letter within 30 calendar days after receiving a prospective claimant's letter of intent that relies on invoices, in that Customs will not have the necessary information to determine the amount to deduct from each invoice amount. Accordingly, this final rule reflects that Customs will issue a verification letter in response to a letter of intent that uses invoices, in whole or in part, to substantiate the amount of duties paid in calendar year 1999 within 30 days from the closing date for filing letters of intent. It is further noted, that this document extends the date, as proposed, by which Customs must receive all letters of intent. See discussion below. The time frame within which Customs will issue a verification letter in response to a letter of intent that is substantiated solely by entry summary information remains unchanged from the terms set forth in the proposed rulemaking (i.e., 30 calendar days from the date Customs receives the letter of intent).

Comment: Extension of Time to File a Letter of Intent. Two commenters suggest that Customs extend the time period to submit a letter of intent so as to allow prospective claimants adequate time to collect the requisite information.

Customs Response: Customs agrees. The final regulations provide in § 10.184(d)(4) that a manufacturer's letter of intent must be received by Customs no later than March 31, 2001, unless this date is extended upon due notice in the **Federal Register**.

Comment: A Claimant May File Only One Wool Duty Refund Claim, and Amended Claims Where Applicable, for Each Claim Year. Proposed § 10.184(g)(1) stated that a claimant may submit to Customs, once per calendar year, a request for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002. Several commenters note that this time limitation seemingly precludes a claimant from filing two separate wool duty refund claims for two different claim years in the same calendar year. The commenters suggest that the regulations should provide that a claimant may file only one wool duty refund claim for each claim year; however, refund claims for two different claim years may be filed within the same calendar year.

Customs Response: It was Customs intent to permit a claimant to file more than one refund claim in a given calendar year, so long as the refund claims were for different claim years. Customs agrees with the commenters that the proposed language seemingly precluded this. Therefore, this final rule provides at § 10.184(g)(1) that a claimant may file one claim for a wool duty refund for each of claim years 2000, 2001, and 2002, including, where applicable, any related amended claims for such claim year. There is no prohibition against a claimant filing two separate claims in a single calendar year, so long as the claims are for two different claim years.

Comment: Time to File a Wool Duty Refund Claim and Amended Claims. Several commenters request that Customs extend the deadlines for filing wool duty refund claims and amended claims, and clarify the meaning of the term ''defective claim''. Proposed § 10.184(g)(1) provided that all claims for a wool duty refund, whether original or amended, must be received by Customs within 90 calendar days from the last day of the calendar year for which a wool duty refund is being sought. The proposed rule provided that a claim may be amended within 30

calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support a duty refund claim or is otherwise defective, within 30 calendar days from the date of the Customs notification. The commenters suggest extending these deadlines so that a claim may be filed by December 31 of the year following the claim year for which a wool duty refund is being sought, and that a claim may be amended within 90 calendar days from the date of the original submission or December 31, whichever date is sooner. The commenters suggest that the time period to file an amended claim in response to a Customs notice of insufficient or defective claim be extended to 90 calendar days from the date of such notice, without the imposition of the December 31 deadline, described above, that is applicable to all other claims and amended claims. Lastly, the commenters suggest that the term ''defective claim'' include a claim that identifies one or more entry summaries that are not available for a refund.

Customs Response: Customs agrees with the comments. Accordingly, in this final regulation Customs is extending the deadlines set forth in proposed § 10.184(g)(1) for filing a wool duty refund claim and related amendments. The final regulations state, at § 10.184(g)(1), that should Customs notify a claimant in writing that the claim is insufficient to support a duty refund claim or is otherwise defective, Customs must receive the claimant's subsequent amended claim or claims within 90 calendar days from the date of such notification. Regarding the term ''defective claim,'' Customs is providing in a parenthetical reference provided at § 10.184(g)(1) that an example of a defective claim is a claim that relies on any entry summary that is ineligible for a wool duty refund, as provided for in § 10.184(j). In order to facilitate the administrative processing of wool duty refund claims, the final regulations provide at § 10.184(h) that no duty refund will be issued to a claimant until the applicable amendment period has expired or unless the claimant has provided Customs with a signed waiver of amendment.

Comment: No Interest Payable in Wool Duty Refunds. Several commenters note that the proposed regulation does not describe the circumstances when interest may be payable on wool duty refunds.

Customs Response: Customs will not pay interest on wool duty refund claims. The United States Supreme Court, in *Library of Congress* v. *Shaw*, 478 U.S. 310, 106 S. Ct. 2957 (1986), held that interest cannot be recovered in a suit against the Federal Government in the absence of an express waiver of sovereign immunity, by specific contractual or statutory provision or by express consent by Congress. Section 505 does not expressly waive the government's sovereign immunity from an award of interest. Moreover, there can be no such waiver ''by implication or by use of ambiguous language,'' as held by the Supreme Court in *United States* v. *N.Y. Rayon Importing Co.,* 329 U.S., at 659. The statute that authorizes Customs to pay interest on certain duties and fees is codified at 19 U.S.C. 1505. It specifically refers to payments of interest on ''excess moneys deposited'' which shall accrue through the ''date of liquidation or reliquidation of the applicable entry or reconciliation.'' 19 U.S.C. 1505(c). Customs payment of claims for refunds under these regulations is not a payment of excess moneys deposited, nor is it triggered by the liquidation of an entry or reconciliation. Rather, these claims are analogous to claims for drawback. Just as no interest is paid on drawback claims, so no interest will be paid on these claims. After Customs has verified that the entry summaries associated with the claim have finally liquidated and the period for amending the claim has expired or the claimant has expressly waived the right to amend the claim, Customs will issue a courtesy notice informing the claimant that the payment will be forthcoming. No notice of liquidation or reliquidation will be posted regarding the claim.

Comment: Definition of the term ''Supplier''. Several commenters suggest that Customs define the term ''supplier'' to mean the entity who is not the importer that sold the fabric directly to the manufacturer.

Customs Response: Customs agrees with the commenters' view that the term ''supplier,'' in the context of these regulations, means an entity who is not the importer that sells fabric directly to the manufacturer. We do not think it is necessary to formally define this term in the final regulation. Customs believes that the meaning of the term ''supplier,'' as intended by Customs and suggested by the commenters, is clear from the context in which it appears in the regulations (*i.e.,* the claimant purchased imported worsted wool fabric ''from an identified importer or from an identified supplier'').

Comment: Definition of the term ''Manufacturer''. Several commenters state that the term ''manufacturer'' should be clarified so as to describe who is eligible to claim a wool duty refund under the terms of these regulations. To that end, the commenters note that some manufacturers are producers of eligible products (*i.e.,* custom tailors), some are subsidiaries of larger companies or purchasers of eligible wool products from related companies, and some manufacturers acquire other manufacturers or undergo reorganizations that result in an assignation of legal interests.

Customs Response: Customs is of the view that it is not feasible to attempt to identify in the final regulations each business relationship or transaction that may affect the eligibility of a manufacturer to claim a refund, have another party file a letter of intent or refund claim on the manufacturer's behalf, or assign a successor-in-interest to an existing wool duty refund claim, etc. Customs will decide whether such situations affect the right to file a wool duty refund claim on a case by case basis. Any questions in this regard should be submitted to Customs as an attachment to a letter of intent or wool duty refund claim. Regarding the more specific questions of whether a custom tailor is an eligible claimant for purposes of the wool duty refund program and whether the legal assignee of an eligible manufacturer may exercise the assignor's claim rights, Customs notes the following. Customs is of the view that so long as a custom tailor manufactures men's or boys' suits, suit-type jackets or trousers, of imported worsted wool, the tailor is described by the terms set forth in § 10.184(c)(1) and there is no need to include any clarification in regard to this class of manufacturer. The final regulations reflect, however, in § 10.184(f)(7), that an eligible claimant may be the legal assignee, as established to Customs satisfaction, of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of § 10.184. The final regulations also set forth, at new paragraphs (d)(5) and (g)(viii), the documentation that a legal assignee of a manufacturer's wool duty refund claim rights must provide to Customs for purposes of filing a letter of intent and a refund claim.

Comment: Confidentiality. One commenter expresses concern with respect to confidential treatment of certain commercial information. Specifically, the commenter notes that as proposed § 10.184(e) provided that a verification letter issued to a prospective claimant will contain the ACS-generated amount of duties paid by a specific importer in calendar year 1999, the prospective claimant will be advised of the amount of duty paid by

each of their importers or suppliers. The commenter is of the view that a prospective claimant will be able to calculate from this information the prices paid for imported fabric and the mark-up cost. The commenter, citing section 645 of the Trade Secrets Act (18 U.S.C. 1905) posits that release of this information may violate the prohibition against release of confidential information by government officials.

Customs Response: In response to the concern expressed by the commenter, Customs is deleting reference in the verification letter to the ACS-generated amount of duties paid by a specific importer in calendar year 1999. Section 10.184(e) of the final regulations reflects this approach.

Comment: Use of Invoices to Substantiate Wool Duty Refund Claims. One commenter questions why the proposed regulations permit a manufacturer to substantiate a letter of intent by providing Customs with invoices for worsted wool fabric imported in calendar year 1999, but requires entry summary information to substantiate a wool duty refund claim.

Customs Response: Section 505(d) requires that ''any person applying for a rebate under this section shall properly identify and make appropriate claim to the United States Customs Service for each entry involved.'' For this reason, the final regulations implementing the statute require a claimant to identify to Customs the entry summaries that provide the basis for a wool duty refund claim. Invoices do not provide the requisite information to substantiate a wool duty refund as mandated by section 505.

Comment: Retroactive Substitution of Entry Summary Numbers for Purposes of Drawback Claims. One commenter notes that where an importer provides entry summary numbers to its customers or directly to Customs for purposes of substantiating a wool duty refund claim, and the importer later learns that a drawback claim is available on one or more of those entry summaries, the drawback claim is invalid. The commenter suggests that in this situation the importer be allowed to replace the entry summaries identified to Customs to substantiate a wool duty refund claim with other comparable entry summaries, so long as the amount of duty paid in connection with the replacement entries is not less than the duty paid on the original entry.

Customs Response: First, it is important to recognize that in the situation posited by the commenter, the importer's drawback claim may not necessarily be forfeited. As set forth in § 10.184(j)(3) of the proposed regulations, if an entry has been used to provide the basis for a duty refund claim pursuant to section 505, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback that is based on that entry will be denied by Customs. If an entry has been used to substantiate a claim for a section 505 duty refund, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for drawback. An entry that has already had 99% of the duties paid on that entry refunded by way of a drawback claim may not be used to provide the basis for a wool duty refund claim. Based on the foregoing, the crucial determination as to whether an importer can replace an entry summary that has already been identified to Customs for purposes of substantiating a claim with another entry summary that has had a comparable amount of duties paid in connection with that entry is whether the wool duty refund claim has been processed yet. If so, and the entire amount of duties paid on that entry was refunded to the claimant, no substitution of entry summaries will be permitted, and a claim for drawback that is based on that entry will be denied by Customs. If, however, the section 505 claim has not yet been processed, § 10.184(j)(3) of the final regulations will permit an importer to replace or substitute an entry summary pursuant to the terms discussed above.

Comment: Importer's Affidavit in Support of a Non-Importing Manufacturer's Letter of Intent. One commenter inquires whether an importer's affidavit in support of a non-importing manufacturer's letter of intent, set forth in proposed § 10.184(d)(2)(iv), covers a single manufacturer.

Customs Response: Each importer's affidavit in support of a non-importing manufacturer's letter of intent applies only to the specific manufacturer or supplier(s) identified in the affidavit.

Comment: Request that Importers be Permitted to File on Behalf of Manufacturers. One commenter requests that importers be permitted to file wool duty refund claims on behalf of smaller manufacturers.

Customs Response: For administrative and legal purposes, Customs considers it important that a manufacturer file a claim on its own behalf, in that the manufacturer, or a knowledgeable authorized officer or employee of the manufacturer, is required to provide a statement to Customs attesting to the truth and accuracy of the submitted information.

Comment: Allocation of Fabric Prices by an Importer. One commenter notes that as some manufacturers purchase fabric at different prices from different sources at different times of the year, it may not be possible for an importer to determine which fabric entry, or portion of an entry, was sold to a particular manufacturer. The commenter questions how an importer will be able to determine a method of allocating the higher price fabrics to its customers.

Customs Response: Customs does not require that an importer allocate to a manufacturer the specific entry for the fabric that was sold to that manufacturer. Rather, the importer need only allocate those entries on which an amount was paid in duties that substantiates the amount of duty refund being claimed by the manufacturer.

Comment: Distinction between HTSUS provisions that may be used to substantiate wool duty refund claims for claim year 2000, and for claim years 2001 and 2002. One commenter notes that the language in proposed § 10.184(c)(2) that read, ''[A] manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheadings 5107.10.00 and 9902.51.13 * * * ,'' should be changed to read, in pertinent part, ''* * * 5107.10.00 or 9902.51.13 * * *.'' The commenter points out that the amended language should reflect the construction used in paragraphs (c)(1) and (c)(3).

Customs Response: This comment precipitated Customs review of the entire structure of § 10.184(c) and (f). It is Customs view that a distinction must be made in the final regulations as to which tariff provisions may be used to substantiate a wool duty refund in each of claim years 2000, 2001, and 2002. In this regard, the final regulations state that the chapter 51, HTSUS, provisions identified in paragraphs (c) and (f) provide the basis for a wool duty refund for claim year 2000, and the HTSUS 9902 subheadings identified in these paragraphs provide the basis for a refund for claims years 2001 and 2002. This distinction is necessitated by the terms of section 505, which only authorizes the refund of duties paid in each of claim years 2000, 2001, and 2002, on imports of certain wool products described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 and 9902.5114. As these 9902, HTSUS, provisions will only go into effect on January 1, 2001, it is impossible for a claimant to use these provisions to substantiate a year 2000 claim. For this reason, Customs is permitting claimants to substantiate year 2000 claims with the chapter 51,

HTSUS, tariff provisions identified in the regulations. Customs will not permit the chapter 51 tariff provisions to be used to substantiate wool duty refund claims for claim years 2001 and 2002, inasmuch as these tariff provisions are broader in scope (they contain no limiting micron criteria in their legal heading text) than the designated 9902, HTSUS, provisions. To do so would result in the Treasury Department refunding more monies than it is statutorily authorized to do.

Comment: Micron Limitation. One commenter notes that the proposed regulations allowed no refund of duties paid on imports of wool yarn of 18.5 micron or finer.

Customs Response: As Congress did not expressly provide for the refund of duties paid on imports of wool yarn of 18.5 micron or finer in section 505, Customs, as an administrative agency, may not exceed what is statutorily authorized.

Comment: Manufacturers of Wool Fabric and Wool Yarn. One commenter raises the issue that the proposed regulations did not provide for duty refunds where the manufacturer of wool fabric purchases imported wool yarn or where the manufacturer of wool yarn purchases imported wool fiber or wool top.

Customs Response: Sections 505(b) and 505(c) require that manufacturers of wool fabric and wool yarn also be importers of eligible wool products in order to be eligible to receive a wool duty refund under the terms of the statute. It is noted that section 505(a) does not require a manufacturer of men's or boys' suits, suit-type jackets, or trousers of worsted wool fabric to also be an importer of worsted wool fabric to be eligible for the refund. Customs has interpreted this difference in statutory construction to mean that Congress did not intend to provide wool duty refunds under sections 505(b) and 505(c) to manufacturers who are not importers.

Conclusion and Other Changes

After analysis of the comments and further review of the matter, Customs has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (65 FR 641780) on October 26, 2000, as corrected by the document published in the **Federal Register** (65 FR 66589) on November 6, 2000, with the changes mentioned in the comment discussion and with the following additional change that removes unnecessary language.

Customs has removed the regulatory text language in proposed § 10.184(j)(1) regarding the order of precedence for purposes of refunding duties paid on eligible wool imports. As each manufacturer that timely and completely files a claim pursuant to the terms set forth in this section, regardless of the date and time of filing, is eligible to receive its verified claim, there is no need to establish an order of precedence.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments conform the Customs Regulations to reflect the terms of section 505, within Title V, of the Trade and Development Act of 2000, which authorizes a refund of duties paid on imports of certain wool articles, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0227. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 10.184 of the Customs Regulations. The information requested is necessary to implement the terms of section 505 of the Trade and Development Act of 2000, whereby Customs is authorized to substantiate and process claims for refunds of duties paid in each of calendar years 2000, 2001, and 2002, on imports of certain wool products. The collection of information is required in order for a claimant to obtain the duty refund. The likely respondents are business organizations who seek a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001, and 2002.

The estimated average annual burden associated with the collection of information in this final rule is 290 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch at the address set forth above.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

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

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 10 and 178 of the Customs Regulations (19 CFR parts 10 and 178) are amended as follows:

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

1. The general authority citation for part 10 is revised, and a new specific authority citation for § 10.184 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106–200, 114 Stat. 251;

* * * * *

2. A new § 10.184 is added to read as follows:

§ 10.184 Refund of duties on certain wool imports.

(a) *General.* Section 505 of Title V of Pub. L. 106–200 (114 Stat. 251), entitled the Trade and Development Act of 2000, authorizes the President to refund duties paid on imports of eligible wool products. The statute permits eligible importing-manufacturers and, in certain circumstances, manufacturers who are not importers, to apply for a refund of duties paid on imports of eligible wool products in each of three succeeding years. Claimants are eligible for a refund of duties paid on imports of eligible

wool products in each of calendar years 2000, 2001 and 2002, limited to an amount not to exceed one-third of the duties paid on such wool products imported in calendar year 1999. This section sets forth the legal requirements and procedures that apply for purposes of obtaining this duty refund.

(b) *Eligible wool products.* For purposes for this section, the term ''eligible wool product'' means an imported wool product described under a Harmonized Tariff Schedule of the United States subheading listed under paragraph (c) of this section, relevant to a manufacturer of the particular wool products specified in paragraph (c).

(c) *Refunds authorized by section 505*—(1) *Worsted wool fabric.* In calendar year 2000, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, and in each of calendar years 2001 and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, is eligible to claim a limited refund of the duties paid in such calendar years on entries of such fabrics that were purchased by the manufacturer. The amount of duties eligible to be refunded to the manufacturer in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid on calendar year 1999 imports of worsted wool fabrics described in HTSUS subheadings 5112.11.20 or 5112.19.90 that were purchased by the manufacturer. A broker or other individual acting on behalf of the manufacturer is ineligible to claim a duty refund.

(2) *Wool yarn.* A manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheading 5107.10.00, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool yarn in calendar year 2000. A manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheading 9902.51.13, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool yarn in each of calendar years 2001 and 2002. The amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on wool yarn described in HTSUS subheading 5107.10.00 and imported in calendar year 1999.

(3) *Wool fiber and wool top.* A manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool fiber or wool top in calendar year 2000. A manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14, is eligible to claim a limited refund of the duties paid by the manufacturer on entries of such wool fiber or wool top in each of calendar years 2001, and 2002. The amount of duties eligible to be refunded in each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on wool fiber or wool top described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29 and imported in calendar year 1999.

(d) *Manufacturer's letter of intent to file a claim for a wool duty refund.* A manufacturer that anticipates filing a wool duty refund claim in calendar years 2000, 2001, and 2002, pursuant to the terms of paragraph (c) of this section, must first file with Customs a letter of intent to that effect. A manufacturer's letter of intent must substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

(1) *Documentation required where the manufacturer is the importer.* Where a manufacturer is the importer of the eligible wool products imported in calendar year 1999, a letter of intent to file a wool duty refund claim must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer and must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful. The letter of intent must contain the following information:

(i) A statement of the total amount of duties paid by the importing-manufacturer on eligible wool products imported in calendar year 1999;

(ii) A list of relevant entry summary numbers, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount set forth in paragraph (d)(1)(i) of this section; and

(iii) A statement that no entry summary has been listed in paragraph (d)(1)(ii) of this section that did not liquidate under the HTSUS subheadings that provide a basis for a wool duty refund.

(2) *Documentation required where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section is not the calendar year 1999 importer of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, but possesses the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 to the manufacturer;

(B) Copies of all relevant invoices, set forth as an attachment, that demonstrate that the manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s) and that establish, where applicable, that the identified supplier(s) purchased such fabric from the identified importer(s);

(C) A completed Customs Form (CF) 5106—Importer ID Input Record, set forth as an attachment; and

(D) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified

supplier(s), with copies of relevant invoices attached;

(*4*) If the affiant purchased fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section from an identified supplier, a statement that the affiant has been provided with substantiating documentation that establishes that the subject fabric was imported by the identified importer; and

(*5*) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the submitted invoices, and such information is set forth as an attachment; and/or

(*6*) A statement by the affiant that the identified importer has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid on worsted wool fabric imported in calendar year 1999 must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent to File a Wool Duty Refund Claim (where the manufacturer possesses the relevant entry summary numbers for the fabric identified in the invoices submitted with this affidavit)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the attached invoices; and/or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (2) above to the undersigned or to identified supplier(s), and to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid in calendar year 1999 on the fabric identified in the attached invoices; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) If an importer assists in the substantiation of a non-importing manufacturer's letter of intent by submitting relevant entry summary numbers directly to Customs as an attachment to a signed affidavit, the importer's affidavit must be signed by the importer or a knowledgeable officer or employee of the importer and must state that, to the best of the affiant's knowledge and belief, the information contained in the affidavit is accurate and truthful. The importer's signed affidavit must contain the following information:

(A) A statement that the affiant paid duties on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, imported in calendar year 1999;

(B) Identification of the claimant, or supplier to the claimant, to whom the affiant sold imported worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section;

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section, imported in calendar year 1999, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duty paid in calendar year 1999 on the fabric sold to the identified claimant or identified supplier, as evidenced by the claimant's invoices; and

(D) A statement that the importer has not listed any entry summary in paragraph (d)(2)(iii)(C) of this section that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.19.90.

(iv) The importer's affidavit in support of a non-importing manufacturer's letter of intent to claim a wool duty refund must be signed by the importer or a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Letter of Intent to Claim a Wool Duty Refund

1. The undersigned, (*name of importer*), is an importer who paid duties on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, imported in calendar year 1999;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid in calendar year 1999 on the fabric that was sold to (*name of manufacturer*) or to (*name of supplier(s)*) by the undersigned;

4. The undersigned has not listed any entry summary in item (3) above that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.11.90; and

5. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(3) *Documentation required where the manufacturer is not the importer and the manufacturer does not possess the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section is not the calendar year 1999 importer of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, and does not possess the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent, where the manufacturer does not possess the relevant entry summary numbers, must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 to the non-importing manufacturer;

(B) Copies of all relevant calendar year 1999 invoices, set forth as an attachment, that demonstrate that the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s);

(C) A statement that if the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified supplier, the manufacturer has substantiating documentation that establishes that such fabric was imported by the identified importer;

(D) A completed Customs Form (CF) 5106—Importer ID Input Record, set forth as an attachment; and

(E) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement of the quantity of imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(D)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of the relevant invoices attached;

(*4*) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(D)(*2*) of this section from an identified supplier, the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer; and

(*5*) A statement by the affiant that a good faith effort was made to contact the identified importer and request relevant entry summary numbers that substantiate the amount of duties paid in calendar year 1999 on fabric identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid by the importer on worsted wool fabric imported in calendar year 1999, where no entry summary numbers are available, must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent to File a Wool Duty Refund Claim (where the manufacturer does not possess the relevant entry summary numbers for the fabric identified in the invoices submitted with this affidavit)

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2002);

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of relevant invoices are attached;

4. If the undersigned has purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5. The undersigned attests that a good faith effort was made to contact the identified importer(s) and request that relevant entry summary numbers be provided to either the undersigned or directly to Customs that substantiate the amount of duties paid in calendar year 1999 on fabric identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance;

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(4) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must submit to Customs a letter of intent to file a wool duty refund claim that is signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) With respect to fabric where the manufacturer is the importer, the letter of intent must contain the information described in paragraph (d)(1) of this section.

(ii) With respect to such fabric where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers, the letter of intent must contain the information described in paragraph (d)(2) of this section and the relevant entry summary numbers may be submitted directly to Customs by the manufacturer and/or the importer(s).

(iii) With respect to such fabric where the manufacturer is not the importer, and the manufacturer does not possess the relevant entry summary numbers, the letter of intent must contain the information described in paragraph (d)(3) of this section.

(5) *Documentation required where a prospective claimant is the legal assignee of an eligible manufacturer's potential wool duty refund rights.* To file a letter of intent where the prospective claimant is the legal assignee of any potential wool duty refund claim rights attributable to an eligible manufacturer described in paragraph (c) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the letter of intent, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund.

(6) *Time to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be received by Customs no later than March 31, 2001, unless this date is extended upon due notice in the **Federal Register**.

(7) *Place to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048–0945.

(e) *Customs verification letter.* Customs will issue to a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a timely and complete letter of intent that relies solely on relevant entry summary numbers to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. Where a prospective claimant submits a letter of intent that relies on invoices, in whole or in part, to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999, Customs will issue a verification letter to such prospective claimant within 30 calendar days after the date all letters of intent must be received by Customs, as set forth in paragraph (d)(5) of this section. The amount of potential duty refund will be based on the quantity of eligible wool products that was imported by the prospective claimant or, where the prospective claimant was not the importer, purchased by the prospective claimant (as indicated by submitted invoices). If entry summary numbers are used to substantiate the amount of duties paid

on eligible wool products in calendar year 1999, the potential refund amount will be limited to the amount of duties paid on such entry summaries that is attributable to that quantity of eligible wool products. If invoices are used to substantiate the amount of duties paid on worsted wool fabrics in calendar year 1999, the amount of duties will be determined by deducting 10 percent from the invoice amounts, dividing the resulting adjusted invoice amounts by 100% plus the duty rate (30.6%) to back out the duty, and then multiplying that amount times the duty rate (30.6%). If the aggregate amount of duties attributable to an importer exceeds the amount of duties paid by that importer in calendar year 1999, as indicated by ACS, an adjustment will be made to those claimants requiring use of the invoice formula. The percentage deducted from the invoice amounts for those claimants will be increased on a *pro rata* basis to ensure that the aggregate amount to be refunded does not exceed the ACS amount. Refund amounts substantiated by entry summary numbers will not be reduced. A letter of verification will set forth the following information:

(1) The prospective claimant's claim identification number;

(2) The maximum amount of wool duty refund that the individual prospective claimant will be eligible to receive in each of calendar years 2000, 2001, and 2002; and

(3) Where invoices are used to substantiate the amount of duties paid on worsted wool fabric in calendar year 1999, the percentage that was deducted from the invoice amounts, with accompanying explanation.

(f) *Eligibility criteria to claim a duty refund in calendar years 2000, 2001, and 2002.* To be eligible to claim a refund of duties paid on imports of certain wool products in calendar years 2000, 2001, and 2002, a claimant must be in receipt of a claim verification letter from Customs. Additionally, a claimant must be:

(1) In calendar year 2000, a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, for which duties were paid in that year;

(2) In calendar years 2001 and 2002, a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, for which duties were paid in those years;

(3) In calendar year 2000, a U.S. manufacturer of worsted wool fabric who paid duties in that year on imported wool yarn of the kind described in HTSUS subheading 5107.10.00;

(4) In calendar years 2001 and 2002, a U.S. manufacturer of worsted wool fabric who paid duties in those years on imported wool yarn of the kind described in HTSUS subheading 9902.51.13;

(5) In calendar year 2000, a U.S. manufacturer of wool yarn or wool fabric who paid duties in that year on imported wool fiber or wool top of the kind described in HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29;

(6) In calendar years 2001 and 2002, a U.S. manufacturer of wool yarn or wool fabric who paid duties in those years on imported wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14; or

(7) A legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of this section.

(g) *Procedures for filing a claim*—(1) *Time to file.* An eligible claimant may file with Customs one wool duty refund claim for each of calendar claim years 2000, 2001 and 2002, including, where applicable, related amended claims. A claim may be amended within 90 calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support the claim as requested or is otherwise defective (*e.g.,* a claim that relies on an entry summary that is ineligible for a wool duty refund, as provided for in § 10.184(j)), within 90 calendar days from the date of the Customs notification. All claims for a wool duty refund, whether original or amended in the absence of a Customs notification of insufficiency or defect, must be received by Customs no later than December 31 of the year following the calendar claim year for which a wool duty refund is being sought. An amended claim made in response to a Customs notification of insufficiency or defect may be submitted to Customs after the December 31 deadline applicable to all other claim submissions. A claimant may file two separate duty refund claims in a single calendar year, so long as the claims are for two different claim years.

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048–0945.

(3) *Documentation.* (i) *Where the manufacturer is the importer.* To file a wool duty refund claim, an importing-manufacturer must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is a U.S. manufacturer of the kind described in either paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of this section, in the current calendar claim year;

(B) A statement of the total amount of duties paid by the affiant in that year on eligible wool products;

(C) The total amount of duty refund being claimed;

(D) A list of relevant entry summary numbers, set forth as an attachment and submitted to Customs in either a paper or an electronic format (the latter on diskette), that substantiates the amount of duties for which a refund is being claimed in paragraph (g)(3)(i)(C) of this section, and does not exceed the affiant's share of duties eligible to be refunded as set forth in the attached verification letter;

(E) A statement that no entry summary has been listed in paragraph (g)(3)(i)(D) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(F) A statement that identifies, if applicable, any entry summary listed in paragraph (g)(3)(i)(D) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(ii) *Form of affidavit.* An importing-manufacturer's signed affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002 must be signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, and submitted to Customs in the following format:

Importing-Manufacturer's Affidavit in Support of a Claim for a Wool Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year–

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer of the kind described in either paragraphs (f)(1) [ ], (f)(2) [ ], (f)(3) [ ], (f)(4) [ ], (f)(5) [ ], or (f)(6) [ ] [check one] of § 10.184 of the Customs Regulations (19 CFR 10.184(f)), in the current calendar claim year;

2. The undersigned paid (*total amount of duties paid*) in calendar year on eligible wool products;

3. The amount of wool duty refund being claimed is $____;

4. Attached is a list of the relevant current claim year entry summary numbers that substantiate the amount of duty refund being claimed in item (3) above;

5. The undersigned has not listed any entry summary in item (4) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

6. The undersigned will list any entry summary in item (4) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

7. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) *Where the manufacturer is not the importer.* To file a wool duty refund claim a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HSTUS subheadings 5112.11.20, 5112.19.90, 9902.51.11 or 9902.51.12, who is a purchaser but not the importer of such fabric, must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that in calendar claim year 2000, the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, or, a statement that in calendar claim years 2001 and 2002, the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12 in calendar claim years 2001 and 2002;

(B) A statement that the affiant is not the importer in the current calendar year of imported worsted wool fabric of the kind described in paragraph (A) above;

(C) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (A) above that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(D) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (A) above from an identified supplier(s), the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer(s); and

(E) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the submitted invoices, and such information is set forth as an attachment; and/or

(F) A statement by the affiant that the identified importer(s) has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached, that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the submitted invoices.

(iv) *Form of affidavit.* A manufacturer who is not the importer of the imported worsted wool fabric must submit to Customs an affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, in the following format:

Non-Importing Manufacturer's Affidavit in Support of a Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year

1. The undersigned, (*name of manufacturer*), is a U.S. manufacturer in calendar year ____ of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90 (in claim year 2000), or HTSUS subheadings 9902.51.11 or 9902.51.12 (in claim years 2001 and 2001);

2. The undersigned was not the importer of imported worsted wool fabric of the kind described in item (1) above;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer(s)*) or from a supplier(s), and the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the attached invoices; and/or

5(b). The importer, (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (1) above to the undersigned or to (*name of supplier*), and has agreed to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid in the current calendar claim year on the fabric identified in the attached invoices; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(v) *Required content of an importer's signed affidavit in support of a manufacturer's wool duty refund claim.* Where an importer chooses to assist in the substantiation of a non-importing manufacturer's wool duty refund claim by submitting relevant entry summary numbers directly to Customs, such entry information must be set forth as an attachment to an affidavit that is signed by the importer or by a knowledgeable officer or employee of the importer, and must contain the following information:

(A) A statement as the total amount of duties that the importer paid in the current calendar claim year on worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section;

(B) A statement that the importer sold worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section, to the identified manufacturer or to the identified supplier(s);

(C) A list of relevant entry summary numbers for the worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid during the current calendar claim year on such fabric that was sold by the importer to the identified manufacturer or to the identified supplier(s);

(D) A statement that no entry summary number has been listed in paragraph (g)(3)(v)(C) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(E) A statement that lists any entry summary number in paragraph (g)(3)(v)(C) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(vi) *Form of affidavit.* The importer's affidavit in support of manufacturer's wool duty refund claim must be signed by the importer or by a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

Importer's Affidavit in Support of a Non-Importing Manufacturer's Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year

1. The undersigned, (*name of importer*), is an importer who [check one] paid duties in calendar year 2000 [ ] on worsted wool fabric of the kind described in HTSUS subheadings 5112.11.20 or 5112.19.90, or who paid duties in calendar year 2001 [ ] or calendar year 2002 [ ] on worsted wool

fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid in the current calendar claim year on such fabric that was sold by the undersigned to (*name of manufacturer*) or to an identified supplier(s) (*name of supplier*);

4. The undersigned has not listed any entry summary in item (3) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

5. The undersigned will list any entry summary in item (3) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

6. The undersigned attests that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(vii) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must provide Customs with both the documentation described in paragraphs (g)(3)(i) and (g)(3)(ii) of this section, and the documentation described in paragraphs (g)(3)(iii) and (g)(3)(iv) of this section.

(viii) *Documentation required where the claimant is the legal assignee of an eligible manufacturer's wool duty refund claim rights.* To file a wool duty refund claim where the claimant is the legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5) or (f)(6) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the claim, and additional substantiating documentation must be available to Customs upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund duty refund.

(h) *Wool duty refund claim processing procedures.* Upon receipt of a timely and complete wool duty refund claim filed pursuant to the terms of this section, Customs will determine the liquidation status of the entry summaries used to substantiate the claim. No duty refund will be issued to a claimant until all the entry summaries identified for purposes of substantiating the claim have been finally liquidated and the applicable amendment period, as set forth in paragraph (g)(1) of this section has expired or the claimant has submitted to Customs a signed waiver of amendment.

(i) *Denial of a wool duty refund claim.* Customs may deny a wool duty refund claim if the claim was not timely filed, if the claimant is not eligible pursuant to the terms of this section, or if the claimant has not complied with the requirements of this section. Customs will provide the claimant with written notice of the denial of the claim, including the reason for the denial.

(j) *Multiple refund claims and pending judicial review*—(1) *Allowance or denial of subsequent claims.* If an entry has been used to provide the basis for a duty refund claim pursuant to this section, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback, or any other refund claim authorized by law, that is based on that entry, will be denied by Customs. If an entry has been used to substantiate a claim for a duty refund under this section, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for subsequent duty refund claims under this section, drawback, or any other refund claim authorized by law.

An entry that has already had 99% or more of the duties paid on that entry refunded by way of a drawback claim, protest, or any other claim authorized by law, may not be used to provide the basis for a wool duty refund claim.

(2) *Substitution of entry summary numbers.* If a duty refund claim under this section has not yet been processed by Customs, an importer may substitute an entry summary that has already been identified to Customs for purposes of substantiating the claim with another comparable entry summary, so long as the amount of duty paid in connection with the replacement entry is not less than the duty paid on the entry that was identified to Customs originally.

(3) *Pending judicial review.* If a summons involving the tariff classification or the dutiability of an imported wool product has been filed in the Court of International Trade, Customs will deem any entry summary at issue in that judicial proceeding ineligible to substantiate a duty refund claim.

(k) *Penalties and liquidated damages.* A wool duty refund claimant's failure to comply with any of the procedural requirements set forth in this document, or failure to adhere to all applicable laws and regulations, may subject the claimant to penalties, liquidated damages or other administrative sanctions.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
*	* * * *	
§ 10.184	Refund of duties on certain wool imports.	1515–0227
*	* * * *	

Raymond W. Kelly,

Commissioner of Customs.

Approved: December 20, 2000.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury

[FR Doc. 00–32836 Filed 12–20–00; 3:09 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8918]

RIN 1545–AY11

Removal of Federal Reserve Banks as Federal Depositaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations

SUMMARY: This document contains temporary regulations relating to the deposit of Federal taxes pursuant to section 6302 of the Internal Revenue Code. The regulations remove Federal Reserve banks as authorized depositaries for Federal tax deposits. The regulations affect taxpayers that make Federal tax deposits using paper Federal Tax Deposit (FTD) coupons (Form 8109) at Federal Reserve banks.

DATES: *Effective Date:* These regulations are effective December 26, 2000.

Applicability Date: These regulations apply to deposits made after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Brinton T. Warren (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to Federal tax deposits under section 6302(c) of the Internal Revenue Code (Code). Section 6302(c) provides that the Secretary may authorize Federal Reserve banks, and incorporated banks, trust companies, domestic building and loan associations, or credit unions that are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as the Secretary may prescribe. Pursuant to this authority, various regulations provide that Federal Reserve banks, as well as other authorized financial institutions, may receive certain Federal tax deposits.

In cooperation with the Treasury Department's Financial Management Service (FMS), the Federal Reserve System has been streamlining its Treasury Tax and Loan (TT&L) Operation to respond to the fact that the overwhelming majority of Federal Tax Deposits (FTDs) are now received electronically. The widespread adoption of electronic deposits by taxpayers is an important aspect of improving the efficiency, reliability, and cost-effectiveness of the Treasury Department's financial management. In general, compared to the universe of all tax deposits, the percentage of FTDs made with paper coupons has significantly declined. FTDs made with paper coupons at Federal Reserve banks now constitute only a tiny percentage of all tax deposits. For example, in Fiscal Year 1999, of the approximately 100 million Federal tax deposits, made by paper coupon and electronically, only about 270,000, or less than one half of one percent, were paper coupons presented at Federal Reserve banks. Additionally, the number of paper coupons presented at Federal Reserve banks has declined over twenty-five percent since 1997.

The Treasury Department has developed an array of other deposit options that are more convenient for taxpayers to use, and more economical to process, than deposits with Federal Reserve banks. For example, taxpayers may use their touch tone telephone or personal computer to make deposits 24 hours a day through the Electronic Federal Tax Payment System (EFTPS). For those taxpayers who still prefer paper coupons over electronic deposits, there are now more than 10,000 financial institutions nationwide that are designated as TT&L depositaries where taxpayers may make FTD deposits using paper coupons.

In response to the declining number of deposits being made with paper coupons at Federal Reserve banks, the Federal Reserve Bank of St. Louis was selected, effective May 1, 2000, to serve as the only Federal Reserve bank accepting FTDs. Even after this consolidation, however, it is no longer cost-effective for the Federal Reserve bank in St. Louis to process the small number of paper coupons it receives annually. Accordingly, these temporary regulations remove all Federal Reserve banks as depositaries for Federal taxes. To mitigate any difficulties for those taxpayers who still do not wish to use the deposit alternatives discussed above, the Treasury Department has authorized a financial agent to receive and process FTD payments through the mail, thereby maintaining a mail-in alternative for taxpayers who do not have an account with an authorized financial institution and who do not wish to use EFTPS. The address for this mail-in alternative is Financial Agent, Federal Tax Deposit Processing, P.O. Box 970030, St. Louis, Missouri, 63197. The IRS is also issuing proposed regulations that remove Federal Reserve banks as depositaries of Federal taxes. See the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6302–1T is added to read as follows:

§ 301.6302–1T Use of Federal Reserve banks after December 31, 2000

Federal Reserve banks are not authorized depositaries for Federal tax deposits made after December 31, 2000.

Dated: December 6, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 6, 2000.

Jonathan Talisman,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 00–32567 Filed 12–22–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities to Provide Services to the Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 343 of the FY 2000 Department of Defense Authorization Act, Section 129a and Section 2461(g) of title 10 within the Department of the Army by means of a reporting requirement included in certain contract actions described in the rule.

EFFECTIVE DATE: December 26, 2000.

ADDRESSES: Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA)), Attention SAMR–FMMR, Rm. 2A672, Washington, DC 20310, or contact the following persons by e-mail or phone as indicated below.

FOR FURTHER INFORMATION CONTACT: Dr. John Anderson, SAMR–FMMR, Phone 703–614–8247, e-mail: John.Anderson@hqda.army.mil or John R. Conklin, SAAL–ZPS, e-mail: John.Conklin@sarda.army.mil

SUPPLEMENTARY INFORMATION:

a. Background

(1) The Department of the Army previously announced an interim rule to establish basic contractor-reporting requirements to identify the number and value of direct, and associated indirect, labor work year equivalents for contracted services in support of the Army. The interim rule, effective on the date of publication, was published in the **Federal Register** (65 FR 13906) dated Wednesday, March 15, 2000. Comments and responses pertaining to the new reporting requirements are provided in b. below.

(2) Major changes to the Interim Rule are outlined herein and further explained in ''b.'' below. In response to numerous administrative questions and requests for clarification from both public and private sector sources, Part 668 has been completely reorganized and rewritten for better readability, clarity and completeness; and to allow easier implementation by the Army contracting community and Army contractors. To further assist with this objective, the Final Rule will be cited and further implemented as appropriate in the Army Federal Acquisition Regulation Supplement.

(3) The substantive changes resulting from the Public Comment process are as follows:

(a) Section 668.1(b)(1)(i) excepting FAR Part 12 contract actions from inclusion of the reporting requirement, and mandatory reporting, is deleted in its entirety. With the effective date of this Final Rule, the reporting requirement will be included in all contracts specified in the amended § 668.1(c)(3) (including those entered into using Part 12 procedures, unless otherwise exempt). All affected contractors shall be requested to provide reportable data from October 1, 1999 (or later start of contract date), in order to insure complete, accurate and useful information to Congress and Army planners.

(b) Section 668(b)(1)(iii) is deleted, and will be moved to § 668.2(e).

(c) Section 668.2 is renamed ''Contract Reporting Requirements.'' Section 668.2(a) is changed (in § 668.2(d)) by amending ''relevant composite indirect labor rate'' to read ''relevant annualized average or composite indirect labor rates'' in order to clarify that rates reported (for hours and dollar value) do not have to be adjusted for every reporting period; and will further clarify that actual estimated hours and dollars may always be reported (in lieu of rates) for indirect labor related to the direct labor reported. To this end, the ASA (M&RA) secure website (*https://contractormanpower.us.army.mil*) will be amended to add appropriate fields and clarifications.

(d) A new § 668.2(g) is added to clarify that prime contractors may use their discretion to determine whether sub-contractors will report their information directly to the data collection web site, or to the prime contractors for validation and submission to the collection web site.

(e) The current paragraph (c), titled ''Reporting format'' is redesignated as paragraph (i) and corresponding changes are made to the list of required data elements;

(f) The secure Army website and its URL address is now highlighted in Section 668.2(a) and (i). The website is the principal source of detailed information on the reporting process, Help Desk functions, and other information and assistance.

b. Comments and Responses

Comments and responses are provided as follows:

Comment: Contractor recommended that the rule clarify that it is permissible for a contractor to use an algorithm of the overall relation of total indirect labor hours to the total direct and indirect hours on an annualized basis for the purposes of reporting the composite indirect rate.

Response: The rule will be clarified to reflect the permissibility for contractors to report using an annualized average composite indirect rate for estimating indirect man-hours rather than a rate developed for the specific reporting period.

Comment: Public sector union requested clarification on the meaning of the ''composite indirect rate'' for estimating value.

Response: The composite indirect rate for estimating value (as opposed to hours) is intended to capture the labor-related charges included in the indirect pools. This rate, when multiplied against the value of direct labor hours is intended to provide an estimate of all of the compensation related charges associated with the reportable services under the contract action during the reporting period (*i.e.*, both direct and indirect labor charges). These compensation charges include: salaries and wages; directors' fees; bonuses (including stock); incentive awards; employee stock options; stock appreciation rights; employee insurance; fringe benefits (*e.g.*, vacation, sick leave, holidays, military leave, supplemental unemployment benefit plans); contributions to pension plans (defined benefit, defined contribution); other post-retirement benefits, annuity, and employee incentive compensation and deferred compensation plans; early retirement plans; off-site pay; incentive pay; hardship pay; severance pay; and COLA differential. Contractors may also report estimated total hours and dollars for (related) indirect labor (as opposed to providing average composite rates). Either method chosen should be

consistently reported. The Final Rule, at Section 668.2(d)(2), contains these clarifications; and the secure Army website will be amended to reflect the new data fields.

Comment: Contractor questioned application of reporting requirement to Time and Materials (T&M) and Firm Fixed Price (FFP) contracts since the contractor invoices the Government based on its fully burdened labor rates, as proposed under T&M, and agreed upon prices or rates under FFP, and does not otherwise usually disclose actual labor costs (under T&M) or actual labor hours or costs under FFP. Conversely, public sector unions requested that the Rule be clarified to apply the reporting requirement to firm fixed price type contracts, on the basis that, assuming the numbers (hours and value) are known and collected by the contractors for their own business purposes, the numbers should be reported to the secure Army website since they are not to be used for billing nor for audit, or any other purposes beyond those stated in the Rule (reporting and manpower planning).

Response: The Army is not requesting this contractor manpower information as a basis for future negotiation, payment or post-audit under the contract(s) reported; and is treating all provided information, especially any estimated indirect labor hour or rate/value information, as proprietary when specifically associated with a contractor by name and contract number. The Rule will clarify that reporting the requested information is not required when a contractor would be forced to create a new, internal cost accounting, allocation or payroll system in order to reasonably identify the requested data. However, it is unlikely that a contractor would be able to operate in accordance with generally accepted accounting principles, and in compliance with taxation and benefits laws and regulations, without having the requested information readily available either at the time of a request for progress payment, submission of invoices or vouchers, or quarterly. Lastly, the data as reported by contractors will not be furnished through or to Army contracting offices, but directly to the office responsible for manpower reporting to Congress and providing gross data to Army planners. Accordingly, firm fixed price contracts and time and materials contracts shall fall within the scope of the reporting requirement and the Final Rule is clarified to reflect that change.

Comment: Public sector union questioned the exclusion of Federal Acquisition Regulation (FAR) Part 12 service contracts from the scope of the reporting requirement.

Response: Initially, FAR Part 12 contracts were exempted on the basis that the reporting requirement could detract from the commercial practices tenet, and based on the sparse use of those procedures for service contracts in general. However, on review of the comments, and reflection on the remaining exceptions for reporting, it was determined that, if contractors possessed the needed data as a matter of common business practice, and if the reporting requirement was minimally burdensome and intrusive, then it should be reported, notwithstanding the use of Part 12. In addition, Army contracting personnel notified us that the number and size/scope of Part 12 Service contracts was quite large and increasing, contrary to our initial expectations. Given the intended scope of both section 2461(g) of title 10 and section 343 of the Fiscal Year 2000 National Defense Authorization Act, excluding the significant and growing numbers of service contracts awarded under Part 12 will detract from the reliability of information collected and undercut the purposes of data collection. Accordingly, the Final Rule eliminates the exception for contracts entered into under the authority and procedures of FAR Part 12.

Comment: Public sector unions questioned the exclusion of contracts below $100,000 in value from the scope of the rule.

Response: The $100,000 exclusion is intended to minimize the workload burden in compiling the report, and covers a relatively small number of contractor support man-hours provided under a large number of contract actions. The Rule will, however, be clarified to explain that the $100,000 refers to the total estimated value of the contract in the case of Task Order or Delivery Order contracts. Individual orders under such contracts that are reported using a DD Form 350, Individual Contracting Action Report (i.e., greater than $25,000) shall be reported). The Army may periodically consider eliminating this exclusion in the event the exclusion is misused or results in a substantial number of service contracts and manpower information being excluded from the requirement in a way that would impair the reliability of the overall data.

Comment: Public sector unions questioned the scope of the proprietary nature of the data and requested that the Army address how it intends on making the data available to the public. Army Major Command Chiefs of Staff and their contracting offices queried how they would be informed about contractor compliance with the reporting requirement.

Response: For the purposes of this data collection effort, information reported on direct or indirect labor hours and rates, and the value of those hours, when associated with a contract number and contractor identity, is treated as proprietary. It was and is considered essential to the data collection effort to ensure this level of information security to reporting contractors. Data subject to potential release to Army sources or the public, or under the Freedom of Information Act, would include information such as the identity of contractors reporting; the number of contract actions reported on; and the overall number of labor hours and value of various categories of support services reported, and other aggregations, but in no event will there be public release of specific reported data when linked to contractor name and or contract number. The Final Rule is clarified to provide that proprietary information may be provided to internal Army sources for purposes of evaluating and enforcing compliance with the reporting requirement, provided the information is appropriately marked and treated as proprietary. For purposes of assuring compliance with the reporting requirement, the Army may eventually decide to make a summarization of non-proprietary, releasable data available through a web site; however this will not be possible in the near future due to the late implementation by many contracting activities and the need for a validation process and cycle using the Federal Procurement Data System database.

Comment: A member of the public suggested that the rule clarify how sub-contractors would report this information. In addition, a contractor suggested that sub-contracting its payroll system excluded it from the scope of the reporting requirement.

Response: Clarifying language is included in the Final Rule making clear that prime contractors may either require their sub-contractors to directly report the information required by this rule to the data collection web site; or the prime contractor may report subcontractor-provided information to the data collection web site (identifying the source of the numbers to the extent practicable). In addition, clarifying language is included in the Final Rule that sub-contracting the payroll system of a contractor is not a basis for exclusion of the contractor from the reporting requirement.

Comment: An Army contracting office queried whether the reporting

requirement applied to Army contracts awarded by them using General Services Administration (GSA) contract vehicles.

Response: Clarifying language is included in the Final Rule that the reporting requirement applies to Army contract actions, valued at greater than $100,000, awarded by Army contracting offices using GSA contract vehicles.

Comment: Contractor suggested that the submission of an invoice with an additional attachment be allowed in lieu of the web-based data collection, at the option of the contractor.

Response: Using multiple data collection formats and methods is impracticable for the Government and would adversely affect the reliability and cost of the data collection. In addition, the inclusion of attachments on an invoice would, for all practical purposes, eliminate the access protections afforded by using a secure web site not associated with contracting channels, for all data collection.

Comment: Public sector union suggested that the reporting requirement be extended to cover manufacturing work analogous to the work performed at Army arsenals and some Army depots (primarily remanufacturing).

Response: The final rule applies only to services covered by federal supply class or service codes covered by the ''Research and Development,'' and the ''Other Services and Construction'' codes. The final rule does not include a reporting requirement for the acquisition of supplies and equipment by purchase, lease or barter. However, when non-incidental services are discretely included in such contract actions, and these services may be characterized under the Other Services and Construction codes or Research and Development codes, they shall be subject to the reporting requirement. Just as, in manufacturing work performed at Army arsenals, support services that the Arsenals contract for must be reported.

Comment: Public sector comments from overseas commands recommended that foreign vendors/contractors providing services to the Army overseas (such as in Contingency support in theaters of operation) be excepted from the reporting requirement. The concern is certain foreign contractors may not be able to connect to the Internet; may not be conversant with our language, our accounting rules and assumptions, and may be distrustful of providing potentially business- (or tax) sensitive information to a foreign government (*i.e.,* the United States), notwithstanding the stated purpose and pledge to protect such data as proprietary.

Response: One of the purposes of this minimal burden data collection effort is for Army Leadership to gain visibility over the total resources (manpower and associated costs) necessary to accomplish mission requirements, as reliance on contractor support has increased. A recent (October 19, 2000) Memorandum to all Army Commanders and Heads of Staff Agencies, signed by the Vice Chief of Staff, GEN John M. Keane, states: ''Defined in both functional and appropriation terms by theater, this [CME] information will address a material weakness capturing the ''contractor shadow workforce'' support to our forces. This information is very important to Army planning and programming, the Quadrennial Defense Review, and for assuring full visibility of all costs in activity based costing initiatives.'' If foreign contractors are unable to comply with the entirety of the reporting requirement, without creating a whole new allocation system or system of records, they can exempt themselves from that part of the reporting which they can certify as infeasible. This must be supported with a written certification outlining the portion of the reporting which is impracticable and the reasons therefore. In certain extreme cases (*e.g.,* when the contractor has no capability to use the Internet), the Army contracting office shall be required to report the relevant data and estimates to the best of their ability.

General

The Interim Rule included an exception to the requirement for reporting when a contractor did not have an internal system for aggregating billable hours in the direct and indirect pools, or an internal payroll accounting system, and did not otherwise have to provide this information to the Government. Since these circumstances and facts are not known in advance by contracting officers, this ''exemption'' (as somewhat restated) has been moved from § 668.1 (which instructs contracting officers), to § 668.2, ''Contract Reporting Requirements'' (which will instruct offerors and contractors in solicitations and contracts). A corresponding requirement has been added for a written certification of these facts to be submitted by the offeror/contractor.

There were a number of suggestions from both public and private sector sources (some mentioned above) for total exemption from reporting for various circumstances, mostly irrelevant to the purpose of the data collection or its availability. The Rule has been amended to clarify that even partial reporting of the data elements required is significantly more useful to the Army than no report at all.

a. Procedural Requirements

(1) Regulatory Flexibility Act

The rule does not require the preparation of a regulatory flexibility analysis since it is not expected to have a significant economic impact on a substantial number of small entities (*i.e.* small and small disadvantaged businesses).

(2) Unfunded Mandates Act

The rule does not impose an enforceable duty among small governments (*i.e.* States and local governments).

(3) Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0702–0112, with an expiration date of August 31, 2003.

(4) Executive Order 12866 (Regulatory Planning & Review)

This is not a significant regulatory action in that it is not likely to result in a rule that will have an annual effect on the economy of $100 million or more or adversely affect productivity, the environment, public health or safety.

(5) Executive Order 13132 (Federalism)

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

(6) Submission to Congress and the General Accounting Office (GAO)

Pursuant to 5 U.S.C., Chapter 8, the rule will be forwarded to both Houses of Congress and the GAO in the final rule announcement together with the GAO prescribed special reporting form for this purpose.

In this document, the Army Department adopts the interim rule published March 15, 2000 as final with the above described changes as set forth below. (Because of the number of changes and the significant reorganization of the Rule, the amended part 668 is provided in full.)

List of Subjects in 32 CFR Part 668

Government contracts; Reporting and record keeping requirements.

Accordingly, the interim rule adding Subchapter L consisting of part 668 to

32 CFR chapter V, which was published in 65 FR 13906 (March 15, 2000), is adopted as a final rule and part 668 is revised to read as follows:

Subchapter L—Army Contracting

PART 668—CONTRACTOR MANHOUR REPORTING REQUIREMENT

Sec.
668.1 General.
668.2 Contract reporting requirements.

Authority: Sec 343 of Pub.L. 106–65, 113 Stat. 569 (10 U.S.C. 129a and 2461(g)).

§ 668.1 General.

(a) *Scope.* This part sets forth reporting requirements, and related policies and procedures, for labor work year equivalents performed by contractors (also called Contractor Man-year Equivalents (CMEs)) in support of the Army, pursuant to 10 U.S.C. 129a, 10 U.S.C. 2461(g), and Section 343 of Public Law 106–65.

(b) *Purpose and Background.* (1) *Purpose.* The purpose of this data collection and related contractor reporting is to respond to Congressional requests, and to internal Army manpower and force management planning information requirements, to quantify the extent of CMEs used to support Army operations and management broadly under the Federal Supply Class and Service Codes for ''Research and Development'' and ''Other Services and Construction.'' The data collected will provide unprecedented Departmental level visibility of the missions supported and functions performed by contractors in support of major Army organizational elements at the tactical level and higher, by linking the Federal Supply Class and Service Code data to appropriation data and organizational data on an Army-wide basis. This information will also provide visibility of contractor manpower capabilities and labor costs in support of Army missions and functions.

(2) *Background.* The lack of adequate and reliable data on the missions supported and functions performed by service contractors, as well as the resources expended by the Department on those contractors on an Army-wide basis, has resulted in uninformed assumptions and decisionmaking in the Planning, Programming and Budgeting System process. This, in turn, results in a failure to properly prioritize or validate the relative importance of missions performed or supported by contractors, as opposed to the very intense prioritization and mission validation decisions made with regard to the Department's expenditures on the more visible in-house performance of similar functions. This can unduly skew the prioritization of in-house resources and manpower. In addition, the CME data will provide information needed at HQDA to assess whether, and to what extent, contractors may be performing functions that the Army senior leadership has determined to be inherently Governmental, or commercial functions, which, when contracted out beyond a certain level of reliance, increase operational risks to overall Army mission capabilities and readiness. When evaluating military capabilities in the generating forces and operating forces under the Quadrennial Defense Review and Total Army Analysis simulations, a critical unit of analysis for assessing military capability is the manpower available to perform a function as linked to major Army organizational elements. The capabilities provided by service contractors consume at least one third of the Department's obligation authority; and yet, due to lack of reliable data, senior Army planners lack the ability to assess the total manpower capabilities within a function and major Army organization to the extent that the organization and function may rely heavily on contractor support. The data collected under this reporting requirement will remedy these defects by compiling and integrating contractor manpower and cost data in aggregated functional categories associated with the major Army organizational elements, in order to make this critical information visible to HQDA planning and programming officials.

(c) *Applicability.* These reporting requirements apply to all Department of the Army agencies, commands, and activities and to contracting actions awarded by such activities Army-wide, except as set forth in paragraph (c)(3) of this section.

(1) *Policy.* These requirements shall be cited and further implemented as necessary in the Army Federal Acquisition Regulation Supplement, and shall be promulgated to procurement and manpower channels Army-wide. Changes to the administrative aspects of this section (such as reporting formats, methods of incorporation of the requirements into solicitations and contracts, waivers and exemptions), may be published in the Army FAR Supplement after coordination with the Deputy Assistant Secretary of the Army (Force Management, Manpower and Resources). The objective of this reporting requirement is to collect as much significant CME data as possible to allow accurate reporting to Congress and for Army planning purposes. The reporting should not be viewed as an ''all or nothing'' requirement. Even partial reporting, *e.g.,* direct labor hours, appropriation data, place of performance, Army customer, etc., will be helpful.

(2) *Contracting office responsibilities.* Contracting officers shall ensure that the reporting requirements set forth herein are included in all covered contract actions. Although every effort has been made to facilitate reporting and to reduce administrative burden on both contractors and contracting offices, there may be situations when a contractor is properly exempt in part or cannot comply with the requirement (*e.g.,* foreign contractor who has no internet access or capability; or is unable to comply without extraordinary costs or effort not recoverable in normal overhead). At the discretion of the contracting officer, contractor self-exemption may be more liberally construed and applied in the case of small foreign contractors not reporting as sub-contactors, with contract values generally less than $200,000, if they lack internet access or are a non-English speaking firm that would have to employ a translator and/or an English speaking financial specialist to calculate, collect and report all of the data. In such cases, and in those situations where the contracting officer failed to timely include this requirement in solicitations and contracts, the contracting office is required to report the required information, to the best of their ability, by the end of the reporting period (end of contract period or end of fiscal year). Army Heads of Contracting Activities and their Principal Assistants Responsible for Contracting shall ensure that contracting offices found to be significantly non-compliant with these requirements, are tasked to directly report the required data to the Army website. The secure Army website will support surrogate reporting of contract(or) data by contracting offices. Classified contract actions are not, per se, exempt from reporting (guidance at DoD FAR Supplement 48 CFR 202.670–8 applies). No classified information will be included in a contracting office report.

(3) *Covered actions.* The contract reporting requirements specified in § 668.2 below shall be included in all Army solicitations issued and contract actions awarded (including orders under GSA Schedule contracts and contracts awarded by other agencies that allow direct ordering by the Army), and all bilateral modifications of existing Army contracts, after March 15, 2000, except the following:

(i) *Contracts valued at $100,000 or below.* Indefinite Delivery contracts estimated to exceed $100,000 in value shall contain the requirement for reporting, for all orders placed in excess of $25,000. Orders placed against GSA Schedule contracts or contracts awarded by non-Army agencies, shall contain the requirement if the value of the order exceeds $100,000.

(ii) *Contracts awarded by an Army contracting office solely as a contracting agent in support of non-Army customer(s) and requirements.* The reporting requirement is limited to contractor labor hour and cost data in support of Army customers and requirements. If the organization receiving the benefit of the services is an Army organization, then the contractor labor hour data is reportable as an Army requirement, even though the appropriations funding all or part of the requirement may be other than Army appropriations.

(iii) *Contracts for the acquisition of supplies and equipment.* The reporting requirement applies only to services covered by Federal Supply Class or Service codes for ''Research and Development,'' and ''Other Services and Construction.'' However, when non-incidental services are discretely included in a contract for supplies and equipment, and can be characterized as ''Research and Development,'' or ''Other Services and Construction,'' contractors shall be required to characterize and report such services under this requirement. (Example: Ongoing facility management or maintenance and quality assurance services separately priced under the contract.)

(4) *Effective dates for reporting.* For covered contracts in effect prior to March 15, 2000, including previously exempt contract actions (such as those entered into under FAR Part 12 (48 CFR Part 12) procedures prior to December 31, 2000), once a contract is modified to include this reporting requirement, reporting is required retroactive to October 1, 1999, or the start of the contract/order, whichever is later.

§ 668.2 Contract Reporting Requirements.

The below requirement will be included in all solicitations and contract actions (including orders) as specified in § 668.1:

Reporting of Contractor Manpower Data Elements

(a) *Scope.* The following sets forth contractual requirements, and related policies and procedures, for reporting of contractor labor work year equivalents (also called Contractor Man-year Equivalents (CMEs)) in support of the Army, pursuant to 10 U.S.C. 129a, 10 U.S.C. 2461(g), and Section 343 of Public Law 106–65. Reporting shall be accomplished electronically by direct contractor submission to a secure Army Web Site: *https://contractormanpower.us.army.mil/.*

(b) *Purpose.* The purpose of this reporting requirement is to respond to Congressional requests; significantly improve reports to Congress and to internal Army manpower and force management planners and decisionmakers; and, to broadly quantify the extent of CMEs used to support Army operations and management under the Federal Supply Class and Service Codes for ''Research and Development'' and ''Other Services and Construction.'' The Army's objective is to collect as much significant CME data as possible to allow accurate reporting to Congress and for Army planning purposes. The reporting data elements should not be viewed as an ''all or nothing'' requirement. Even partial reporting, *e.g.*, direct labor hours, appropriation data, place of performance, Army customer, etc., will be helpful.

(c) *Applicability.* This reporting requirement applies only to services covered by Federal Supply Class or Service codes for ''Research and Development,'' and ''Other Services and Construction.'' If the contractor is uncertain of the coding of the services performed under this contract/order, or the scope and frequency of reporting, guidance may be obtained from the Army Web Site Help Desk, other HQDA contacts cited at the Web Site, or from the contracting officer. Classified contract actions are not, per se, exempt from this requirement. Report submissions shall not contain classified information.

(d) *Requirements.* The contractor is required to report the following contractor manpower information, associated with performance of this contract action in support of Army requirements, to the Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), using the secure Army data collection web-site at *https://contractormanpower.us.army.mil/*:

(1) *Direct Labor.* Direct labor hours and the value of those hours;

(2) *Indirect Labor.* Composite indirect labor hours associated with the reported direct hours, and the value of those indirect labor hours plus compensation related costs for direct labor hours ordinarily included in the indirect pools; or two distinct, relevant annual composite or average indirect labor rates. If used in lieu of raw indirect labor hours and the value of those indirect hours, the rates may be annualized average estimates for the reporting contractor and need not be developed for each reporting period.

(i) *Composite Indirect Rate for Indirect Manhours.* If provided, the composite indirect labor rate will be used to grossly estimate the number of indirect hours associated with services reported in each period, when multiplied by the reported direct labor hours.

(ii) *Composite Indirect Rate for Compensation Value.* If provided, a different composite indirect labor rate will be used to grossly estimate the value of compensation related charges not included in the value of direct labor charges, when multiplied by the reported direct labor value. This rate shall include: salaries and wages for indirect labor hours; directors' fees; bonuses (including stock); incentive awards; employee stock options; stock appreciation rights; employee insurance, fringe benefits (*e.g.*, vacation, sick leave, holidays, military leave, supplemental unemployment benefit plans); contributions to pension plans (defined benefit, defined contribution); other post-retirement benefits, annuity, and employee incentive compensation and deferred compensation plans; early retirement plans; off-site pay; incentive pay; hardship pay; severance pay; and COLA differential;

(iii) *Actual Estimated Indirect Labor Hours and Value(s).* Contractors may choose to report estimated total hours and dollars for indirect labor (related to the reported direct labor) and compensation charges not reported as direct labor charges (as opposed to providing average composite rates). Either method chosen should be consistently reported.

(e) *Reporting Exemption(s).* In the rare event the contractor is unable to comply with these reporting requirements without creating a whole new cost allocation system or system of records (such as a payroll accounting system), or due to similar insurmountable practical or economic reasons, the contractor may claim an exemption to at least a portion of the reporting requirement by certifying in writing to the contracting officer the clear underlying reason(s) for exemption from the specified report data elements, and further certifying that they do not otherwise have to provide the exempted information, in any form, to the United States Government. This certification is subject to audit and potential legal action under Title 18, United States Code. The contractor may not claim an exemption on the sole basis that they are a foreign contractor; that services are provided pursuant to a firm fixed price or time and materials contract or similar instrument; or on the basis that they have sub-contracted their payroll system, or have too many subcontractors. If the contracting officer, by written notice, determines that the ''self-exemption'' is lacking in basis or credibility, the contractor shall comply with the subsequent direction of the contracting officer, whose decision is final in this matter.

(f) *Uses and Safeguarding of Information.* The information submitted will be treated as contractor proprietary information when associated with a contractor name or contract number. The Assistant Secretary of the Army (Manpower and Reserve Affairs) will oversee the aggregation of this information and will exclude contract number and contractor name from any use of this data (except as necessary for internal Army verification and validation measures). The planning factor(s) derived from this data by ASA (M&RA) and its contract support (if any) will be used solely for Army manpower planning purposes and will not be applied to any specific acquisition(s). Detailed data by contract number and name will not be released to any Governmental entity other than ASA (M&RA), except for purposes of assessing compliance with the reporting

requirement itself, and will only be used for the stated purposes (reporting and planning). Any potentially sensitive data released within the Army or to its contractor will be clearly marked as Contractor Proprietary. Non-sensitive roll-up information may eventually be published for public inspection after such data has been validated as deemed appropriate.

(g) *Sub-Contractor(s).* The contractor shall ensure that all reportable sub-contractor data is timely reported to the data collection web site (citing this contract/order number). At the discretion of the prime contractor, this reporting may be done directly by subcontractors to the data collection site; or by the prime contractor after consolidating and rationalizing all significant data from their sub-contractors.

(h) *Report schedule.* The contractor is required to report the required information to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) data collection web site generally contemporaneous with submission of a request for payment (for example, voucher, invoice, or request for progress payment), but not less frequently than quarterly, retroactive to October 1, 1999, or the start of the contract/order, whichever is later. Deviation from this schedule requires approval of the contracting officer.

(i) *Reporting format.* The information required should be reported electronically to the M&RA data collection point, at *https://contractormanpower.us.army.mil.* This web site identifies and explains all the mandatory data elements and format required to assure reliable and consistent collection of the data required by law, and includes, but is not limited to, identification of the information collected pursuant to § 668.2(d)(1) and (2) as related to:

(1) *Reporting to Congress or Army Leadership.* Data elements required for reports to Congress and Army manpower planning, such as: the applicable federal supply class or service code, appropriation data (and estimated value for each appropriation where more than one appropriation funds a contract), major Army organizational element receiving or reviewing the work, and place of performance/theater of operation where contractor performs the work.

(2) *Data Credibility.* Data elements required for purposes of assuring credible and consistent reporting and general compliance with the reporting requirement, such as: beginning and ending dates for reporting period; contract number (including task or delivery order number); name and address of contracting office; name, address and point of contact for contractor; and total estimated value of contract.

(j) *Reporting Flexibility.* Contractors are encouraged to communicate with the help desk identified at the data collection web site to resolve reporting difficulties. The web site reporting pages include a ''Remarks'' field to accommodate non-standard data entries if needed to facilitate simplified reporting and to minimize reporting burdens arising out of unique circumstances. For example, contractors may use the remarks field to identify multiple delivery orders associated with a single data submission or record, so long as the contract number, federal supply or service code, major Army organizational element receiving or reviewing the work, and contracting office are the same for the reporting period for that set of delivery orders, rather than entering a separate data submission or record for each individual delivery order. Subcontract data may also be consolidated in a single report for a reporting period. Other changes to facilitate reporting may be authorized by the contracting officer or the Help Desk (under Army policy direction and oversight).

Robert Bartholomew III,

Deputy Assistant Secretary (Force Management, Manpower and Resources).

Edward G. Elgart,

Acting Deputy Assistant Secretary of the Army (Procurement).

[FR Doc. 00–32628 Filed 12–22–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Southeast Alaska 00–017]

RIN 2115–AA97

Safety Zone; Tongass Narrows, Ketchikan, AK; correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register**, June 21, 1994, (59 FR 31933). The regulations related to the movement of vessels in Tongass Narrows, Ketchikan, AK during the annual fireworks display. That document contained a latitude/longitude position and a required safety fallout radius from the barge conducting fireworks display that has changed; thus, a correction is necessary.

DATES: Effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt, United States Coast Guard Marine Safety Office Juneau, (907) 463–2470.

SUPPLEMENTARY INFORMATION:

Background

In final rule 59 FR 31933, the latitude/longitude position and safety fallout radius around the barge conducting fireworks display are no longer correct because the marine event sponsor has increased the fireworks display shell size (12 inches) and amount of fireworks display (600 lbs Division 1.3G UN 0335), causing an increase in the required safety fallout radius of 300 yards around the barge conducting fireworks display activities and changing the latitude/longitude position.

Need for Correction

As published, the final regulations contain errors which may prove to be dangerous to the public and need to be amended. Accordingly, 33 CFR Part 165 is corrected by making the following correcting amendments:

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. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.1708 [Amended]

2. In § 165.1708 paragraph (a), delete the word ''100'' and add the word ''300'' in its place, respectively.

3. In § 165.1708 paragraph (a) location, delete the words ''55°20′20″ N, 131°39′36″ W'' and add the words ''55°20′32″ N, 131°′39′40″ W'' in its place, respectively.

Dated: December 5, 2000.

Robert Lorigan,

Captain, U.S. Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 00–32825 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Southeast Alaska 00–018]

RIN 2115–AA97

Safety Zone; Gastineau Channel, Juneau, AK; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register**, June 21, 1994, (59 FR 31934). The regulations related to the movement of vessels in Gastineau Channel, Juneau, AK during the annual fireworks display. That document contained a required safety fallout radius from the barge conducting fireworks display that has changed; thus, a correction is necessary.

DATES: Effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt, United States

Coast Guard Marine Safety Office Juneau, (907) 463–2470.

SUPPLEMENTARY INFORMATION:

Background

In final rule 59 FR 31934, the safety fallout radius around the barge conducting fireworks display is no longer correct because the marine event sponsor has increased the fireworks display shell size (12 inches) and amount of fireworks display (600 lbs Division 1.3G UN 0335), causing an increase in the required safety fallout radius of 300 yards around the barge conducting fireworks display activities.

Need for Correction

As published, the final regulations contain errors which may prove to be dangerous to the public and need to be amended. Accordingly, 33 CFR Part 165 is corrected by making the following correcting amendments:

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. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.1706 [Amended]

2. In § 165.1706 paragraph (a), remove the word ''100'' and add the word ''300'' in its place, respectively.

Dated: December 5, 2000.

Robert Lorigan,

Captain, U.S. Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 00–32824 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–051]

RIN 2115–AA97

Safety Zone; Big Island Contract Section of the Wilmington Harbor Deepening Project, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Cape Fear River in Wilmington, NC. This zone is necessary to ensure the safety of life and property during the detonation of explosives along the bottom of the Cape Fear River in conjunction with the harbor deepening and widening project. Vessels entering the safety zone must inform themselves when and where blasting activities will occur, and stay 500 yards away from any blasting activities.

DATES: The rule is effective from 9 a.m. on November 6, 2000, through 5 p.m. on January 31, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–051 and are available for inspection or copying at USCG Marine Safety Office Wilmington, 1502 23rd Street, Wilmington, NC 28405 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Novotny, Chief of Port Operations, at (910) 772–2215, or after normal business hours, the Officer of the Day at (910) 313–5213.

SUPPLEMENTARY INFORMATION:

Regulatory History:

A Notice of Proposed Rule Making (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 533(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The Coast Guard received confirmation of this request from Great Lakes Dredge and Dock Company on 2 October, 2000. There was not sufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying the effective date of the regulation would be contrary to the public interest because immediate action is necessary to protect vessels, property, and the public, from hazards associated with the detonation of explosives.

Background and Purpose

The Captain of the Port Wilmington, North Carolina, received notification from Great Lakes Dredge and Dock Company on 2 October 2000, that the company intended to detonate explosives along the bottom of the Cape Fear River in order to break up rock to be dredged. In order to ensure the safety of life and property the Coast Guard is establishing a safety zone that encompasses the section of the Cape Fear River where the blasting is to occur. The safety zone is the width of the Cape Fear River, between Latitudes 34°06′00″ N and 34°09′00″ N. Vessels and persons entering the safety zone must check one of the following sources of information concerning the location and time of blasts occurring that day, and maintain a 500 yard distance from the blast sites. The blast sites within the safety zone will be identified daily and made available to the public through a Broadcast Notice to Mariners, direct contact with the control vessel on channel 16 VHF–FM, direct contact with the contractor, Great Lakes Dredge and Dock Company at (910) 350–3507, or through the Coast Guard Marine Safety Office at (910) 772–2200. In addition, Great Lakes Dredging will have control vessels present at the site of blast to warn any vessels in the area.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of 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 Transportation (DOT) (44 FR 11040, February 26, 1979). This rule only affects waters between Latitudes 34°06′00″ N and 34°09′00″ N on the Cape Fear River, Wilmington, North Carolina. Vessels will be allowed to pass through the Safety Zone if they inform themselves of the time and location of the blasts. The actual blast sites will be identified daily and made available to the public through a Broadcast Notice to Mariners, direct contact with the control vessel on channel 16 VHF–FM, direct contact with the contractor, Great Lakes Dredge and Dock Company at (910) 350–3507, or through the Coast Guard Marine Safety Office at (910) 772–2200. Therefore, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Cape Fear River affected by this safety zone from 9:00 a.m. 6 November 2000, through 5:00 p.m. on 31 January 2001.

This safety zone will not have a significant economic impact on substantial number of small entities for the following reasons. This rule only affects a limited area of water for the limited period of time. Vessels will be allowed to transit the safety zone provided that they comply with Captain of the Port requirements for doing so. It is unlikely that there will be more than two blasts a day, one in the morning and one in the evening. The waterway will be restricted one hour before the blasts and will be reopened after the blast.

Assistance to Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we are willing to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. 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

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(g) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

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—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. Add temporary § 165.T05–051 to read as follows:

§ 165.T05–051 Safety Zone; Cape Fear River, Wilmington, North Carolina.

(a) *Location.* The following area is a safety zone: The Cape Fear River near Wilmington, N.C. between Latitudes 34°06′00″ N and 34°09′00″ N.

(b) *Blast Sites.* The blast sites will be within the Safety Zone, and will be identified daily and made available to the public through a Broadcast Notice to Mariners, direct contact with the control vessel on channel 16 VHF–FM, direct contact with the contractor, Great Lakes Dredge and Dock Company at (910) 350–3507, or through the Captain of the Port on VHF Marine Band Radio, channels 13 and 16, or at telephone number (910) 772–2200. In addition, Great Lakes Dredge and Dock Company will have control vessels present at the site of blast.

(c) *Effective Date.* From 9 a.m. on November 6, 2000, through 5 p.m. on January 31, 2001.

(d) *Definitions.*

(1) Captain of the Port means the Commanding Officer of the Marine Safety Office Wilmington, North Carolina or any Coast Guard commissioned, warrant, or petty officer who has been authorized by Captain of the Port to act on his behalf.

(2) Blast Site means the location Great Lakes Dredge and Dock Company is placing or detonating underwater explosives, as announced by Broadcast Notice to Mariners, direct contact with the control vessel on channel 16 VHF–FM, direct contact with the contractor, Great Lakes Dredge and Dock Company at (910) 350–3507, or through the Captain of the Port on VHF Marine Band Radio, channels 13 and 16, or at telephone number (910) 772–2200. Blast Sites will be within the Safety Zone.

(3) Control Vessels are vessels operated by Great Lakes Dredging that mark the blast site, monitor and provide safety advisories on VHF Channel 16, and warn vessels away from the blast site.

(e) *Regulation.*

(1) Any person or vessel entering or navigating in the safety zone must inform themselves of the time and location of scheduled blasts. The blast sites within the safety zone will be identified daily and made available to the public through a Broadcast Notice to Mariners, direct contact with the control vessel on channel 16 VHF–FM, direct contact with the contractor, Great Lakes Dredge and Dock Company at (910) 350–3507, or through the Coast Guard Marine Safety Office at (910) 772–2200. In addition, Great Lakes Dredging will have control vessels present at the blast site to warn any vessels in the area.

(2) Any person or vessel operating in the Safety Zone must maintain a distance of 500 yards from the Blast Site unless authorized to be closer by the Captain of the Port.

(3) Any person operating in the Safety Zone must comply with instructions given by the Captain of the Port and monitor VHF channel 16 for safety advisories provided by Great Lakes Dredge and Dock Company.

(4) Great Lakes Dredge and Dock Company will operate a Control Vessel

at every blast site. Control Vessels crews must be able to warn of the blast site danger and communicate on VHF Channel 16.

(5) The Captain of the Port can be contacted on VHF Marine Band Radio, channels 13 and 16, or at telephone number (910) 772–2200.

(6) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: October 30, 2000.

W.C. Bennett,

Captain, USCG, Captain of the Port, Wilmington, NC.

[FR Doc. 00–32823 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–253]

RIN 2115–AA97

Safety Zone; Potential Explosive Atmosphere, Vessel Highland Faith, Port of New York/New Jersey.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone for a potential explosive atmosphere on the vessel HIGHLAND FAITH, in the Port of New York/New Jersey. This action is necessary to protect investigating personnel, vessel repair personnel, the vessel HIGHLAND FAITH, and vessels in the vicinity of the vessel HIGHLAND FAITH, and the marine environment. This action is intended to restrict vessel traffic within a 2000-foot radius of the vessel HIGHLAND FAITH.

DATES: This rule is effective from 10:30 a.m. (e.s.t.) on December 12, 2000, until 7 a.m. (e.s.t.) on January 1, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–253) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the fact that the safety zone is required due to an unforeseen potential explosive atmosphere and required vessel safety inspections and needed repairs. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect the inspection personnel, the vessel HIGHLAND FAITH and vessels in the vicinity of the HIGHLAND FAITH, and the marine environment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: it is an unforeseen explosive atmosphere, and is needed to protect the inspection personnel, the vessel HIGHLAND FAITH and vessels in the vicinity of the HIGHLAND FAITH, and the marine environment.

Background and Purpose

There is an ongoing potential explosive atmosphere in the Port of New York/New Jersey on the vessel HIGHLAND FAITH that began on December 5, 2000. The Coast Guard is establishing a temporary moving safety zone to provide safety to personnel engaged in the vessel safety inspection and vessel repairs, and to vessels in the area. The safety zone is in effect from 10:30 a.m. (e.s.t.) on December 12, 2000, until 7 a.m. (e.s.t.) on January 1, 2001. The effective times of this safety zone may be extended or shortened depending on the time required to conduct the safety inspections and vessel repairs. The safety zone prevents vessels from transiting within a 2000-foot radius of the vessel HIGHLAND FAITH in the Port of New York/New Jersey. The size and duration of this zone may be expanded or contracted as required for oil spill recovery activities, safety inspections, and vessel repairs. Public notifications will be made by facsimile, broadcast notice to mariners, and to VTS users as required.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, and the unforeseen nature of the potential explosive atmosphere.

The size of this safety zone was determined using the predicted explosive radius of the vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Port of New York/New Jersey during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is due to an unforeseen incident creating a potential explosive atmosphere, and the safety zone only closes the Port of New York/New Jersey within a 2000-foot radius of the vessel HIGHLAND FAITH while it is in the Port of New York/New Jersey. The size and duration of the zone may be expanded or contracted due to the results of the vessel safety inspection.

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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 as the zone will only be in effect for the time required to complete the vessel safety inspections and repairs on the vessel HIGHLAND FAITH while it is in the Port of New York/New Jersey.

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

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

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Regulation

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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–253 to read as follows:

§ 165.T01–253 Safety Zone; Potential Explosive Atmosphere, Vessel Highland Faith, Port of New York/New Jersey.

(a) *Location.* The following area is a safety zone: All waters of the Port of New York/New Jersey within a 2000-foot radius of the vessel HIGHLAND FAITH.

(b) *Effective period.* This section is effective from 10:30 a.m. (e.s.t.) on December 12, 2000, until 7 a.m. (e.s.t.) on January 1, 2001. The size and duration of this safety zone may be expanded or contracted due to the results of the vessel safety inspection.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 12, 2000.

R.E. Bennis,

Rear Admiral, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00–32827 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6922–5]

Final Rule Making Findings of Failure to Submit Required State Implementation Plans for the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action making findings, under the Clean Air Act (CAA), that Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Ohio, and the District of Columbia failed to make complete State implementation plan (SIP) submittals required under the CAA. Under the CAA and EPA's nitrogen oxides (NO_X) SIP call regulations, these States were required to submit SIP measures providing for reductions in the emissions of NO_X, an ozone precursor. The EPA is continuing to work with these States to assist them in adopting State plans that meet the requirements of the NO_X SIP Call and is hopeful that States will submit fully approvable plans. The EPA is taking this step today to continue the progress being made towards reducing NO_X emissions in the eastern portion of the country because of the significant public health benefits of those reductions. This action triggers the 18-month time clock for mandatory application of sanctions in these States under the CAA. This action also triggers the requirement that EPA promulgate a Federal implementation plan (FIP) within 2 years of making the finding.

EFFECTIVE DATE: January 25, 2001.

ADDRESSES: A docket containing information relating to this rulemaking (Docket No. A–98–12) is available for public inspection at the Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A

reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Jan King, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711; telephone (919) 541–5665. Legal questions should be addressed to Howard J. Hoffman, Office of General Counsel, 1200 Pennsylvania Avenue, NW, MC–2344A, Washington, DC 20460, telephone (202) 564–5582.

SUPPLEMENTARY INFORMATION: You can find a copy of today's action at http://www.epa.gov/ttn/rto.

The contents of this preamble are listed in the following outline:

I. Background

II. What Action is EPA Taking Today?

III. Administrative Requirements

A. Notice and Comment Under the Administrative Procedure Act (APA)
B. Executive Order 12866 (Regulatory Planning and Review)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act of 1995 (UMRA)
E. Submission to Congress and the General Accounting Office
F. Paperwork Reduction Act
G. Judicial Review

I. Background

For almost 30 years, Congress has focused major efforts on curbing ground-level (tropospheric) ozone. In 1990, Congress amended the CAA to better address, among other things, continued nonattainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS) and transport of air pollutants across State boundaries.

The 1990 Amendments reflect general awareness by Congress that ozone is a regional, as well as local problem. Ozone and NO_X, one of its precursors, may be transported long distances across State lines to combine with ozone and precursors downwind, thereby worsening the ozone problems downwind. This transport phenomenon is a major reason for the persistence of the ozone problem, notwithstanding the imposition of numerous emission controls, both Federal and State, across the country.

Section 110(a)(2)(D) of the CAA is one of the most important tools for addressing the problem of transport. This section states that States must adopt SIPs that contain provisions prohibiting sources within the State from contributing significantly to nonattainment problems in, or interfering with maintenance by, downwind States. Section 110(k)(5) of the CAA authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement. It further authorizes EPA to require a State with an inadequate SIP to submit, within a specified period, a SIP revision to correct the inadequacy.

By notice dated October 27, 1998, EPA issued its final rule under sections 110(a)(2)(D) and 110(k)(5) NO_X SIP call rules finding that emissions of NO_X from 22 States and the District of Columbia significantly contribute to downwind areas' nonattainment of the 1-hour ozone NAAQS (63 FR 57356). In the NO_X SIP call rule, as modified by the March 2, 2000 technical amendment (65 FR 11222), EPA also established emissions budgets for NO_X that each of the identified States must meet through enforceable SIP measures. The SIP call rule addressed both the 1-hour ozone NAAQS in existence since 1979 and a revised 8-hour NAAQS EPA promulgated in 1997. Various industries and States challenged the final NO_X SIP call rule by filing petitions for review in the U.S. Court of Appeals for the District of Columbia (D.C. Circuit). [1]

The September 24, 1998 NO_X SIP called required States to submit SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP call filed a motion requesting the Court to stay the submission schedule until April 27, 2000. In response, in May 1999, the DC Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan* versus *EPA,* No. 98–1497 (D.C. Cir., May 25, 1999) (order granting stay in part).

In a separate legal challenge to EPA's revised NAAQS for ozone, the D.C. Circuit remanded the 8-hour ozone NAAQS. *American Trucking Associations, Inc.* v. *EPA,* 175 F.3d 1027 upon rehearing 195 F.3d 4 (D.C. Cir. 1999). The Supreme Court is considering this case. Prior to presenting argument in the SIP call case, EPA informed the court that it would stay the 8-hour basis of the SIP call and requested that the court stay its consideration of the 8-hour basis of the SIP call due to the uncertainties created by the litigation. The EPA indefinitely stayed the NO_X SIP call as it applies for the purposes of the 8-hour NAAQS (65 FR 56245, September 18, 2000).

On March 3, 2000, the court of appeals issued an opinion, largely upholding the 1-hour basis for the NO_X SIP call. However, the court vacated and remanded the rule as it applied to three States—Wisconsin, Georgia and Missouri—on the basis that the record for the 1-hour standard did not support EPA's determinations with respect to these three States. The court also remanded, but did not vacate, two other minor issues—the definition of an electric generating unit, as applied to cogeneration units, and the control level assumed for internal combustion engines.

On April 11, 2000, in light of the court's favorable decision, EPA filed a motion with the court to lift the stay of the SIP submission date. The EPA requested that the court lift the stay as of April 27, 2000. The EPA recognized, however, that at the time the stay was issued, States had approximately 4 months (128 days) remaining to submit SIPs. Therefore, EPA's motion to lift the stay indicated that EPA would allow States until September 1, 2000 to submit SIPs addressing the SIP call.[2] On June 22, 2000, the Court granted EPA's request in part. The Court ordered that EPA allow the States 128 days from the June 22, 2000 date of the order to submit their SIPs.[3] Therefore, SIPs were due October 30, 2000.[4] Because the court vacated the rule as to Wisconsin, Georgia, and Missouri, these States were not required to submit SIPs by that date.

II. What Action is EPA Taking Today?

Today, EPA is making findings of failure to officially submit complete submissions to their SIPs, including adopted rules, in response to the SIP call. The States that are receiving these

[1] In a separate legal challenge to EPA's revised NAAQS for ozone and particulate matter, the D.C. Circuit remanded the 8-hour ozone NAAQS. *American Trucking Associations, Inc.* v. *EPA,* 175 F.3d 1027 *on rehearing* 195 F.3d 4 (D.C. Cir. 1999). The Supreme Court is considering this case. Because EPA believes we should not continue implementation efforts under section 110 due to the uncertainty created by the DC Circuit's decision, and the continued litigation, EPA indefinitely stayed the NO_X SIP call as it applies for the purposes of the 8-hour NAAQS (65 FR 56245, September 18, 2000), including the SIP submission obligation. Therefore, EPA is making no findings with respect to the 8-hour basis for the NO_X SIP call.

[2] In the April 11 letters to the States, EPA recognized that Wisconsin, Georgia and Missouri were not required to submit SIPs because the court vacated (and remanded to EPA for further consideration) the NO_X SIP call rule as it applied to those States. Recognizing that the court remanded (but did not vacate) as to two limited issues, EPA also provided that the States that remained subject to the SIP call could choose to submit SIPs addressing only the portion of the NO_X budgets that were not affected by the courts remand of two issues: the definition of an electric generating unit and the level of control for internal combustion engines.

[3] The EPA determined that SIPs were due on October 30, 2000, which is the first business day following the expiration of the 128-day period.

[4] The EPA's stay of the 8-hour basis stayed all aspects of the rule for purposes of the 8-hour standard, including their obligation to submit a SIP. Thus, the findings EPA is making are not for purposes of the 8-hour basis of the SIP call.

findings are Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Ohio, and the District of Columbia. The EPA intends to continue working with these States so that they can submit approvable adopted rules as soon as possible. EPA is issuing findings today to help ensure continued progress in reducing NO_X emissions in the eastern portion of the country.

These findings start an 18-month sanctions clock; if the State fails to make the required submittal which EPA determines is complete within that period, the emissions offset sanction will apply in accordance with 40 CFR 51.121(n) and 52.31. The offset sanction requires new or modified sources subject to a CAA section 173 new source review program for ozone to obtain reductions in existing emissions in a 2:1 ratio to offset their new emissions.[5] If 6 months after the sanction is imposed, the State still has not made a complete submittal that EPA has determined is complete, limitations on the approval of Federal highway funds will apply in accordance with 51.212(a) and 52.31. Conversely, the 18-month clock, or additional 6-month clock, stops and the sanctions will not take effect (or will be lifted) when EPA finds that the State has made a complete SIP submittal under the SIP call.

In addition, CAA section 110(c) provides that EPA can promulgate a FIP immediately after making the findings, as late as 2 years after making the findings, or any time in between. Public health in downwind States depends on reductions being made upwind, and it is important that sources in States that have met their obligations under the NO_X SIP call are not at a competitive disadvantage to sources in other States subject to the NO_X SIP call. The EPA will take these needs into consideration as it reviews taking any action regarding FIPs.

Our goal is to have approvable SIPs that meet the requirements of the NO_X SIP call. We remain ready to work with the States to develop fully approvable SIPs, which would eliminate the need for EPA to promulgate a FIP or replace any FIP that EPA adopts. The process of developing the SIP call rulemaking offered opportunities for collaboration, and such opportunities remain as the States continue to develop their SIPs.

[5] In general, the areas subject to a section 173 new source review program are those areas with areas designated nonattainment for the 1-hour ozone standard. However, all areas in the Northeast Ozone Transport Region, regardless of designation, are subject to this requirement.

Recently, EPA sent letters to the Governors of the affected States describing the status of the States' effort and these findings in more detail. These letters are included in the docket to this rulemaking.

III. Administrative Requirements

A. Notice and Comment Under the Administrative Procedure Act

This notice is final agency action but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes, consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). The EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Notice and comment are unnecessary because no significant EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs or elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

B. Executive Order 12866 (Regulatory Planning and Review)

This action is exempt from OBM review under Executive Order 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described under (A) above, it is not subject to the RFA.

D. Unfunded Mandates Reform Act of 1995

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.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The various CAA provisions discussed in this notice require the States to submit SIPs. This notice merely provides a finding that the States have not met those requirements. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, 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 General Accounting Office. This rule is not a ''major rule'' as defined by APA 804(2), as amended.

The EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of ''particular applicability'' under

§ 804(3)(A) of the APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of ''particular applicability.''

F. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of December 26, 2000.

Dated: December 19, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–32842 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC047–2024; FRL–6921–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology for Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision requires major sources of nitrogen oxides (NO_X) in the District to implement reasonably available control technology (RACT). EPA is approving these revisions to the District's SIP in accordance with the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on January 25, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker, (215) 814–2177 or by e-mail at bunker.kelly@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 182 of the Clean Air Act (CAA), ozone nonattainment areas classified as serious or above are required to implement RACT for all major sources of NO_X by no later than May 31, 1995. The major source size is determined by the classification of the nonattainment area and whether it is located in the Ozone Transport Region which was established by the CAA. Because the District of Columbia is classified as a serious ozone nonattainment area, major stationary sources are defined as those that emit or have the potential NO_X to emit 50 tons or more of NO_X per year.

On January 13, 1994, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), now known as the District of Columbia Department of Public Health (DCPH), submitted revisions to its State Implementation Plan (SIP) that included a new regulation, Section 805, entitled ''Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen,'' to Subtitle I (Air Quality) of Title 20 of the District of Columbia Municipal Regulations (DCMR). Section 805 requires sources which emit or have the potential to emit 50 tons or more of NO_X per year to comply with RACT requirements by May 31, 1995.

On February 25, 1999 (64 FR 9272), EPA published a direct final rulemaking (DFR) conditionally approving the District of Columbia's NO_X RACT regulation found in section 805 of Title 20 of the DCMR. A companion notice of proposed rulemaking (NPR) proposing conditional approval the District of Columbia's NO_X RACT regulation was published in the Proposed Rules section of the same February 25, 1999 **Federal Register** (64 FR 9289). In the February 25, 1999 DFR, EPA stated that if adverse comments were received within 30 days of its publication, EPA would publish a document announcing the withdrawal of that DFR before its effective date. Because EPA did receive adverse comments on the February 25, 1999 DFR within the prescribed time frame, we withdrew it. Under these circumstances the companion NPR remained in effect and interested parties submitted comments pursuant to that NPR. The withdrawal of the DFR document appeared in the **Federal Register** on April 13, 1999 (70 FR 17982).

On August 28, 2000, the District of Columbia submitted proposed revisions to EPA, for parallel processing, to Section 805 of Title 20 of the DCMR as a supplement to its January 13, 1994 SIP submittal. These revisions correct the deficiencies identified in the February 25, 1999 notice. On September 28, 2000 (65 FR 58249), EPA published a new NPR which withdrew its February 25, 1999 proposed conditional approval and instead proposed full approval of the District's NO_X RACT regulation as amended by its August 28, 2000 submittal. The specific requirements of the District of Columbia's NO_X RACT regulation and the rationale for EPA's approval are explained in the September 28, 2000 NPR and will not be restated here. No public comments were received on the September 28, 2000 NPR.

These proposed revisions were approved by the District of Columbia City Council on October 17, 2000, adopted on October 26, 2000 and became permanent and effective on December 8, 2000. EPA is fully approving the District of Columbia's NO_X RACT regulation found in section 805 of Title 20 of the DCMR submitted on January 13, 1994 and supplemented on August 28, 2000, October 26, 2000 and December 8, 2000.

II. Final Action

EPA is fully approving the District of Columbia's NO_X RACT regulation found in section 805 of Title 20 of the DCMR. This SIP revision was submitted by the District of Columbia on January 13, 1994 and supplemented with a revised version of section 805 of Title 20 of the DCMR submitted for parallel processing on August 28, 2000. The revised regulations were adopted by the District of Columbia on October 26, 2000 and became permanent and effective in the District on December 8, 2000. The District submitted the fully adopted and effective revised version of section 805 of Title 20 of the DCMR to EPA on December 8, 2000. The regulations formally adopted were exactly the same as the proposed version upon which EPA proposed approval. Approval of this SIP revision is necessary for full approval of the attainment demonstration SIP for the Metropolitan Washington, DC ozone nonattainment area.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 2001. 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 approving the District of Columbia's NO_X RACT regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: December 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

2. In § 52.470, an entry for Chapter 8, Section 805 is added in numerical order in the ''EPA Approved Regulations in the District of Columbia SIP'' table in paragraph (c) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Chapter 8	Asbestos, Sulfur and Nitrogen Oxides.			
*	*	*	*	*
Section 805	Reasonably Available Control Technology For Major Stationary Sources of Oxides of Nitrogen.	11/19/93 and 12/8/00.	Type: 12/26/00.	
*	*	*	*	*

[FR Doc. 00–32564 Filed 12–22–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ063–0034; FRL–6916–4]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 24, 2000 and concerns volatile organic compound (VOC) emissions from stationary storage tanks, dock loading and leakages from pumps and compressors. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves local rules that regulate these emission sources but identifies several rule deficiencies. There are no sanctions associated with this action as PCAQCD is in attainment with the ozone NAAQS.

EFFECTIVE DATE: This rule is effective on January 25, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

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

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

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, (P.O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), U.S. EPA, Region IX, (415) 744–1185.

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

I. Proposed Action

On July 24, 2000 (65 FR 45566), EPA proposed a limited approval of the following rules that were submitted for incorporation into the Arizona SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
PCAQCD	5–18–740	Storage of Volatile Organic Compounds—Organic Compound Emissions	02/22/95	11/27/95
PCAQCD	5–19–800	General	02/22/95	11/27/95
PCAQCD	5–24–1055	Pumps and Compressors—Organic Compound Emissions	02/22/95	11/27/95

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. However, we cannot grant a full approval because the rules contain deficiencies which conflict with section 110 of the Act. Our proposed action contains more information on the basis for this rulemaking, but the major deficiency that we identified is that the rules do not adequately specify test methods, recordkeeping, monitoring, and other requirements needed to make the rules enforceable.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received a letter dated August 22, 2000 from Donald Gabrielson of PCAQCD. This letter clarified that EPA's proposed action ''will not trigger a requirement for additional revisions of these rules.'' EPA concurs with this statement. The letter also requested that EPA explicitly delete old PCAQCD rules R7–3–3.1, 3–2 and 3–3 when approving new PCAQCD rules 5–18–740, 19–800 and 24–1055. As stated below, EPA's final action to approve the new rules will supercede the old rules.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the Arizona SIP, including those provisions identified as deficient and will supercede Rules 7–3–3.1, 7–3–3.2, and 7–3–3.3 from the SIP. Note that the submitted rules have been adopted by the PCAQCD, and EPA's final limited approval does not prevent PCAQCD from enforcing them. Because this is an attainment area, EPA is not simultaneously finalizing a limited disapproval of the rules. As a result, no sanctions clocks under section 179 or FIP clocks under section 110(c) are associated with this action.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate health or safety risks.

C. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects 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. If the mandate is unfunded, EPA must provide to OMB, 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, E.O. 13084 requires EPA to develop an effective process permitting elected 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply.

D. Executive Order 13132

E.O. 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces E.O. 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. E.O. 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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 E.O. 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. Submission to Congress and the Comptroller General

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 rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: November 28, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(84)(i)(F) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(84)

(i) * * *

(F) Amendments to Rules 5–18–740, 5–19–800, and 5–24–1055 adopted on February 22, 1995.

* * * * *

[FR Doc. 00–32557 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6921–5]

RIN 2050–AE76

Deferral of Phase IV Standards for PCB's as a Constituent Subject to Treatment in Soil

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is temporarily deferring a portion of the rule applying Land Disposal Restrictions (LDR) under the Resource Conservation and Recovery Act (RCRA) to constituents subject to treatment (CST) in soils contaminated with certain characteristic hazardous wastes. EPA promulgated this rule on May 26, 1998. Specifically, EPA is temporarily deferring the requirement that polychlorinated biphenyls (PCBs) be considered a CST when they are present in soils that exhibit the Toxicity Characteristic for metals. EPA is taking this action because the regulation appears to be discouraging generators from cleaning up contaminated soils, which is contrary to what EPA intended when we promulgated alternative treatment standards for contaminated soils. In addition, EPA needs more time to restudy the issue of appropriate treatment standards for metal-contaminated soils which also contain PCBs as CST. The Agency still requires generators to treat these soils to meet LDR standards for all hazardous constituents except PCBs. Generators also are required to treat PCBs if the total concentration of halogenated organic compounds in the soil equals or exceeds 1000 parts per million.

DATES: This rule is effective December 26, 2000.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The docket identification number is F–2000–PCBP–FFFFF.

The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C. metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ernesto Brown, Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, D.C. 20460–0002, (703) 308–8608, brown.ernie@epa.gov

SUPPLEMENTARY INFORMATION: You can find the index and the following supporting materials on the Internet at: http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm

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I. Authority

These regulations are promulgated under the authority of sections 1006(b), 2002, and 3004 of RCRA, as amended, 42 U.S.C. 6905, 6012(a), 6921, and 6924.

II. Background

A. Land Disposal Restrictions Program

The LDR program generally requires that generators of hazardous wastes pretreat the wastes before they can be disposed of on land. The treatment must substantially reduce the toxicity or mobility of the hazardous waste to minimize short- and long-term threats to human health and the environment posed by the waste's disposal. See RCRA section 3004 (m)(1). EPA typically accomplishes this objective by requiring that hazardous constituents in the wastes be treated to, or be present at levels no greater than levels, set out in 40 CFR Part 268, reflecting performance of the Best Demonstrated Available Technology for the waste. In addition to BDAT treatment levels, EPA uses treatability variances (both risk-based and technology based), and determination equivalency (see 40 CFR 268.42) for situations where the treatment standard is specified as a method of treatment and other technologies perform comparably to the specified method.

B. Contaminated Soils

Contaminated soils excavated during a remedial action, whether it is conducted under RCRA, Superfund, or state authority, are subject to the Land Disposal Restriction (LDR) requirements when the soil contains listed hazardous

waste or exhibits a hazardous characteristic, and when it is excavated outside of a corrective action management unit (CAMU) or an area of contamination (AOC). EPA's rules require that soils contamination with hazardous waste(s) meet LDR requirements when a generator excavates such soils and places them in a land disposal unit (See RCRA sections 3004(d)(3) and (e)(3) (requiring LDR requirements to apply to such contaminated soils); 63 FR at 28602 (May 26, 1998)).[1] The LDR requirements specify constituent concentrations which must be met in the treated soils, or in some cases particular technologies which must be employed, prior to placement of the soils. Application of these requirements to remedial actions has sometimes reduced the flexibility needed to make site-specific remedial decisions, and thus sometimes presented a barrier to cost-effective management of contaminated media. (As explained in the following section, however, the special standards for contaminated soils which EPA adopted in the Phase 4 rule should alleviate some of these difficulties, since those standards can be achieved without resort to combustion treatment technology.) While there are alternatives to managing contaminated soils which mitigate the burden of meeting these requirements (such as obtaining a treatability variance once the LDRs are triggered), it has been EPA's experience that the LDRs often have driven remedial decisions away from excavating the soils in the first place. Under such circumstances, facilities, may simply have deferred cleanup to a later date. In cases where cleanup was still pursued, it was often the case that either containment remedies have been employed (*e.g.*, cap and cover in-place, thereby avoiding the LDRs) or the soils have been treated in-situ (which allows treatment without triggering LDRs). While containment and in-situ treatment of soils offer management options which have generally been less expensive than complying with the LDR requirements for the media, they may not always result in the most environmentally protective cleanup.

C. Alternative Treatment Standards for Contaminated Soils

EPA has long recognized the incentives and objectives for the hazardous waste prevention and cleanup programs differ fundamentally. EPA has developed extensive policies and regulations to preserve RCRA's goal of protectiveness, while providing oversight agencies the tools necessary to make effective site-specific remedial decisions. One such regulation is the Phase IV LDR Rule (63 FR 28603–04). Promulgated in May 26, 1998, the Phase IV LDR Rule established alternative soil treatment standards, in part, to remedy the disincentives to excavation/ex-situ treatment of soils which were created by application of the LDRs in a remedial setting. In recognition of the physical and chemical differences which often exist between as-generated waste and contaminated soils, these standards require that contaminated soils which will be land disposed be treated to reduce concentrations of hazardous constituents by 90 percent or meet hazardous constituent concentrations that are ten times the universal treatment standard (UTS), whichever is greater. (See *Louisiana Environmental Action Network* v. *EPA*, 172 F. 3d 65, 67, 70 (D.C. Cir. 1999) which upheld EPA's authority to develop more lenient treatment standards for contaminated soils and other remediation wastes in order to encourage remediation involving exhumation and treatment of these wastes, since ''the agency's authority to compel high-quality disposition of such wastes is not as great as it is for as yet undisposed waste.'') The soil treatment standards apply to all underlying hazardous constituents reasonably expected to be present in any given volume of contaminated soil when such constituents are found at initial concentrations greater than ten times the UTS (See 63 FR at 28608–28609; 40 CFR 268.49(d)).

D. Constituents Subject to Treatment

Importantly for the present rule, the existing standards further require that generators treat all constituents subject to treatment (CST)[2] in contaminated soils. See 63 FR at 28608–09; 40 CFR 268.49(d). A constituent subject to treatment is any hazardous constituent listed at 40 CFR 264.48 that might be present in the soil at levels exceeding 10 times the UTS for that constituent. See 40 CFR 268.49(b). In the Phase IV rule, EPA imposed this requirement for the first time on soils exhibiting the Toxicity Characteristic (TC) for metals, and on soils containing listed hazardous wastes.[3]

PCBs can be an example of a CST in contaminated soils, including metal-containing soils. Where this occurs, the Phase IV rule establishes a treatment standard of 100 ppm total PCBs in soil (10 times the UTS) or 90 percent reduction of total PCB concentrations in the soil, whichever is less stringent. See 40 CFR 268.49(c). EPA found that generators can achieve these standards without applying combustion technology, (see 63 FR at 28616 Table 4), although treatment often requires that heat be applied to the waste, as occurs with thermal desorption technology. The rules also provide another treatment option: to treat soils to the standards applicable to process wastes, although in that instance as well, soils that exhibit a hazardous characteristic must achieve treatment standards for CSTs before they are land disposed. 40 CFR 268.40(e). EPA found that generators can achieve these standards without applying combustion technology, (see 63 FR at 28616 Table 4), although treatment often requires that heat be applied to the waste, as occurs with thermal desorption technology.

RCRA also addresses PCBs in soils under Section 3004(d)(2)(E), the so-called California list provision. This provision prohibits land disposal of hazardous wastes that contain halogenated organic compounds at concentrations equal to or exceeding 1000 ppm. Congress specified this level (and the other California list levels) as a starting point in the land disposal prohibition process, prohibiting land disposal of wastes that pose the most obvious hazards. See 51 FR at 44718 (Dec. 11, 1986). PCBs are a type of halogenated organic compound. Consequently, in the absence of the Phase IV PCB standards, the 1000 ppm statutory level would be the upper bound of PCBs that could be in contaminated soil without triggering LDR treatment requirements (*i.e.*, contaminated soils could not be land disposed equal to or greater than 1000 ppm total HOCs all of which, in theory, could be PCBs).

[1] Technically, the soils which are subject to LDRs, are (a) soil which contains a listed hazardous waste, and (b) soil which exhibits (or, in some cases, exhibited) a characteristic of hazardous waste. See discussion at 63 FR 28617–28619. This action applies to a subset of the second of these types of contaminated soils, as explained later in this notice. This action also uses the term ''contaminated soils'' to refer to soils which may potentially be subject to LDRs.

[2] In response to comments to the NPRM (February 16, 2000), the Agency is using the term ''constituents subject to treatment'' defined in 40 CFR 268.49(d) instead of underlying hazardous constituents which was used in the proposal. This is to avoid confusing the term UHC defined in 40 CFR 268.2(i) with constituents subject to treatment (a term EPA developed specifically for the alternative treatment standard for contaminated soils, although CST and UHC are essentially synonymous).

[3] The requirement already applied, however, to soils exhibiting the ignitability, corrosivity, reactivity, or organic toxicity characteristics.

III. Need to Defer Portions of the Phase IV Rule

A. Why Has Remediation of Certain PCB-Contaminated Soils Been Impeded?

Unfortunately, initial indications are that the requirement that PCBs be treated as a CST in soils exhibiting the TC for metals is having an effect opposite to what EPA intended. As EPA noted at proposal, cleanups of sites with metal characteristic soils where PCBs are now a CST and where the remedy was to involve soil exhumation, treatment and redisposal have stopped, or been seriously delayed. See Letter from Phillip Comella Esq. to Steven Silverman, EPA Office of General Counsel, April 21, 1999 detailing experiences of private entities, including waste generators, treaters and disposers; Memorandum to Administrative Record, November 2, 1999 (detailing experiences of EPA site managers). As set out in more detail in these communications, the reason is that as a practical matter a choice is now being presented between combustion and leaving soils in place. Some of the reasons attributed for this are:

I. limited effective non-combustion treatment presently available for PCBs, and what there is involves mobile units which face potential permitting delays at non-Superfund sites.

II. lack of State authorization to implement the amended soil standards, thus retaining PCBs as a CST, without the option of treating to 10 times the Universal Treatment Standards or 90 percent reduction from initial concentration.

Commenters acknowledge that at least some of these situations could be eligible for a treatment variance under 40 CFR 268.44. Such variances can be requested when a standard is demonstrably not achievable using non-combustion technology, or when treatment to LDR levels would discourage aggressive remediation. See *LEAN* v. *EPA*, 172 F. 3d at 70 (upholding EPA authority to issue treatment variances for remediation wastes where existing treatment standard discourages aggressive remediation). But there are undesirable delays attendant in the variance process, and EPA in any case believes that if a problem with a rule is widespread, it is appropriate to amend the rule rather than issuing variances piecemeal.

Commenters to the proposed rule reiterated that cleanups of TC metal soils containing PCBs is being impeded, but provided no additional empirical information in support.

EPA does not necessarily agree with all of these comments, but does believe that remediations involving TC soils contaminated with both PCBs and metals are being delayed or stopped. This situation has taken place after promulgation of the new Phase IV requirements respecting these soils, and, as indicated at proposal, it appears that at least some of the reasons for these delays are legitimately attributable to the new requirements in the Phase IV rule. Commenters all supported this overall conclusion (albeit anecdotally rather than empirically). Thus, this aspect of the Phase IV rule appears at least potentially to be having an environmentally counterproductive effect of delaying cleanups and discouraging aggressive remediation.

B. Why the Temporary Deferral?

EPA believes it is appropriate to temporarily defer the requirement that PCBs be treated as an CST in TC soils under RCRA 1006(b) in order to investigate how best to integrate the RCRA LDR requirements for PCBs with the cleanup programs under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and RCRA (both the specific ''corrective action'' requirements of RCRA 3004(u) and (v) and 3008(h), and the cleanup requirements applying to RCRA regulated units, *e.g.*, during closure).

Another reason is to provide EPA an opportunity to investigate further the relationship between the RCRA rules and those under the authority of the Toxic Substances Control Act (TSCA) for PCB remediation wastes. See 63 FR 35384 (June 29, 1998). TSCA allows ''bulk PCB remediation wastes'' including soils containing 50 ppm PCBs or greater to be disposed without treatment in a TSCA disposal facility or an RCRA subtitle C landfill. See 40 CFR 761.61(b)(2)(i). These TSCA standards, which allow disposal without treatment of soils containing any concentrations of PCBs greater or equal to 50 ppm, were not established to represent levels at which threats posed by land disposal of PCB-containing soils are minimized. Furthermore, those rules require persons disposing of PCBs to comply with all other applicable Federal, State, and local laws and regulations, and should not be read as overriding applicable RCRA requirements. Nonetheless, the TSCA rules serves a similar purpose as the RCRA Phase IV rule—an attempt to encourage aggressive remediation of contaminated soil (see 63 FR at 35409) and reflects the Agency's judgment that land disposal of these soils is reasonably protective.

Under RCRA the standard set forth by Congress for the LDR program was to ''* * * promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' See 42 U.S.C. 6924(m). Under TSCA Congress authorized EPA to prescribe methods for the disposal of PCBs so long as they do not ''present an unreasonable risk to health or the environment.'' See 15 U.S.C. 2605(e). TSCA also explicitly requires EPA to consider economic impact when promulgating rules under its authority. See 15 U.S.C. 2601(b) and (c). By comparison, Congress did not identify economic considerations under RCRA in setting treatment standards. ''* * * Waste that is nevertheless generated should be treated, stored or disposed of so as to minimize the present and future threat to human health and the environment.'' See 42 U.S.C. 6902(b). Thus, the RCRA LDR program differs from regulations promulgated under TSCA in two respects. First, the RCRA LDR program has an explicit requirement to treat waste prior to disposal. TSCA contains no such requirement. Second, TSCA has an explicit requirement to consider economic impacts when the Agency promulgates regulations under its authority that is not present in RCRA. Although both types of regulations are intended to address health and environmental risks from PCBs, these key differences between RCRA and TSCA can lead to different approaches to environmental regulation. Certainly as an interim measure EPA believes it appropriate to seek to coordinate better the two sets of rules, and thus to defer the Phase IV rule while we further evaluate the workings and actual effect of the two sets of rules. EPA believes it is appropriate to temporarily defer the requirement that PCBs be treated as a CST in TC soils under RCRA 1006(b) in order to investigate how best to integrate the RCRA LDR requirements for PCBs with the cleanup programs under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and RCRA (both the specific ''corrective action'' requirements of RCRA 3004(u) and (v) and 3008(h), and the cleanup requirements applying to RCRA regulated units, *e.g.*, during closure).

C. What Is the Effect of the Deferral?

The statutory California list provision mentioned above (RCRA section 3004(d)(2)(E)) will create an upper bound on the concentration of PCBs in

soil that could be disposed without treatment. As explained earlier, that upper bound will be 1,000 ppm, the statutory limit for halogenated organic compounds. This means that the temporary deferral will only affect a relatively narrow class of wastes: soils exhibiting the TC for metals and containing PCBs in concentration between 100 ppm and a maximum of 1000 ppm (this maximum applying only if no other HOCs are present in the contaminated soil).

RCRA allows temporary deferral of the Phase IV requirement. As in the temporary deferral of RCRA requirements to accommodate a potentially overlapping regulatory regime for underground storage tanks at issue in *Edison Electric Inst.* v. *EPA*, 2 F. 3d 438 (D.C. Cir. 1993), EPA here needs to investigate further the relationship of different sets of rules addressing PCB-contaminated soil disposal. These soils will be managed protectively during the deferral period, either in RCRA subtitle C or TSCA-approved landfills, and there is a reasonable upper bound on the concentration of PCBs that could be disposed of without treatment. See 2 F.3d at 452–53 citing these factors as a reasonable justification for a comparable temporary deferral. Moreover, EPA may permissibly alter land disposal restriction treatment standards for remediation wastes in order to encourage aggressive remediations. See *LEAN,* 172 F. 3d at 69–70.

The scope of this deferral is exclusive to soils exhibiting the TC for metals which contain PCBs as an underlying hazardous constituent. The requirement to treat PCBs as a CST also can apply to soils containing a listed hazardous waste, where the generator elects to comply with the alternative soil standard of 10 times Universal Treatment Standard or 90 percent reduction of initial concentrations. See 40 CFR 268. 49(d). It should be noted, however, that a generator would have the option of treating such soil to the standards for process wastes, see 40 CFR 268.49(b), in which case there is no requirement to treat CSTs. Thus, generators do not face the same quandary as they do with soils exhibiting the TC for metals which contain PCBs as a .

IV. Analysis of and Response to Comments

In general, all comments supported the deferral of PCBs as a constituent subject to treatment in soils. Commenters felt that the inconsistency between RCRA and TSCA regulations concerning the treatment/disposal of material containing PCBs should be resolved.

As noted at proposal, EPA believes it is appropriate to seek a better coordination between the two sets of rules, and thus to defer PCBs as an CST in soils, while the Agency further evaluates the workings and actual effect of the two sets of rules. Several commenters suggested that EPA simply defer to the TSCA rule without an independent determination that the TSCA standards are sufficient to minimize threats posed by land disposal. EPA does not believe that this suggestion can be supported. RCRA requires that treatment standards for hazardous waste must minimize the threats posed by land disposal. RCRA section 3004(m). The TSCA rule was not developed to satisfy that standard. See, *e.g., Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 25 (D.C. Cir. 1992) (EPA may not defer LDR treatment requirements to less stringent disposal requirements of another environmental statute); see also *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355, 362–63 (D.C. Cir. 1989) noting stringency of the minimize threat standard in RCRA section 3004 (m), and further explaining why that requirement justifies LDR standards more stringent than those developed pursuant to less stringent statutory standards).

Another general recommendation is that EPA should extend the deferral to all soils, debris and PCB bulk product waste that contain listed hazardous waste, as well as for soils that are hazardous waste due to the exhibition of a TC for a metal. EPA has not received any hard information, or any convincing reasons, why the Phase IV requirements should be impeding treatment of soils contaminated with listed hazardous wastes. As already explained, the rules allow generators the option of treating the soil to the standards for process wastes, see 40 CFR 268.49(b), in which case there is no requirement to treat CSTs. Moreover, this alternative (to treat soil to meet the standards for listed hazardous waste) represents the status quo before the Phase IV rule (i.e. it merely restates already-existing regulatory requirements), so that one cannot properly attribute to the Phase IV rule any impediment to remediating these contaminated soils. Generators thus can continue to operate as they did before promulgation of the Phase IV rule.

V. State Authorization

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. Following authorization, we maintain independent enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have enforcement responsibility. A State would become authorized for today's proposed PCB treatment standard for contaminated soil by following the approval process described under 40 CFR 271.21. See 40 CFR 271 for the overall standards and requirements for authorization.

Like all land disposal restriction treatment standards, today's changes are proposed under the authority of 3004(g) and (m) of RCRA. These statutory provisions were enacted as part of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Under section 3006(g) of RCRA, new requirements promulgated under the authority of statutory provisions added by HSWA go into effect in authorized States at the same time as they do in unauthorized States—as long as the new requirements are more stringent than the requirements a State is currently authorized to implement.

Authorized States are not required to modify their programs when we promulgate changes to Federal requirements that are less stringent than existing Federal requirements. This is because RCRA section 3009 allows the States to impose (or retain) standards that are more stringent than those in the Federal program. (See also 40 CFR 271.1(i)). Therefore, States that are authorized for the LDR program are not required to adopt today's changes, and these changes do not go into effect until the State revises its LDR program accordingly. However, we encourage States to allow compliance with the new PCB treatment standard for contaminated soil if they have the ability under State law to waive existing land disposal restriction treatment standards, or if they have adopted them but are not yet authorized. Again, if a State is not currently authorized for the LDR program, we will implement the new treatment standard in that State.

VI. Regulatory Assessments

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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.

OMB has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.''

Economic Assessment

We estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance cost savings from the deferral and resulted in cost savings. A detailed discussion of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's final rule, followed by a presentation of the cost, economic impact and benefit results were prepared and documented in the following report: ''Economic Assessment of the Deferral of Phase IV Land Disposal Restriction Treatment Standards for Polychlorinated Biphenyls (PCBs) as an Underlying Hazardous Constituent in Contaminated Soils.'' This report can be found in its entirety in the docket for today's final rule. A summary of the report is provided below.

1. Methodology

To estimate the cost savings associated with today's final rule deferring of CST requirements for PCB-containing hazardous soils, the Agency estimated the difference between the costs that would have been incurred in the absence of the deferral and the costs estimated under the post-regulatory environment with the deferral. The cost savings are reported based upon a shift of more expensive baseline treatment technologies (incineration, thermal desorption or nonthermal treatment for PCB-containing hazardous waste soils that exhibit a TC for metal) followed by immobilization of the residue to less expensive post-regulatory treatment including immobilization of soils exhibiting a TC for metal soils. Although generally placing soils that are metal contaminated are prohibited from being combusted, all of the contaminated soils affected by this rulemaking have incineration as an option. Only soils with an insignificant organic content are prohibited from combustion as a treatment technology. Soils with PCBs at levels greater than 10 ppm are considered to have sufficient organic content. See May 23, 1994 memo from Elliott Laws to Waste Management Directors I—X for further details.

2. Results

(a) Volume

The procedure for estimating the volumes of PCB-containing hazardous wastes affected by today's final rule is detailed in the background document ''Economic Assessment of the Deferral of Phase IV Land Disposal Restriction Treatment Standards for Polychlorinated Biphenyls (PCBs) as an Underlying Hazardous Constituent in Contaminated Soils,'' which was placed in the docket for today's final rule. To estimate volumes of TC hazardous PCB contaminated soils affected by this rulemaking, the Agency looked at data received from a waste treatment firm and extrapolated it national estimates of soils remediated using Biennial Reporting Systems data. The Agency estimates annual affected soil volumes to be 86,500 tons.

(b) Costs

The Phase IV LDR final rule [4] applied a requirement to treat all TC metal waste (i.e., wastes that are hazardous because they exhibit the toxicity characteristic for selected metals and carry the corresponding EPA hazardous waste number D004 through D011) for CSTs reasonably expected to be present.[5] In practical terms, this means that if a hazardous waste that is only hazardous for metal constituents also contains organic constituents above the UTS levels, those underlying organic constituents must also be treated to the UTS level if the waste is to be land disposed.[6] For PCBs, the UTS level is 10 ppm.[7, 8]

The Phase IV LDR final rule also established an alternative set of treatment standards for hazardous soils. These alternative standards were designed to encourage cost-effective cleanup of hazardous contaminated soils that are subject to LDRs. Prior to the Phase IV LDRs, hazardous soils were required to comply with the traditional technology-based treatment standards developed for processed industrial hazardous waste. These treatment standards often proved to be inappropriate (*e.g.*, not cost effective) and unachievable (*e.g.*, did not account for heterogeneous soil matrices) when applied to hazardous constituents present in soils. For example, in the case of TC metal soils containing PCBs, treating both metals and PCBs would entail a combination of treatment technologies. These technologies most likely would consist of incineration (or other thermal treatment) to destroy the PCBs, followed by immobilization of the ash to prevent the metallic constituents from leaching. This treatment approach is problematic because (1) it is expensive, (2) it destroys the soil, which is a valuable natural resource, and (3) incineration of metal bearing waste and/or soils is generally considered to be impermissible dilution (because it may allow metals to volatilize and enter the atmosphere) unless it has sufficient organic content to justify treatment. The alternative soil treatment standards provide more flexible, less stringent treatment requirements that, for many contaminants, are achievable using a variety of non-thermal treatment alternatives. For instance, a site may now choose to (1) reduce hazardous constituents by at least 90 percent of their initial concentration, or (2) meet ten times the applicable universal treatment standard.[9] Thus, for TC metal soils that contain PCBs, the PCBs currently must be treated to either 90 percent reduction or to 100 ppm (which is 10 times the UTS level), whichever is greater, prior to land disposal. EPA intended that these alternative treatment standards would allow soils to be treated using non-combustion treatment technologies.

To estimate costs saving resulting from this rule, EPA examined a number of thermal and non-thermal treatment technologies for PCBs and TC metals along with their estimated costs and commercial availability. The Agency then took the estimated soil volumes and assigned treatment trains to percentages of the affected volume (*e.g.* 10 percent of affected soils are estimated to be treated through in-situ

[4] 63 FR 28556, May 26, 1998.

[5] 40 CFR 268.4(e).

[6] Land disposal is defined under the Resource Conservation and Recovery Act (RCRA) broadly to include virtually all types of land-based solid waste management units such as landfills, waste piles, and surface impoundments.

[7] See 40 CFR 268.48 for the UTS level of PCB nonwastewaters at 10 ppm.

[8] The numerical treatment levels that must be met before a given waste can be land disposed, like the 10 ppm UTS level for PCBs, are based on a specific best demonstrated available technology (BDAT). For metals, the numerical treatment standards are based on immobilization. The BDAT for many organic constituents, including PCBs, is incineration. While the BDAT does not have to be used to reach the numerical treatment levels, the BDAT is often used in practice.

[9] 40 CFR § 268.49.

technologies) in both the baseline (*i.e.* pre-regulation) and post-rule. EPA's estimate of cost savings is the difference between the more expensive baseline treatment remedies (*e.g.* incineration) and the less expensive post-rule treatment remedies (*e.g.* stabilization). The baseline treatment remedies are more expensive because they require treatment of both PCBs and metal whereas the post-rule treatment remedies only require treatment of metals for the affected soils. The extent of the cost savings from the deferral of LDR treatment standards for TC metal PCB-containing hazardous waste soils depends on the decision whether to remediate the site, the decision to switch to in-situ clean-up remedies (avoiding LDR treatment standards) and the decision to pursue other administrative remedies such as treatability variances. As the result, EPA has estimated the incremental treatment cost savings attributable to the deferral of the Phase IV LDR treatment standards for PCBs as a CST in hazardous soils to be $47.6 million annually. EPA notes that these cost savings are not new savings under the Land Disposal Restriction program. Rather, these cost savings are saving previously provided from the PCB disposal rule (63 FR 34384, June 29, 1998). The PCB disposal rule allowed greater flexibility in the types of land disposal units that PCB-contaminated remediation waste could be placed in including RCRA Subtitle C hazardous waste landfills for soils with PCB concentrations greater than 50 ppm and Part 258 RCRA nonhazardous landfills for soils with PCB concentrations less than 50 ppm. See 40 CFR 761.61(a)(5)(ii)&(iii).

(c) Economic Impacts

EPA has not completed an economic impact analysis with today's final rule due to uncertainty regarding the identity of owner/operators of affected sites. Because this final rule results in cost savings mentioned above, any economic impacts would be favorable to affected entities. Because affected entities would be subject to less stringent treatment requirements for PCBs in TC contaminated soils, they would only have to treat the metals in the soil which would mean lower treatment costs and therefore less expensive site cleanups.

(d) Benefits

The primary benefit of this final rule is to encourage remediation of soils contaminated with both TC metals and PCB soils. The Economic Analysis completed for this rule documents a list of public commenters who have stipulated that they are not conducting cleanups under current regulations. These additional clean ups will reduce the potential for environmental releases of hazardous constituents, given the increased treatment of TC metals and placement of these soils into secure land disposal units.

B. 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. 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; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The overall economic impact of today's final rule to defer LDR treatment standards for TC metal PCB-containing hazardous waste soils results in cost savings of $47.6 million (for additional detail see cost savings discussion above). We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon state, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt this rule, and submit it for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect local

governments. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has prepared and Information Collection Request (ICR) document: OSWER ICR No. 1442.15 (LDR Phase IV), and a copy may be obtained from Sandy Farmer, Collections Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460–0002, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA believes the changes in this final rule to the information collection do not constitute a substantive or material modification. This rule would not change any of the information collection requirements that are currently applicable RCRA Land Disposal Restrictions Phase IV except to possibly reduce those requirements by requiring fewer references to PCBs. There is no net increase in recordkeeping and reporting requirements (if anything, there may be a slight decrease, as just noted). As a result, the reporting, notification, or recordkeeping (information) provisions of this rule will not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of this final rule on low-income populations and minority populations and concluded.

Today's final rule is intended to encourage aggressive remediation of contaminated soils, and thus, and to benefit all populations. As such, this rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

H. 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 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. EPA has determined that this rule, would not have ''federalism implications'' within the meaning of Executive Order 13132. This is because the rule would not impose any direct effects on States, would not preempt State law, and would not constrain State administrative discretion. In fact, States need not even adopt this final rule as part of their authorized programs. Thus, the Executive Order does not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, 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 13084 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 13084 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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 [OR is not] a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 15, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—[Amended]

2. Section 268.32 is added to subpart C to read as follows:

§ 268.32 Waste specific prohibitions—Soils exhibiting the toxicity characteristic for metals and containing PCBs.

(a) Effective December 26, 2000, the following wastes are prohibited from land disposal: any volumes of soil exhibiting the toxicity characteristic solely because of the presence of metals (D004—D011) and containing PCBs.

(b) The requirements of paragraph (a) of this section do not apply if:

(1)(i) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(ii) The wastes meet the treatment standards specified in Subpart D of this part for EPA hazardous waste numbers D004—D011, as applicable; or

(2)(i) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(ii) The wastes meet the alternative treatment standards specified in § 268.49 for contaminated soil; or

(3) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(4) The wastes meet applicable alternative treatment standards established pursuant to a petition granted under § 268.44.

3. Appendix III to Part 268 is added to subpart C to read as follows:

Appendix III to Part 268—List of Halogenated Organic Compounds Regulated Under § 268.32

In determining the concentration of HOCs in a hazardous waste for purposes of the § 268.32 land disposal prohibition, EPA has defined the HOCs that must be included in a calculation as any compounds having a carbon-halogen bond which are listed in this Appendix (see § 268.2). Appendix III to Part 268 consists of the following compounds:

I. Volatiles

1. Bromodichloromethane
2. Bromomethane
3. Carbon Tetrachloride
4. Chlorobenzene
5. 2-Chloro-1,3-butadiene
6. Chlorodibromomethane
7. Chloroethane
8. 2-Chloroethyl vinyl ether
9. Chloroform
10. Chloromethane
11. 3-Chloropropene
12. 1,2-Dibromo-3-chloropropane
13. 1,2-Dibromomethane
14. Dibromomethane
15. Trans-1,4-Dichloro-2—butene
16. Dichlorodifluoromethane
17. 1,1-Dichloroethane
18. 1,2-Dichloroethane
19. 1,1-Dichloroethylene
20. Trans-1,2-Dichloroethene
21. 1,2-Dichloropropane
22. Trans-1,3-Dichloropropene
23. cis-1,3-Dichloropropene
24. Iodomethane
25. Methylene chloride
26. 1,1,1,2-Tetrachloroethane
27. 1,1,2,2-Tetrachloroethane
28. Tetrachloroethene
29. Tribromomethane
30. 1,1,1-Trichloroethane
31. 1,1,2-Trichloroethane
32. Trichlorothene
33. Trichloromonofluoromethane
34. 1,2,3-Thrichloropropane
35. Vinyl Chloride

II. Semivolatiles

1. Bis(2-chloroethoxy)ethane
2. Bis(2-chloroethyl)ether
3. Bis(2-chloroisopropyl)ether
4. p-Chloroaniline
5. Chlorobenzilate
6. p-Chloro-m-cresol
7. 2-Chloronaphthalene
8. 2-Chlorphenol
9. 3-Chloropropionitrile
10. m-Dichlorobenzene
11. o-Dichlorobenzene
12. p-Dichlorobenzene
13. 3.3′-Dichlorobenzidine
14. 2,4-Dichlorophenol
15. 2,6-Dichlorophenol
16. Hexachlorobenzene
17. Hexachlorobutadiene
18. Hexachlorocyclopentadiene
19. Hexachloroethane
20. Hexachloroprophene
21. Hexachlorpropene
22. 4,4′-Methylenebis(2-chloroanaline)
23. Pentachlorobenzene
24. Pentachloroethane
25. Pentachloronitrobenzene
26. Pentachlorophenol
27. Pronamide
28. 1,2,4,5-Tetrachlorobenzene
29. 2,3,4,6-Tetrachlorophenol
30. 1,2,4-Trichlorobenzene
31. 2,4,5-Trichlorophenol
32. 2,4,6-Trichlorophenol
33. Tris(2,3-dibromopropyl)phosphate

III. Organochlorine Pesticides

1. Aldrin
2. alpha-BHC
3. beta-BHC
4. delta-BHC
5. gamma-BHC
6. Chlorodane
7. DDD
8. DDE
9. DDT
10. Dieldrin
11. Endosulfan I
12. Endosulfan II
13. Endrin
14. Endrin aldehyde
15. Heptachlor
16. Heptachlor epoxide
17. Isodrin
18. Kepone
19. Methoxyclor
20. Toxaphene

IV. Phenoxyacetic Acid Herbicides

1. 2,4-Dichlorophenoxyacetic acid
2. Silvex
3. 2,4,5-T

V. PCBs

1. Aroclor 1016
2. Aroclor 1221
3. Aroclor 1232
4. Aroclor 1242
5. Aroclor 1248
6. Aroclor 1254
7. Aroclor 1260
8. PCBs not otherwise specified

VI. Dioxins and Furans

1. Hexachlorodibenzo-p-dioxins
2. Hexachlorodibenzofuran
3. Pentachlorodibenzo-p-dioxins
4. Pentachlorodibenzofuran
5. Tetrachlorodibenzo-p-dioxins
6. Tetrachlorodibenzofuran
7. 2,3,7,8-Tetrachlorodibenzo-p-dioxin

Subpart D—[Amended]

4. In § 268.48(a) Table UTS-Universal Treatment Standards is amended by adding a reference to new footnote number (8) to the entry for ''Total PCBs (sum of all PCB isomers, or all Aroclors),'' and adding footnote (8), to read as follows:

§ 268.48 Universal treatment standards.

* * * * *

(a) * * *

Regulated Constituent Common Name	CAS [1] Number	Wastewater Standard	Nonwastewater Standard
		Concentration in mg/l[2]	Concentration in mg/l[2] unless noted as ''mg/l TCLP''
* * * * *			
Total PCBs (sum of all PCB isomers, or all Arcolors)[8]	1336–36–3	0.10	10
* * * * *			

[8] This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004–D011 only.

* * * * *

5. Section 268.49 is amended by revising paragraph (d) to read as follows:

§ 268.49 Alternative LDR treatment standards for contaminated soil.

* * * * *

(d) *Constituents subject to treatment.* When applying the soil treatment standards in paragraph (c) of this section, constituents subject to treatment are any constituents listed in § 268.48 Table UTS-Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except flouride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

* * * * *

[FR Doc. 00–32670 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6921–9]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 9, 2000, we published an Immediate Final Rule at 65 FR 26750 to authorize changes to Montana's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). At that time, we determined that the changes to Montana's hazardous waste program satisfied all requirements for final authorization and authorized the changes through an Immediate Final Rule. The Immediate Final Rule was to be effective on August 7, 2000 unless significant written comments opposing the authorization were received during the comment period. At the same time, in the event we received written comments, we also published a Proposed Rule at 65 FR 26802 to authorize these same changes to the Montana hazardous waste program.

As a result of comments received on the Immediate Final Rule, we withdrew the Immediate Final Rule on August 8, 2000 at 65 FR 48392 and went forward with the Proposed Rule. By this action, we are issuing a Final Rule authorizing the changes to the Montana hazardous waste program as listed in the Immediate Final Rule at 65 FR 26750 and responding below to each of the comments received.

DATES: This authorization will be effective on December 26, 2000.

ADDRESSES: You can view and copy Montana's application at the following addresses: Air and Waste Management Bureau, Montana Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, MT 59620 , Phone (406) 444–1430; and U.S. EPA Region VIII, Montana Office, 301 South Park Avenue, Federal Building, Helena, MT 59626, phone (406) 441–1130 ext 239.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, Phone (303) 312–6139; or Eric Finke, Waste and Toxics Team Leader, 301 South Park Avenue, U.S. EPA Montana Office, 301 South Park Avenue, Federal Building, Helena, MT 59626, Phone (406) 441–1130 ext 239.

SUPPLEMENTARY INFORMATION: The reader should also refer to the Proposed Rule at 65 FR 26802 and the Immediate Final Rule at 65 FR 26750, both published on May 9, 2000.

We received written comments from four parties during the comment period, two of which opposed the authorization. One comment expressed concern that Montana has more programs than the State can afford and it appeared that EPA wants to put more people out of business. Two comments expressed concern that this authorization would make Montana's rules more stringent than the Federal rules. One of these commenters later withdrew this comment but noted that StATS (EPA's database containing the status of Federal rule adoptions for each State) showed that Montana had not yet adopted EPA's less stringent Land Disposal Restrictions (LDR) rules and that it was odd and confusing that EPA plans to authorize Montana for some rules that are no longer effective. Another comment expressed concern that Montana has not been able to retain sufficient trained

staff to adequately implement the Corrective Action program; one comment asked EPA to clarify that Montana cannot enforce HSWA rules until Montana adopts them; and one comment asked EPA to clarify that EPA cannot enforce non-HSWA requirements until Montana adopts them. Finally, three comments addressed EPA's statement in the Immediate Final Rule that EPA ''retains the authority to take enforcement actions regardless of whether the State has taken its own actions''. Specifically, these three comments stated that in light of the Eighth Circuit decision in *Harmon Industries, Inc.* v. *Browner,* 1919 F. 3d 894 (8th Circuit 1999), EPA has no authority under RCRA to bring an enforcement action against a company that has already settled with an authorized State agency for the same violations.

A. Statutory Framework

Congress enacted RCRA in 1976 to provide nationwide protection against environmental and health dangers arising from the generation, management, and disposal of waste. Congress' overriding concern was ''the effect on the population and the environment of the disposal of discarded hazardous wastes—those which by virtue of their composition or longevity are harmful, toxic, or lethal'' and ''present a clear danger to the health and safety of the population and to the quality of the environment.'' [1] Both the statutory text and legislative history make clear that Congress considered the problems associated with hazardous waste management to be national in scope. *See, e.g.,* RCRA 1003(b), 42 U.S.C. 6902(b), establishing a ''national policy'' that hazardous waste should be treated, stored or disposed to minimize its threat; RCRA 1003(a)(4) and (5), 42 U.S.C. 6902(a)(4) and (5). Subtitle C of RCRA, sections 3001–3023, establishes a ''cradle-to-grave'' regulatory structure overseeing the safe treatment, storage, and disposal of hazardous waste.[2] 42 U.S.C. 6921–6939e. EPA believes it is clear that the protective management of hazardous waste is the central policy objective underlying RCRA Subtitle C.

To achieve its goal of nationwide protection, Congress established a system that relies on both the Federal and State governments. Congress established some statutory requirements governing hazardous waste management and directed EPA to establish additional standards governing the identification of hazardous waste, RCRA 3001, and the management of such hazardous waste by generators, RCRA 3002; transporters, RCRA 3003; and treatment, storage and disposal facilities, RCRA 3004. 42 U.S.C. 6921–6924. Congress also established a permit requirement for hazardous waste treatment, storage, and disposal facilities in RCRA 3005 and directed EPA to establish regulations governing permitting. These statutory and regulatory requirements make up the Federal hazardous waste management program. See 40 CFR parts 124, 260–270, and 273.

Congress also established a process in RCRA 3006 of Subtitle C allowing States to request EPA to authorize a qualified State program. 42 U.S.C. 6926. The State hazardous waste ''program'' consists of statutes and regulations issued by the State prior to authorization that EPA determines are equivalent to the Federally-issued hazardous waste program and meet other statutory authorization requirements. Once authorized, a State may carry out its authorized program ''in lieu of the Federal program under * * * subtitle [C] in such State and * * * issue and enforce permits for the storage, treatment, or disposal of hazardous waste.'' RCRA 3006(b).

When EPA authorizes a provision of a State-issued statute or regulation, that requirement replaces the equivalent, Federally-issued requirement, and becomes the Federal requirement governing regulated parties in the State. Authorization federalizes the State-issued requirement so that it becomes a requirement of RCRA Subtitle C. A regulated party complying with authorized State-issued requirements is also complying with Federal requirements.[3]

The authorized State-issued laws also retain their status as independent State requirements. RCRA 3009 allows States to retain the authority to regulate hazardous waste within the national framework established in RCRA Subtitle C and regulations promulgated by EPA. 42 U.S.C. 6929. State requirements, however, may be no less stringent than those authorized under RCRA Subtitle C.

RCRA 3006(b) also gives EPA the power to authorize a qualified State ''to issue and enforce permits'' for treatment, storage, and disposal (TSD) facilities. Congress used RCRA 3006(d) to clarify the effect of authorization on the permits so that any permit issued by a State with an authorized program ''shall have the same force and effect as action taken by the Administrator under this subtitle.'' After EPA authorizes State permitting, the State rather than EPA issues any new permits and TSD facilities in such a State generally do not need to get a second permit from EPA, as they did prior to authorization.[4]

B. Responses to Comments Received

(1) *Comment:* ''Montana does not need to expand any more programs, we have more now than the people in this State can afford. Sounds [to] me like you want to put some more people out of business or drive them out of this State!''

EPA's response: Our authorization of Montana's application would not add new programs in Montana. Instead, it would merely authorize regulations that Montana adopted in 1995 to update a program that it has operated since 1984. RCRA requires that States continue to adopt new Federal rules for hazardous waste in order for States to continue to regulate hazardous waste under the Federal program. Before we authorize Montana's newly adopted hazardous waste rules, handlers of hazardous waste in Montana are actually subject to regulation by both Montana and EPA. After we authorize Montana's rules, as we are doing today, the primary responsibility for implementing those rules rests with Montana, and EPA's primary role becomes one of oversight.

(2) *Comment:* The commenters noted that the rules that EPA proposes to approve are more stringent than current Federal rules in some cases. The commenters noted that Montana cannot adopt rules that are more stringent than Federal rule and objected to EPA's approval until EPA provides assurance that the program elements that EPA is approving are not those in the application package, but are in fact Montana's December 1999 updated rules.

EPA's response: States must formally adopt rules before they can apply to EPA for approval. As a result, our review and authorization of State rules lags behind the State's own rulemaking process. RCRA allows States one year to adopt new Federal rules where no State

[1] H.R. Rep. No. 94–1491 at 3, 11 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6238, 6241.

[2] *United Technologies* v. *EPA,* 821 F.2d 714, 716 (D.C. Cir. 1987).

[3] Not all Federally-issued Subtitle C requirements are superseded in States with authorized programs. Federal requirements found in the 1984 Solid and Hazardous Waste Amendments (HSWA) and attendant regulations apply directly in all States, even those with authorized programs, until EPA authorizes equivalent State-issued requirements. 42 U.S.C. 6926(g). See 50 FR 28702 and 28728–28733 (July 15, 1985).

[4] If the permit contains Federally-issued requirements issued pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the State has not been authorized for those requirements, the facility must obtain a permit from EPA for the HSWA requirements.

statutory change is necessary and two years where a State statutory change is necessary. The process of application, review, and authorization of those newly adopted rules may take an additional year or more, particularly if a State's rules must subsequently be changed to establish equivalence to their Federal counterparts.

In 1993 and 1996, EPA revised some of the Federal Land Disposal Restriction rules (LDRs) to be less stringent than the original LDR rules. This occurred after Montana had already adopted the original LDR rules. Montana adopted the less stringent LDR rules in December 1999, but has not yet applied to EPA for authorization. When Montana applies for authorization of the less stringent LDR rules and if we find that Montana's LDR rules are equivalent to EPA's, we will authorize those rules in a later **Federal Register** action. Because Montana's current application contains other rules which were not made less stringent by EPA, we believe it is more expedient to authorize Montana's application now rather than wait until Montana submits an application containing the less stringent rules.

(3) *Comment:* The comment noted that StATS (EPA's data base containing the status of Federal rule adoptions for each State) shows that Montana has not yet adopted EPA's less stringent LDR rules. The comment also noted that Montana has in reality already adopted the less stringent LDR rules and found it rather odd and confusing that EPA plans to authorize Montana for some rules that are no longer effective.

EPA's response: At the time this comment was prepared, it may have been true that StATS incorrectly displayed the status of Montana's rule adoptions. However, as of June 30, 2000, StATS correctly displayed the adoption status of the rules in question.

For the second half of this comment, we refer the reader to comment number 2 above and add the following information: Whenever EPA modifies a rule, regardless of whether the change is to a less or a more stringent version, the lag between State adoption and EPA authorization may cause EPA to find itself authorizing a State for a rule which has already been changed. The apparent confusion will be cleared up when Montana submits an authorization update application which includes the less stringent LDR rules.

(4) *Comment:* Montana is unable to retain sufficient, multi-discipline trained, permanent staff to administer the Corrective Action program.

EPA's Response: As part of our review of Montana's hazardous waste program, we conducted Capability Assessments in 1994 and 2000 which examined precisely this question. These Capability Assessments are available through a Freedom of Information Act request or they may be viewed at the EPA Montana Office in Helena, Montana or at the EPA Region 8 office in Denver, Colorado.

EPA's 1994 Capability Assessment revealed that Montana had experienced some of the difficulties described in the comment. However, EPA's 2000 Capability Assessment revealed that Montana's Department of Environmental Quality (DEQ) and the Montana Legislature implemented several important changes since the time period described in the comment. These changes resulted in significant improvements in retention of qualified staff. The current staff and management within the DEQ hazardous waste program collectively have many years of experience in a variety of relevant technical and environmental program areas. We believe that the current mix of skills, experience, and retention in DEQ's hazardous waste program is sufficient to implement the Corrective Action program.

(5) *Comment:* EPA should clarify that Montana has no authority to enforce HSWA rules until the State adopts them. (The comment referred to EPA's statement in the Immediate Final Rule that EPA and Montana have agreed to joint permitting and enforcement for those HSWA requirements for which Montana is not yet authorized.)

EPA's response: Under a previous long-standing agreement, EPA and Montana have agreed that, when necessary, the agencies will issue a single, jointly-prepared permit document containing the signatures and authorities of both agencies. This agreement addresses the potential situation in which Montana would not yet be sufficiently authorized to issue the entire permit by itself. Under this arrangement, Montana issues the permit requirements for which it is authorized and EPA issues those permit requirements for which Montana is not authorized. The single joint permit would have in it all of the relevant Federal and State requirements and would substantially reduce the possibility of conflicting and duplicative requirements that might exist if EPA and Montana issued their permits separately. Montana and EPA would each oversee the permittee's implementation of their respective permit requirements.

Under this agreement, each agency retains its own independent enforcement authority. EPA may enforce requirements of Federal law, including requirements of the authorized program and any HSWA requirements for which Montana has not yet been authorized. Montana may enforce any requirement of State law.

Although the preamble in the Immediate Final Rule could have been more clear, EPA did not contemplate that Montana could enforce HSWA rules before it had adopted them as State rules.

(6) *Comment:* EPA should clarify that it cannot enforce non-HSWA requirements until Montana is authorized to administer them. (The comment referred to EPA's statement in the Immediate Final Rule that it retains authority to enforce RCRA requirements and suspend or revoke permits after authorization occurs.)

EPA's response: EPA may enforce Federally-issued HSWA rules in any State as soon as they are effective. EPA may enforce non-HSWA requirements in a base-authorized State like Montana after it is authorized for State-issued requirements equivalent to the Federal non-HSWA requirements. EPA's preamble statement discussed the enforcement authority which EPA retains after the State is authorized. Although it could have been more clear, EPA's statement did not refer to the enforcement of unauthorized non-HSWA rules.

(7) *Comment:* The commenters objected to EPA's assertion that EPA retains authority to take enforcement actions regardless of whether the State has taken its own actions. They state that under the decision in ''Harmon'' EPA has no authority under RCRA to bring an enforcement action against a company that has settled with a State agency for the same violations.

EPA's Response:

Effect of Authorization on Federal and State Enforcement

Authorization does not affect the authority of the Federal or State governments to take enforcement actions in the State. RCRA authorizes the Federal government to enforce the Subtitle C hazardous waste program independent of State enforcement and States continue to have the authority to enforce pursuant to State law.

EPA's longstanding interpretation of RCRA,[5], that EPA may take an

[5] *See, e.g., In re Martin Elec., Inc.,* 2 E.A.D. 381, 385, 1987 WL 109670, at *3 (CJO 1987), holding that ''even if a State's enforcement action is adequate, such State action provides no legal basis for prohibiting EPA from seeking penalties for the same RCRA violation. EPA's decision whether to defer to a prior State action is a matter of enforcement discretion and policy.'' This interpretation is also is embodied in regulatory text that makes clear EPA's view that it retains

Continued

enforcement action regardless of whether a State with an authorized program has taken action, is based on the language of RCRA and Congress' intent at the time of enactment and subsequent amendment.

RCRA 3008(a) grants EPA the power to enforce RCRA Subtitle C requirements in all States, regardless of authorization. 42 U.S.C. 6928(a). The only restriction placed on EPA's ability to bring an enforcement action in a State with an authorized program is that EPA give notification to a State prior to issuing an order or commencing a civil action. Similarly in RCRA 3008(a)(3) and (c), Congress recognized that authorization does not supplant Federal enforcement when it gave EPA the power to revoke a permit whether ''issued by the Administrator or the State'' after giving notification to the State. Congress dispensed with even the notification requirement in the enforcement provisions creating criminal RCRA violations, leaving Federal power to enforce those laws despite authorization. *See, U.S.* v. *MacDonald & Watson Waste Oil Co.,* 933 F.2d 35 (1st Cir. 1991). Similarly, Congress granted EPA broad enforcement powers to issue orders or initiate civil actions to require Corrective Action at interim status facilities in RCRA 3008(h), without imposing any limitations connected to authorization.[6]

Nothing in RCRA 3006 modifies Federal enforcement authority. The section does not address Federal authority and, as discussed above, the ''in lieu of'' provision in RCRA 3006(b) operates only to substitute authorized State-issued hazardous waste requirements for Federally-issued equivalents as requirements of Subtitle C. RCRA 3006(d) also does not address Federal enforcement. Although States must have adequate enforcement authority to become authorized, RCRA 3006(b), the State enforcement provisions themselves are not part of the State hazardous waste program that becomes authorized to operate in lieu of the Federal program. This is clear from the language and structure of the statute, because the enforcement section of RCRA, as explained above, explicitly contemplates Federal enforcement in States with authorized programs. Thus, Congress clearly did not intend that State enforcement would operate in lieu of Federal enforcement in such States. Rather, Congress expressly established the standards governing Federal enforcement in States with authorized programs in the enforcement section of RCRA. In short, RCRA 3006(b) addresses what gets enforced, not who may take enforcement actions.

The provision which is titled ''Effect of State permit '' provides that any action taken by a State under an authorized program has the ''same force and effect'' as an action of EPA's Administrator. This provision ensures that State-issued permits have the same force and effect as permits issued by EPA. Absent this provision there could have been some doubt as to whether a facility operating under a permit from a State with an authorized program had complied with the requirement in RCRA 3005(a) that each TSD facility have a RCRA permit.

Harmon Industries

In *Harmon,* the Eighth Circuit held that RCRA precluded EPA from pursing a civil action for violation of RCRA against a company when Missouri, a State with an authorized program, had signed an agreement with the same company that resolved claims based on violations of Missouri regulations, and a State court had embodied the settlement in a consent decree. In dicta, the court stated that EPA's enforcement rights are ''triggered only after State authorization is rescinded or the State fails to initiate an enforcement action.'' *Harmon,* 191 F.3d at 899.

It is the Federal government's position that the court did not correctly interpret the law in *Harmon.*[7] The decision conflicts with the better interpretation of RCRA, discussed previously, which authorizes EPA to maintain an enforcement action despite action by a State with an authorized hazardous waste program. The court disregarded the plain meaning of RCRA 3008(a) which conditions EPA's authority to take enforcement actions only upon notification to States with an authorized program, with no other limitations.[8] The Eighth Circuit also misinterprets RCRA 3006 based upon its unsupported conclusion that the ''administration and enforcement of the hazardous waste program are inexorably intertwined.'' *See, U.S.* v. *Power Engineering Co.,* No. 97–B–1654, slip op at 15–17 (concluding that RCRA does not intertwine administration and enforcement). RCRA 3006(b) simply provides that once authorization takes place, selected State-issued requirements replace selected Federally-issued requirements as the controlling body of Federal hazardous waste requirements in that State. It does not affect Federal enforcement authority.

Similarly, *Harmon* fails to recognize, as discussed previously, that RCRA 3006(d) addresses State permits, clarifying that any permit issued by a State with an authorized program must be given the ''same force and effect'' of a permit issued by EPA. As the Colorado district court noted in *Power Engineering,* slip op. at 19, EPA's interpretation ''is the most reasonable because it both gives effect to every word of the statute, and does not necessitate 'harmonizing' Section 6928 by adding restrictions on the EPA's enforcement power not found in the plain language of that section.''

EPA also believes the *Harmon* court's conclusion that, under the principles of res judicata, EPA is bound by a State court suit is contrary to the Supreme Court's decision in *Montana* v. *U.S.,* 440 U.S. 147 (1979). EPA authorization of a State hazardous waste program is not sufficient to bring EPA into privity with the State or otherwise establish an agency relationship. *Power Engineering,* slip op at 29 (Harmon rests on ''unsupported expansion of the doctrine of res judicata and provides no basis for precluding Federal enforcement based on ''attenuated connection'' of authorization).

Finally, the *Harmon* decision is fundamentally flawed because it fails to recognize the Federal/State relationship that Congress established in RCRA. It has long been a Federal goal and EPA policy to encourage and support State

enforcement authority in authorized States. *See* U.S. Response to Defendants' Cross-Motion for Summary Judgment, *Power Engineering,* which EPA incorporates into this comment response together with the other U.S. briefs place in the record of this authorization decision. *See also U.S.* v. *Power Engineering Co.,* No. 97–B–1654, slip op. at 20–23 (ID. Colo. Nov. 24, 2000), concluding that regulations reflect EPA's position that the ''only restrictions on its authority to bring enforcement actions are those *explicitly* stated in the RCRA.''

[6] Congress also granted EPA broad inspection authority without limitations related to authorization. In RCRA 3007(a), Congress granted representatives of both EPA and States with authorized programs, access to enter and inspect the records of places where hazardous waste activities occur. RCRA 2002(c) authorizes EPA to conduct investigations of RCRA's criminal provisions. Similarly, RCRA 3013 authorizes EPA to order monitoring, analysis, and testing but imposes no limitations related to authorization. *See, Wyckoff Co.* v. *EPA,* 796 F.2d 1197 (9th Cir. 1986).

[7] The Administrator of EPA, through the Department of Justice, as well as the Solicitor General, have stated that the Eighth Circuit did not correctly interpret RCRA. See Petition for Rehearing En Banc filed in *Harmon* on November 15, 1999, and the U.S. Brief in Opposition to Petition for Writ of Certiorari in *Smithfield Foods, Inc.* v. *U.S.* filed July 2000.

[8] Congress has already considered, and rejected an explicit prohibition against EPA enforcement unless the State failed to bring an action *Legislative History of the Solid Waste Disposal Act,* 102d Cong., 1st Sess. At 370 (Comm. Print 1991). In addition, Congress demonstrated its intent not to prevent EPA enforcement when it amended RCRA in 1980 to eliminate the requirement that EPA give States with authorized programs thirty days notification prior to initiating action. *Id.* at 896.

administration of the RCRA hazardous waste management program. At the same time, RCRA directs EPA to ensure that hazardous wastes are managed nationally in a responsible manner. Recognizing both the States' interest in program administration and the national interest in consistent and effective implementation of the RCRA program, RCRA provides for independent State and Federal authority in States with authorized programs. EPA must maintain the ability to enforce RCRA in a manner that ensures equal levels of protection from hazardous waste contamination for the entire nation. Although EPA rarely takes an enforcement action when a State has taken an action with respect to the same violator,[9] there are numerous circumstances where national interests must be protected. For example, EPA must be able to act where a particular violator operates facilities in several States, all with varying degrees of noncompliance. To rely on State-by-State actions to address such patterns of illegal activity would likely not result in a comprehensive remedy addressing corporate-wide mismanagement and penalties commensurate with the scope of illegal behavior. In addition, EPA may know of a pattern of non-compliance by different companies nationwide that threatens to erode part of the RCRA program and may therefore place a high priority on an enforcement action against a type of violation that is lower on the State's list of priorities. EPA's authority also may be required to address situations where a facility's illegal behavior in one State results in environmental contamination in a neighboring State. Similarly EPA must protect national interests in maintaining a level playing field to ensure that law abiding facilities are not at a competitive disadvantage to facilities that choose to violate the law. EPA enforcement helps ensure that disparate enforcement priorities between States do not disadvantage those companies that operate in States with rigorous environmental enforcement. *See Power Engineering,* slip op at 27–28.

Rather than foster cooperative efforts between EPA and the States, *Harmon* offers an unreasonable statutory interpretation which creates an incentive for competition between Federal and State governments. Some courts would erroneously use the *Harmon* rationale, to suggest that either sovereign is prohibited from bringing an action as a result of the action of the other sovereign. *See e.g., Treacy* v. *Smithfield Foods Inc.,* Chancery No. 97–80, Final Order (Cir. Ct. Isle of Wight Co., Jan 5, 2000).

The suggestion in *Harmon* that, where the State has acted, EPA must withdraw authorization to take a civil enforcement action is a drastic, impractical, and lengthy remedy. At least one court already has agreed that program withdrawal is an inappropriate remedy, stating that ''wholesale withdrawal of State enforcement authority is a drastic measure warranted only by drastic circumstances'' such as where there is ''clear evidence that the entire State program has fallen into disrepair,'' *CLEAN* v. *Premium Standard Farms, Inc.,* slip op. at 52, 2000 U.S. Dist. LEXIS 1990 (W.D. Mo. Feb 23, 2000) (citing Clean Water Act legislative history from 1972). Use of such a measure, when faced with a case-specific need for action, is unworkable within the State-Federal partnership scheme.

Conclusion

Because the *Harmon* court does not have the authority to impose its interpretation outside the Eighth Circuit and because it is proper for EPA to continue to exercise its enforcement authority consistent with its interpretation of RCRA, EPA is not adopting the court's interpretation of RCRA in the State of Montana.[10] EPA therefore stands by its statement that after authorization of Montana's hazardous waste program EPA may continue to ''take enforcement actions regardless of whether the State has taken its own actions.''

C. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

[9] During fiscal years 1992 through 1994, EPA took action after the conclusion of a State action in 30 cases under RCRA, the Clear Air Act, and the Clean Water Act combined. During fiscal years 1994 and 1995, EPA took such action in a total of 18 cases. During fiscal year 1996, EPA filed its own actions following State action in four cases. *Statement of Steven A. Herman, Assistant Administrator, OECA, USEPA, Before the Environment and Public Works Committee,* U.S. Senate, June 10, 1997, available in LEXIS, Legis, Library, Congressional Hearings file, and in Westlaw at 1997 WL 309230 *13. By comparison, States took 8,643 enforcement actions in fiscal year 1992; 11,881 in fiscal year 1993; 11,250 in fiscal year 1994; 9,785 in fiscal year 1995; 9,306 in fiscal year 1996; and 10,515 in fiscal year 1997. *Enforcement and Compliance Assurance Accomplishments Report,* FY 1997, EPA–300–R–98–003, July 1998, page 2–1 and Table A–6.

[10] *Harmon,* however, is final and is binding on EPA in that particular case.

Unanticipated Taking'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Incorporation by reference, Penalties, Reporting and record keeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 2000.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

[FR Doc. 00–32843 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50638; FRL–6592–8]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 40 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this rule as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is February 26, 2001 without further notice, unless EPA receives adverse comment or notice of intent to submit adverse comment before January 25, 2001. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on January 9, 2001.

If EPA receives adverse comment or notice before January 25, 2001 that someone wishes to submit adverse or critical comments on EPA's action in establishing a significant new use rule (SNUR) for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the substance for which the comment or notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Comments or notice of intent to submit adverse or critical comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50638 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood , Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

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 the table 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 or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. 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 Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. You may also obtain copies of the notice of availability documents for the 850 (62 FR 16486, April 15, l996) (FRL–5363–1) and 870 (63 FR 41845, August 5, l998) (FRL–5740–1) series OPPTS harmonized test guidelines at this same site. To access these documents, on the Home Page, select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and

then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. The OPPTS harmonized test guidelines referenced in this document are available on EPA's Internet Home Page at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50638. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50638 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. 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) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50638. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide 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 rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section

5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the TSCA section 5(e) consent order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs P–98–487, P–98–496, P–98–1033/1034/1035, P–99–31/32/33/34, P–99–531, P–99–519/522/593/594, P–99–544/545/546/547/548/583/584/585/ 586/587/588, P–99–703, and P–99–1131/1132/1133/1134/1135/1138, which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement (NOC). EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a NOC or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final section 5(e) consent order under TSCA.

PMN Number P–97–0766

Chemical name: (generic) Tetrahydrohetero polycycle.

CAS number: Not available.

Effective date of section 5(e) consent order: January 29, 1999.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.

Toxicity concern: Based on data on structural analogues, the substance may cause mutagenicity and carcinogenicity to workers who are exposed by either inhalation or dermal route.

Recommended testing: EPA has determined that a Mitogenicity Assay for rats via gavage based on the consent order guidelines and a 2-year, two-species oral carcinogenicity study (40 CFR 798.3300 or OPPTS 870.4200 test guideline) would help to characterize the human health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing the Mitogenicity Assay.

CFR citation: 40 CFR 721.6479.

PMN Number P–97–0916

Chemical name: (generic) 4,4'-(1-methylethylidene)bisphenol, polymer with (chloromethyl)oxirane and a diamine.

CAS number: Not available. Effective date of section 5(e) consent order: March 30, 1999.

Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.

Toxicity concern: Based on test data submitted on the PMN substance, the concentration of concern for the PMN substance is 2 parts per billion (ppb) for daphnids and 8 ppb for fish.

Recommended testing: EPA has determined that the following testing would help characterize the environmental effects of the PMN substance:

Tier I: A daphnid chronic toxicity test (40 CFR 797.1330 or OPPTS 850.1330 test guideline (public draft)). If test chemical shows no effects at saturation,

then no further testing is required. If the test chemical shows chronic toxicity toward daphnids, then proceed to next tier.
Tier II: A chronic fish early life stage toxicity test in rainbow trout (40 CFR CFR 797.1600 or OPPTS 850.1400 test guideline (public draft)).
CFR citation: 40 CFR 721.5585.

PMN Number P–98–0002

Chemical name: (generic) Mixed metal oxides.
CAS number: Not available.
Effective date of section 5(e) consent order: April 29, l999.
Basis for action: The order was issued under section 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on test data on structural analogues, the PMN substance may pose a risk of lung toxicity or fibrosis, developmental toxicity, or carcinogenicity through inhalation or ingestion of the PMN substance.
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 798.2450 or OPPTS 870.3465 test guideline) and a 2-year, two-species oral carcinogenicity test (40 CFR 798.3300 or OPPTS 870.4200 test guideline) would help to characterize the human health concerns. The consent order contains a production volume limit. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day oral subchronic toxicity test.
CFR citation: 40 CFR 721.4610.

PMN Number P–98–0903

Chemical name: (generic) Polyalkylene glycol polyamide ester phosphate.
CAS number: Not available.
Basis for action: The PMN substance will be used as a coating additive. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 60 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)); a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6180.

PMN Number P–98–1016

Chemical name: (generic) Polymer of polyalkylenepolyol and trisubstituted phenol.
CAS number: Not available.
Basis for action: The PMN substance will be used as an emulsifying component for adhesive resin. Based on structural analogy to alkyl ethoxylated nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the PMN substance is not released to surface water above 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 10 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)); a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6515.

PMN Numbers P–98–1274 and P–98–1275

Chemical names: (generic) (P–98–1274) Silicoaluminophosphates compd. with organic amine; (P–98–1275) Aluminosilicates, phospho-.
CAS numbers: Not available for (P–98–1274); for (P–98–1275) it is 201167–69–3.
Effective date of section 5(e) consent order: May 4, 1999.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to human health.
Toxicity concern: Structurally similar chemicals have been shown to cause lung effects and cancer in humans and test animals.
Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity study in rats (40 CFR 798.2450 or OPPTS 870.3465 test guideline) with special attention to lung tissues and histopathology of the lung tissues and a 2-year, two-species oral carcinogenicity study (40 CFR 798.3300 or OPPTS 870.4200 test guideline) would help to characterize the human health effects of the substances. The PMN submitter has agreed not to exceed the production volume limit without performing the 90 day inhalation toxicity test on P–98–1275.
CFR citations: 40 CFR 721.632 (P–98–1274) and 40 CFR 721.633 (P–98–1275).

PMN Number P–99–0026

Chemical name: Cerium, hydroxy oleate propionate complexes.
CAS number: Not available.
Basis for action: The PMN substance will be used as a fuel oil/diesel additive. Based on structural analogy to lanthanides or rare earth metals, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 7 ppb of the PMN substance in surface waters. Since significant environmental exposure is not expected as the substance is not released to surface waters above 7 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters above 7 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)); a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.8657.

PMN Number P–99–0052

Chemical name: (generic) Hydrofluoric acid, reaction products with octane.
CAS number: Not available.
Basis for action: The PMN substance will be used as a chemical intermediate. Based on structural analogy to neutral

organics, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 400 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.4461.

PMN Number P–99–0093

Chemical name: 1,4-Dioxa-7,9-dithia-8-stannacycloundecane-5,11-dione, 8,8-dioctyl-.

CAS number: 56875–68–4.

Basis for action: The PMN substance will be used as an additive for plastic. EPA has identified health concerns for neurotoxicity and immunotoxicity based on organotin compounds. Since significant worker exposure is unlikely when used, as described in the PMN, EPA has not determined that proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance could result in exposures that may cause serious health effects. Also, based on organotin data, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 6 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. EPA has determined that a 90-day oral subchronic study in rodents (40 CFR 798.2650 or OPPTS 870.3100 test guideline) would help to characterize the human health effects.

CFR citation: 40 CFR 721.9535.

PMN Number P–99–0114

Chemical name: Chromate (5-), bis[4-hydroxy-7-[(2-hydroxy-1-naphthalenyl)azo]-3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentasodium.

CAS number: 159574–72–8.

Basis for action: The PMN substance will be used as an acid dye for dyeing leather. EPA has identified health concerns for skin sensitization and blood toxicity based on submitted test data; and concerns for developmental toxicity, reproductive toxicity and carcinogenicity based on data for structurally similar substances. Since significant worker exposure is unlikely because it would not be manufactured, processed, or used as a powder, EPA has not determined that manufacturing, processing, or use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that manufacturing, processing, or use of the substance as a powder may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(B), (b)(3)(i), and (b)(3)(ii) .

Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) and a 2-year, two-species oral carcinogenicity study (40 CFR 798.3300) or 870.4200 test guideline)) would help to characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.5284.

PMN Number P–99–0115

Chemical name: (generic) Aminoester of polyalkenylated alkyldicarboxylic acid.

CAS number: Not available.

Basis for action: The PMN substance will be used as an emulsifier. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.480.

PMN Numbers P–99–0143/0144/0145/0146

Chemical names: (generic) (P–99–0143) Dimer acid/rosin amidoamine reaction product; (generic) (P–99–0144) Dimer acid/polymerized rosin amidoamine reaction product; (generic) (P–99–0145) Rosin amidoamine, and (generic) (P–99–0146) Polymerized rosin amidoamine.

CAS numbers: Not available.

Basis for action: The PMN substances will be used as described in the PMN. Based on structural analogy to aliphatic amines, EPA is concerned that effects to the aquatic environment may occur at a concentration as low as 40 ppb of the PMN substances in surface waters. Since significant environmental exposure is unlikely, as the substances are not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public

draft)) would help to characterize the environmental effects of the PMN substances.
CFR citations: 40 CFR 721.9484 (P–99–0143), 40 CFR 721.9485 (P–99–0144), 40 CFR 721.9486 (P–99–0145), and 40 CFR 721.9487 (P–99–0146).

PMN Number P–99–0157

Chemical name: (generic) Ethyl silicate, reaction products with modified alkoxysilane salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to aliphatic amines and inorganic phosphoric acid, EPA is concerned that toxicity to aquatic organisms may occur at a concentration of 30 ppb in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.9514.

PMN Number P–99–0198

Chemical name: (generic) Tetraaryltin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a coating system intermediate. EPA has identified health concerns for reproductive toxicity in males, immunotoxicity, and allergic reaction based on analogy to organotin compounds; and concern for mutagenicity based on data for triphenyltin hydroxide. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing and use of the substance may present an unreasonable health risk. EPA has determined, however, that other uses of the substance other than as an intermediate may result in serious health effects. Also, based on data on organotins, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected above 1 ppb as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that any release of the PMN substance to surface waters above 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that a prenatal development toxicity study by the oral route in two-species (40 CFR 799.9370) would help to characterize the human health effects of the PMN substance. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects: A fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public)).
CFR citation: 40 CFR 721.9670.

PMN Number P–99–0199

Chemical name: (generic) Triaryltin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a coating system intermediate. EPA has identified health concerns for reproductive toxicity in males, carcinogenicity, immunotoxicity, and allergic reaction based on analogy to organotin compounds; and concern for mutagenicity based on data for triphenyltin hydroxide. Since significant worker exposure is unlikely when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable health risk. EPA has determined, however, that other uses of the substance other than as an intermediate may result in serious health effects. Also, based on data on organotins, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since environmental releases are not expected above 1 ppb as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that any release of the PMN substance to surface waters above 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).
Recommended testing: EPA has determined that a prenatal development toxicity study by the oral route in two-species (40 CFR 799.9370) would help to characterize the human health effects of the PMN substance. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects: A fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)).
CFR citation: 40 CFR 721.9671.

PMN Numbers P–99–0207 and P–99–0208

Chemical names: (P–99–0207) L-Glutamic acid, N-(1-oxododecyl)-, disodium salt; and (P–99–0208) L-Glutamic acid, N-(1-oxododecyl)-.
CAS numbers: 50622–20–3 and 3397–65–7.
Basis for action: The PMN substances will be used as isolated intermediates. Based on structural analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substances in surface waters as a soluble salt at pH7. Since significant environmental exposure is unlikely, as the substances are not released to surface waters in significant amounts, as described in the PMNs, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances. The sodium salt at pH7 should be tested for P–99–0208.

CFR citations: 40 CFR 721.3820 (P–99–0207) and 40 CFR 721.3821 (P–99–0208).

PMN Number P–99–0313

Chemical name: (generic) Substituted ethoxylated hydrocarbon.

CAS number: Not available.

Basis for action: The PMN substance will be used as an intermediate. Based on structural analogy to ethoxylated nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters above 100 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.4365.

PMN Number P–99–0365

Chemical name: (generic) Substituted acetate.

CAS number: Not available. donna

Basis for action: The PMN substance will be used as a chemical intermediate. EPA has identified health concerns for developmental toxicity, reproductive toxicity, and immunotoxicity based on data from the carboxylic acid based ester hydrolysis product, and concern for neurotoxicity based on solvent properties. Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 28-day oral toxicity study in rats (Organization for Economic Cooperation and Development (OECD) guideline no. 407) that includes a neurotoxicity functional observational battery (National Technical Information Service (NTIS) (NTIS: PB 91–154617)) for all test doses with the highest dose set at 1,000 milligram/kilogram (mg/kg), and for the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, and an oral developmental toxicity study in two-species (40 CFR 798.4900 or OPPTS 870.3700 test guideline) would help to characterize the health effects of the substance.

CFR citation: 40 CFR 721.303.

PMN Numbers P–99–0368 and P–99–0369

Chemical name: (generic) Dimethyl alkylamine salt.

CAS number: Not available.

Basis for action: The PMN substances will be used as water clarifiers. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb in surface waters for P–99–0368 and 6 ppb in surface waters for P–99–0369. Since significant environmental exposure is unlikely, as the substances are not released to surface waters in significant amounts, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that use of the substances other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a freshwater fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an freshwater algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.333.

PMN Number P–99–0385

Chemical name: (generic) Fatty alkyl phosphate, alkali metal salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as a lubricant. Based on structural analogy to phosphate-based anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 8 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.5985.

PMN Number P–99–0423

Chemical name: (generic) Polyalkylene oxide dialkylamine.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 100 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.2265.

PMN Number P–99–0435

Chemical name: (generic) Polyether modified fatty acids.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substances other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3710.

PMN Number P–99–0467

Chemical name: (generic) Acrylated (long-chainalkyl) glycidyl ether.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on structural analogy to acrylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since environmental exposure is unlikely, as the substance is not released to surface water above 2 ppb as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3850.

PMN Number P–99–0472

Chemical name: (generic) Polyalkenylalkylphenol.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.545.

PMN Number P–99–0479

Chemical name: (generic) Polysubstituted bisphenylazonapthalene disulfonic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used in leather dyeing as described in the PMN. Based on structural analogy to aminoaniline anionic dyes, EPA has identified health concerns for carcinogenicity, developmental toxicity, kidney toxicity, liver toxicity and neurotoxicity based on the potential azo reduction products. Since significant worker exposure is unlikely, when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacturing could result in exposures which may cause serious chronic and developmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a 90-day oral subchronic in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline) with neurotoxicity adjuncts (NTIS PB 91–154517), a prenatal development toxicity study by the oral route in two-species (40 CFR 799.9370), and a 2-year, two-species oral carcinogenicity study (40 CFR 798.3300 or OPPTS 870.4200 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.5914.

PMN Number P–99–0531

Chemical name: (generic) Formaldehyde, reaction products with an alkylated phenol and an aliphatic amine.
CAS number: Not available.
Basis for action: The PMN substance will be used as a detergent additive for gasoline and diesel fuel. Based on structural analogy to aliphatic amines and phenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 3 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substances other than as described in the PMN may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance. The PMN substance should be tested as 100 percent active ingredients.
CFR citation: 40 CFR 721.3830.

PMN Number P–99–0557

Chemical name: Benzenamine,4,4'-methylenebis[N-ethyl-N-methyl-.
CAS number: 76176–94–8.
Basis for action: The PMN substance will be used as an intermediate. EPA has identified health concerns for mutagenicity, developmental toxicity, and sensitization based on analogy to

methylenedianiline (MDA). EPA also has concerns for carcinogenicity and male reproductive toxicity based on analogy to N,N,N',N'-tetramethyl methylenedianiline (tetramethyl MDA). Since significant worker exposure is unlikely when the substance is used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN could result in exposures which may cause serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that a 28-day oral toxicity study in rats (OECD guideline no. 407) where histopathologic examination shall be extended to include testes/ovaries and lungs, and an oral developmental toxicity study by oral route in two-species (40 CFR 798.4900 or OPPTS 870.3700 test guideline) would help to characterize the health effects of the substance.

CFR citation: 40 CFR 721.1085.

PMN Number P–99–0558

Chemical name: (generic) Formaldehyde, polymers with substituted phenols.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to polynonionic polymers and phenols, EPA has concern for toxicity to aquatic organisms, which may occur at a concentration as low as 5 ppb of the PMN substance with a number average-molecular weight below 600. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters of lower molecular weight species may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.3810.

PMN Number P–99–0610

Chemical name: (generic) Modified hydroxystyrene homopolymer.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to polynonionic polymers and phenols, EPA has concern for toxicity to aquatic organisms, which may occur at a concentration as low as 5 ppb of the PMN substance with a number average-molecular weight below 600. Since significant exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters of lower molecular weight species may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.4565.

PMN Number P–99–0618

Chemical name: (generic) Hydrochloride salt of a fatty polyalkylene polyamine.

CAS number: Not available.

Basis for action: The PMN substance will be used as a processing aid. Based on structural analogy to aliphatic amines, EPA is concerned that effects to the aquatic environment may occur at a concentration as low as 50 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.6196.

PMN Number P–99–0645

Chemical name: (generic) Amidoamine modified polyethylene glycol.

CAS number: Not available.

Basis for action: The PMN substance will be used as a surfactant. Based on structural analogy to aliphatic amines, EPA is concerned that effects to the aquatic environment may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish chronic toxicity study (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.6493.

PMN Number P–99–0654

Chemical name: (generic) Thiosubstituted carbonate ester.

CAS number: Not available.

Basis for action: The PMN substance will be used as described in the PMN. Based on structural analogy to thiocarbamates esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental

exposure is unlikely, as the substance is not released to surface waters, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.2121.

PMN Number P–99–0723

Chemical name: (generic) Phenoxazin-5-ium, 3-dialkylamino-7-arylamino-, salt.

CAS number: Not available.

Basis for action: The PMN substance will be used as a basic dye for cationic dyeable polyester fibers. Based on structural analogy to cationic dyes with delocalized cationic charge, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely, as the substance is not released to surface waters in significant amounts, when used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the substance may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.5912.

PMN Number P–99–0754

Chemical name: 9-Phosphabicyclo[3.3.1]nonane, 9,9'-(1,2-ethanediyl)bis- (9C1).

CAS number: 153280-11-6.

Basis for action: The PMN substance will be used as a catalyst. EPA has identified health concerns for neurotoxicity and internal organ effects based on analogy to structurally similar compounds. Since significant worker exposure is unlikely when the substance is used as a liquid. EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable health risk. EPA has determined, however, that manufacture, process, or use of the substance as a solid may result in serious health effects. Also, based on analogy to cationic dyes with delocalized charge, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable environmental risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that a 28-day oral toxicity study in rats (OECD guideline no. 407) that includes a neurotoxicity functional observational battery (NTIS: PB 91–154617) for all test doses with the highest dose set at 1,000 mg/kg, and for the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, would help to characterize the human health effects of the PMN substance. In addition, the following chronic aquatic toxicity tests would help to characterize the environmental effects: A fish chronic toxicity study (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft)), a daphnid chronic toxicity study (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft)), and an algal toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)).

CFR citation: 40 CFR 721.5378.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 5 of the 40 substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 35 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.
2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.
3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.
4. All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective February 26, 2001, unless EPA receives a written notice by January 25, 2001 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a document to

withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the substances.
3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 5 substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 31 of the 40 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait

until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the official record for this rule (OPPTS–50638).

X. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Similarly, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and

any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

XI. Submission to Congress and the Comptroller General

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 final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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 final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 13, 2000.

Mary Ellen Weber,

Acting Office Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.303 to subpart E to read as follows:

§ 721.303 Substituted acetate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted acetate (PMN P–99–0365) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

3. By adding new § 721.333 to subpart E to read as follows:

§ 721.333 Dimethyl alkylamine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as a Dimethyl alkylamine salt (PMNs P–99–0368 and P–99–0369) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

4. By adding new § 721.480 to subpart E to read as follows:

§ 721.480 Aminoester of polyalkenylated alkyldicarboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as Aminoester of polyalkenylated alkyldicarboxylic acid (PMN P–99–0115) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

5. By adding new § 721.545 to subpart E to read as follows:

§ 721.545 Polyalkenylalkylphenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a Polyalkenylalkylphenol (PMN P–99–0472) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

6. By adding new § 721.632 to subpart E to read as follows:

§ 721.632 Silicoaluminophosphates, compd. with organic amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as Silicoaluminophosphates, compd. with organic amine (PMN P–98–1274) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (b) and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor

may choose to follow the New Chemical Exposure Limit (NCEL) provisions listed in the section TSCA 5(e) consent order for these substances. The NCEL is 0.1 mg/m³ as an 8-hour time weighted average verified by actual monitoring data.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (g)(1)(ii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

7. By adding new § 721.633 to subpart E to read as follows:

§ 721.633 Aluminosilicates, phospho-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as Aluminosilicates, phospho- (PMN P–98–1275; CAS No. 201167–69–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (b), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for these substances. The NCEL is 0.1 mg/m³ as an 8-hour time weighted average verified by actual monitoring data.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (g)(1)(ii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

8. By adding new § 721.1085 to subpart E to read as follows:

§ 721.1085 Benzenamine,4,4'-methylenebis[N-ethyl-N-methyl-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as a Benzenamine,4,4'-methylenebis[N-ethyl-N-methyl- (PMN P–99–0557; CAS No. 76176–94–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

9. By adding new § 721.2121 to subpart E to read as follows:

§ 721.2121 Thiosubstituted carbonate ester (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Thiosubstituted carbonate ester (PMN P–99–0654) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

10. By adding new § 721.2265 to subpart E to read as follows:

§ 721.2265 Polyalkylene oxide dialkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Polyalkylene oxide dialkylamine (PMN P–99–0423) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

11. By adding new § 721.3710 to subpart E to read as follows:

§ 721.3710 Polyether modified fatty acids (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a Polyether modified fatty acids (PMN P–99–0435) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

12. By adding new § 721.3810 to subpart E to read as follows:

§ 721.3810 Formaldehyde, polymers with substituted phenols (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as Formaldehyde, polymers with substituted phenols (PMN P–99–0558) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

13. By adding new § 721.3820 to subpart E to read as follows:

§ 721.3820 L-Glutamic acid, N-(1-oxododecyl)-, disodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as L-Glutamic acid, N-(1-oxododecyl)-, disodium salt (PMN P–99–0207; CAS No. 50622–20–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

14. By adding new § 721.3821 to subpart E to read as follows:

§ 721.3821 L-Glutamic acid, N-(1-oxododecyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as L-Glutamic acid, N-(1-oxododecyl)- (PMN P–99–0208; CAS No. 3397–65–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

15. By adding new § 721.3830 to subpart E to read as follows:

§ 721.3830 Formaldehyde, reaction products with an alkylated phenol and an aliphatic amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as Formaldehyde, reaction products with an alkylated phenol and an aliphatic amine (PMN P–99–0531) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

16. By adding new § 721.3850 to subpart E to read as follows:

§ 721.3850 Acrylated (long-chainalkyl) glycidyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a Acrylated (long-chainalkyl) glycidyl ether (PMN P–99–0467) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=2 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

17. By adding new § 721.4365 to subpart E to read as follows:

§ 721.4365 Substituted ethoxylated hydrocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as Substituted ethoxylated hydrocarbon (PMN P–99–0313) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

18. By adding new § 721.4461 to subpart E to read as follows:

§ 721.4461 Hydrofluoric acid, reaction products with octane (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as a hydrofluoric acid, reaction products with octane (PMN P–99–0052) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

19. By adding new § 721.4565 to subpart E to read as follows:

§ 721.4565 Modified hydroxystyrene homopolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Modified hydroxystyrene homopolymer (PMN P–99–0610) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

20. By adding new § 721.4610 to subpart E to read as follows:

§ 721.4610 Mixed metal oxides (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as mixed metal oxides (PMN P–98–0002) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA 5(e) consent order for this substance. The NCEL is 0.05 mg/m^3 as an 8-hour time weighted average verified by actual monitoring data.

(ii) Hazard communication program. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f) (g)(1)(ii), (g)(1)(vii), (g)(2)(ii), (g)(2)(iii), and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

21. By adding new § 721.5284 to subpart E to read as follows:

§ 721.5284 Chromate (5-), bis[4-hydroxy-7-[(2-hydroxy-1-naphthalenyl)azo]- 3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentasodium.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as a Chromate (5-), bis[4-hydroxy-7-[(2-hydroxy-1- naphthalenyl)azo]- 3-[(2-hydroxy-3-nitro-5-sulfophenyl)azo]-2-naphthalenesulfonato(4-)]-, pentasodium (PMN P–99–0114; CAS No. 159574–72–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

22. By adding new § 721.5378 to subpart E to read as follows:

§ 721.5378 9-Phosphabicyclo[3.3.1]nonane,9,9'-(1,2-ethanediyl)bis- (9C1).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 9-Phosphabicyclo[3.3.1]nonane,9,9'-(1,2-ethanediyl)bis- (9C1) (PMN P–99–0754; CAS No.153280–11–6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (f), (v)(2), (w)(2), and (y)(2).

(ii) *Release to water*. Requirements as specified § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

23. By adding new § 721.5585 to subpart E to read as follows:

§ 721.5585 4,4'-(1-methylethylidene)bisphenol, polymer with (chloromethyl)oxirane and a diamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as 4,4'-(1-methylethylidene)bisphenol, polymer with (chloromethyl) oxirane and a diamine (PMN P–97–0916) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) Hazard communication program. Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=2 ppb).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

24. By adding new § 721.5912 to subpart E to read as follows:

§ 721.5912 Phenoxazin-5-ium, 3-dialkylamino-7-arylamino-, salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Phenoxazin-5-ium, 3-dialkylamino-7-arylamino-, salt (PMN P–99–0723) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

25. By adding new § 721.5914 to subpart E to read as follows:

§ 721.5914 Polysubstituted bis phenylazonapthalene disulfonic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a Polysubstituted bis phenylazonapthalene disulfonic acid. (PMN P–99–0479) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

26. By adding new § 721.5985 to subpart E to read as follows:

§ 721.5985 Fatty alkyl phosphate, alkali metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a fatty alkyl phosphate, alkali metal salt (PMN P–99–0385) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

27. By adding new § 721.6180 to subpart E to read as follows:

§ 721.6180 Polyalkylene glycol polyamide ester phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as polyalkylene glycol polyamide ester phosphate (PMN P–98–0903) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

28. By adding new § 721.6196 to subpart E to read as follows:

§ 721.6196 Hydrochloride salt of a fatty polyalkkylene polyamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Hydrochloride salt of a fatty polyalkkylene polyamine (PMN P–99–0618) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

29. By adding new § 721.6479 to subpart E to read as follows:

§ 721.6479 Tetrahydroheteropolycycle (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Tetrahydroheteropolycycle (PMN P–97–0766) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1)(i), (a)(2)(i), (a)(3), (a)(4), (a)(5)(ii) (if no data on cartridge service life testing has been reviewed and approved by EPA), (a)(5)(xii) (if data on cartridge service life testing has been reviewed and approved by EPA), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii) (a)(6)(iii), (a)(6)(iv), (a)(6)(v), and (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c). The imperviousness of each item pursuant to paragraph (a)(2)(i) must be demonstrated by actual testing under paragraph (a)(3) and not by manufacturer specifications. Permeation

testing shall be conducted according to the American Society for Testing Materials (ASTM) F739 ''Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases.'' Results shall be recorded as a cumulative permeation rate as a function of time, and shall be documented in accordance with ASTM F739 using the format specified in ASTM 1194–89 ''Guide for Documenting the Results of Chemical Permeation Testing on Protective Clothing Materials.'' Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. The manufacturer, importer, or processor must submit all test data to the Agency and must receive written Agency approval for each type of glove tested prior to use of such gloves. The following gloves have been tested in accordance with the ASTM F739 method and found to satisfy the requirements for use by EPA: Latex (at least 14 mils thick), Nitrile (at least 16 mils thick), and Silvershield (at least 3 mils thick). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 1.0 ug/m^3 as an 8-hour time weighted average verified by actual monitoring data.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(p) (12,300 kilograms).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

30. By adding new § 721.6493 to subpart E to read as follows:

§ 721.6493 Amidoamine modified polyethylene glycol (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a amidoamine modified polyethylene glycol (PMN P–99–0645) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

31. By adding new § 721.6515 to subpart E to read as follows:

§ 721.6515 Polymerof polyalkylenepolyol and trisubstituted phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as polymer of polyalkylenepolyol and trisubstituted phenol (PMN P–98–1016) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10 ppb).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) Limitations or revocation of certain notification requirements. The provisions of § 721.185 apply to this section.

32. By adding new § 721.8657 to subpart E to read as follows:

§ 721.8657 Cerium, hydroxy oleate propionate complexes.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as Cerium, hydroxy oleate propionate complexes (PMN P–99–0026) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=7 ppb).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

33. By adding new § 721.9484 to subpart E to read as follows:

§ 721.9484 Dimer acid/rosin amidoamine reaction product (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Dimer acid/rosin amidoamine reaction product (PMN P–99–0143) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

34. By adding new § 721.9485 to subpart E to read as follows:

§ 721.9485 Dimer acid/polymerized rosin amidoamine reaction product (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Dimer acid/polymerized rosin amidoamine reaction product (PMN P–99–0144) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

35. By adding new § 721.9486 to subpart E to read as follows:

§ 721.9486 Rosin amidoamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Rosin amidoamine (PMN P–99–0145) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

36. By adding new § 721.9487 to subpart E to read as follows:

§ 721.9487 Polymerized rosin amidoamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Polymerized rosin amidoamine (PMN P–99–0146) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

37. By adding new § 721.9514 to subpart E to read as follows:

§ 721.9514 Ethyl silicate, reaction products with modified alkoxysilane salt (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as Ethyl silicate, reaction products with modified alkoxysilane salt (PMN P–99–0157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

38. By adding new § 721.9535 to subpart E to read as follows:

§ 721.9535 1,4-Dioxa-7,9-dithia-8-stannacycloundecane-5,11-dione, 8,8-dioctyl-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as a 1,4-Dioxa-7,9-dithia-8-stannacycloundecane-5,11-dione, 8,8-dioctyl- (PMN P–99–0093; CAS No. 56875–68–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) and (f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

39. By adding new § 721.9670 to subpart E to read as follows:

§ 721.9670 Tetraaryltin (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a Tetraaryltin (PMN P–99–0198) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Release to water*. Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=1 ppb).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

40. By adding new § 721.9671 to subpart E to read as follows:

§ 721.9671 Triaryltin (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a Triaryltin (PMN P–99–0199) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Release to water*. Requirements as specified § 721.90 (a)(4), (b)(4), and (c)(4) (N=1 ppb).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

[FR Doc. 00–32766 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–117

[FPMR Amendment G–116]

RIN 3090–AH16

Transportation Management; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors contained in a final rule appearing in Part V of the **Federal Register** of Friday, October 6, 2000 (65 FR 60060). The rule revised the Federal Property Management Regulations (FPMR) by moving coverage on transportation and traffic management into the Federal Management Regulation (FMR) and adding a cross-reference to the FPMR to direct readers to the coverage in the FMR.

EFFECTIVE DATE: October 6, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Allison, Transportation Management Policy Division (MTL), 202–219–1729.

SUPPLEMENTARY INFORMATION: In rule document 00–25130 beginning on page 60060 in the issue of Friday, October 6, 2000, make the following corrections:

§ 102–117.25 [Corrected]

1. On page 60062, in the first column, in § 102–117.25, in the definition of ''Agency'', paragraph (4), correct ''The Atomic Energy Commission'' to read ''The Nuclear Regulatory Commission''.

§ 102–117.140 [Corrected]

2. On page 60065, in the first column, in § 102–117.140, in the last line, correct the URL cite to read ''e-mail: cargo@marad.dot.gov''.

§ 102–117.170 [Corrected]

3. On page 60065, in the third column, in § 102–117.170(b)(1), in the third line, remove the comma after ''NW.''

§ 102–117.220 [Corrected]

4. On page 60066, in the second column, in § 102–117.220, in the eleventh line from the top of the column, correct ''Note to § –117–220'' to read ''Note to § 102–117–220''.

§ 102–117.250 [Corrected]

5. On page 60067, in the first column, in § 102–117.250(b), in the thirteenth line, correct the URL site to read ''http://www.kc.gsa.gov/fsstt''.

Dated: December 19, 2000.

Michael E. Hopkins,

Federal Acquisition Policy Division, Office of Governmentwide Policy.

[FR Doc. 00–32778 Filed 12–22–00; 8:45 am]

BILLING CODE 6820–24–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

45 CFR Part 1801

Harry S. Truman Scholarship Regulations

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Final rule.

SUMMARY: The following are the regulations governing the annual competition for Harry S. Truman Scholarships and the disbursement of Scholar payments. The regulations reflect modifications in the program adopted by the Harry S. Truman Scholarship Foundation on November 2, 2000. Modifications were made to clarify and make explicit policies of the Foundation in administering the Truman Scholarship Program.

This regulation describes the procedures to be followed by individuals who apply for or receive Harry S. Truman Scholarships and educational institutions which nominate Scholarship applicants, as well as the procedures the Foundation follows in selecting Truman Scholars and in administering scholarships.

EFFECTIVE DATE: January 19, 2001.

ADDRESSES: Harry S. Truman Scholarship Foundation, 712 Jackson Place, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Louis H. Blair, (202) 395–4831. E-mail, lblair@truman.gov.

SUPPLEMENTARY INFORMATION:

OMB has determined that this regulation is not a significant action requiring its review under Executive Order 12866. I hereby certify that this regulation does not apply to small businesses, and thus will have no significant economic impact on a substantial number of small entities within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation relates to the Foundation's management and procedures, and thus is not a ''rule'' within the meaning of the Congressional Review Act, 5 U.S.C. *et seq.*

List of Subjects in 45 CFR Part 1801

Grant programs—education, Scholarships and fellowships.

Chapter XVIII, title 45 of the Code of Federal Regulations is amended by revising Part 1801 to read as follows:

PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

Subpart A—General

Sec.
1801.1 Annual Truman Scholarship competition.
1801.2 Truman Scholars are selected from qualified applicants from each State.
1801.3 Students eligible for nomination.
1801.4 Definitions.

Subpart B—Nominations

1801.10 Nomination by institution of higher education.
1801.11 Annual nomination.
1801.12 Institutions with more than one campus.
1801.13 Two-year institutions.
1801.14 Faculty Representative.
1801.15 Submission of application to the Foundation.
1801.16 Closing date for receipt of nominations.
1801.17 Contents of application.
1801.18 Limitations on nominations.

Subpart C—The Competition

1801.20 Selection of finalists.
1801.21 Evaluation criteria.
1801.22 Interview of finalists with panel.
1801.23 Recommendation by panel.
1801.24 Selection of Truman Scholars by the Foundation.

Subpart D—Graduate Study

1801.30 Continuation into graduate study.
1801.31 Approval of graduate programs by the Foundation.
1801.32 Eligible institutions and degree programs.

Subpart E—Payments to finalists and Scholars

1801.40 Travel expenses of finalists.
1801.41 Scholarship stipends.
1801.42 Definition of ''fee''.
1801.43 Allowance for books.
1801.44 Allowance for room and board.
1801.45 Deduction for benefits from other sources.

Subpart F—Payment Conditions and Procedures

1801.50 Acceptance of the scholarship.
1801.51 Report at the beginning of each term.
1801.52 Payment schedule.
1801.53 Postponement of payment.
1801.54 Annual report.

Subpart G—Duration of Scholarship

1801.60 Renewal of scholarship.
1801.61 Termination of scholarship.
1801.62 Recovery of scholarship funds.

Authority: Pub. L. 93–642, 88 Stat. 2276 (20 U.S.C. 2001–2012).

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Truman Scholars are selected from qualified applicants from each State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets minimum eligibility criteria as established by the Foundation. These minimum eligibility criteria are stated in §§ 1801.3, 1801.21 and 1801.23.

(b) As used in this part, *State* means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands (The Islands).

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated for a Truman Scholarship if he or she:

(a) Is a junior-level student pursuing a bachelor's degree as a full-time student at an accredited institution of higher education and will receive a baccalaureate degree the following academic year; or, is a full-time senior level student from the Commonwealth of Puerto Rico or from The Islands;

(b) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(c) Ranks in the upper quarter of his or her class; and

(d) Is a U.S. citizen, a U.S. national, or a permanent resident of the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions.

As used in this part:

Academic year means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, three quarters, or the equivalent.

Foundation means the Harry S. Truman Scholarship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more time than the length of time normally taken at his or her institution.

Graduate study means the courses of study beyond the baccalaureate level which lead to an advanced degree.

Institution means an institution of higher education. ''Institution of higher education'' has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141 (a)).

Junior means a student who, following completion of the current academic year, has one more year of full-time course work to receive a baccalaureate degree.

President means the principal official responsible for the overall direction of the operations of an institution.

Public service means employment in: government at any level, the uniformed services, public interest organizations, non-governmental research and/or educational organizations, public and private schools, and public service oriented non-profit organizations such as those whose primary purposes are to help needy or disadvantaged persons or to protect the environment.

Resident means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account place of registration to vote, family's place of residence, home address listed for school registration, and eligibility for ''in-State'' tuition rates at public institutions of higher education.

Scholar means a person who has been selected by the Foundation as a Truman Scholar, has accepted the Scholarship and agreed to the conditions of the award, and is eligible for Scholarship stipend(s).

Senior means a student who is in his or her last year of study before receiving a baccalaureate degree.

Term means the period which the institution uses to divide its academic year: semester, trimester, or quarter.

Subpart B—Nominations

§ 1801.10 Nomination by institution of higher education.

To be considered in the competition a student must be nominated by the institution that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.11 (b), 1801.12, and 1801.24, each institution may nominate up to four students annually. Additionally, a four-year institution may nominate up to three currently enrolled juniors who completed their first two college years at a two-year institution. Nominees may have legal residence in the same State as the institution or in different States.

(b) The Foundation may announce each year in its Bulletin of Information or on its website (http://www.truman.gov) special circumstances under which an institution may nominate additional candidates.

(c) All nominations must be made by the President of the institution or the designated Faculty Representative.

§ 1801.12 Institutions with more than one campus.

If an institution has more than one component separately listed in the current edition of the Directory of Postsecondary Institutions published by the U.S. Department of Education, each component will be considered to be a separate institution under this regulation, and each may nominate up to four students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution does not offer education beyond the sophomore level, the institution may nominate only students who have completed two years at that institution and who are currently enrolled as full-time juniors at accredited four-year institutions. Faculty Representatives at two-year institutions may submit the materials directly to the Foundation or they may forward the nomination materials to the Faculty Representative of the four-year institution attended by the nominee.

§ 1801.14 Faculty Representative.

(a) Each institution which nominates a student must give the Foundation the name, business address, and business telephone number of a member of the faculty or administrator who will serve as liaison between the institution and the Foundation.

(b) The Faculty Representative is responsible for a timely submission of all nominations and supporting documentation.

(c) The Foundation delegates the responsibility to the Faculty Representative to establish a process to publicize the scholarship, recruit candidates, select nominees, and assist nominees.

§ 1801.15 Submission of application to the Foundation.

To nominate a student for the competition, the Faculty Representative must submit the completed nomination packet to the Foundation as provided in § 1801.16. The Foundation does not accept nominations packets directly from students.

§ 1801.16 Closing date for receipt of nominations.

The Foundation announces in its Bulletin of Information and in the **Federal Register** and posts on its

website (http://www.truman.gov) the date and address at which the Foundation must receive nominations. Nominations not received by this date at the address specified will not be considered.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following:

(1) A certification of nomination and eligibility signed by the Faculty Representative;

(2) A completed Truman Scholarship Application signed by the nominee;

(3) A policy proposal written by the nominee;

(4) A current official college transcript; and

(5) A letter of nomination from the Faculty Representative and three letters of recommendation.

§ 1801.18 Limitations on nominations.

A candidate nominated by an institution and not selected as a Truman Scholar may not be renominated the following year.

Subpart C—The Competition

§ 1801.20 Selection of Finalists.

The Foundation selects Finalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation appoints a committee to select finalists from the students nominated on the basis of the following criteria:

(1) Extent and quality of community service and government involvement;

(2) Leadership record;

(3) Academic performance and writing and analytical skills; and

(4) Suitability of the nominee's proposed program of study and its appropriateness for a leadership career in public service.

(b) The Foundation selects Finalists solely on the basis of the information required under § 1801.17.

§ 1801.22 Interview of Finalists with panel.

The Foundation invites each Finalist to an interview with a regional review panel. Panels evaluate Truman Finalists primarily on:

(a) Leadership potential and communication skills;

(b) Likelihood of ''making a difference'' in public service; and

(c) Intellectual strength, analytical abilities, and prospects of performing well in graduate school.

§ 1801.23 Recommendation by panel.

(a) Each Panel is asked to recommend to the Board of Trustees the name of one candidate from each state in the region to be appointed as a Truman Scholar. The Foundation may authorize each regional review panel to recommend additional Scholars from the States in its region.

(b) A panel's recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each Finalist in terms of criteria presented in § 1801.22.

(c) In the event that a regional review panel determines that none of the Finalists from a state meets all the requirements expected of a Truman Scholar, it does not provide a recommendation. The Foundation will carry over the Scholarship for that state making two Scholarships available the following year.

§ 1801.24 Selection of Truman Scholars by the Foundation.

The Foundation names Truman Scholars after receiving recommendations from the regional review panels.

Subpart D—Graduate Study

§ 1801.30 Continuation into graduate study.

(a) Only Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

(b) The Foundation does not conduct a competition for graduate scholarships and does not add new Truman Scholars at the graduate level.

§ 1801.31 Approval of graduate programs by the Foundation.

(a) By December 1, Scholars desiring Foundation support for graduate study the following academic year must submit a proposed program of graduate study to the Foundation for approval. The graduate program proposed for approval may differ from that proposed by the Scholar when nominated for a Truman Scholarship. Factors to be used by the Foundation in considering approval include being consistent with:

(1) Field of study initially proposed in the Scholar's Application;

(2) Graduate school programs given priority in the current Bulletin of Information;

(3) Undergraduate educational program and work experience of the Scholar; and

(4) Preparation specifically for a career in public service.

(b) Foundation approval in writing of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in public service that specifies in detail how their graduate program and their overall educational and work experience plans will realistically prepare them for their chosen career goal in government or elsewhere in public service.

(d) After completing his or her undergraduate studies, a Scholar each year may request in writing a deferral of support for graduate studies. Deferrals must be requested no later than June 15 for the succeeding academic year. Scholars failing to request a year's deferral and to receive written approval from the Foundation may lose one year of funding support for each year for which they fail to request and receive deferrals. Total deferrals may not exceed four years unless an extension is granted in writing by the Foundation.

§ 1801.32 Eligible institutions and degree programs.

(a) Truman Scholars at the graduate level may use Foundation support to study at any accredited college or university in the United States or abroad that offers graduate study appropriate and relevant to their public service career goals.

(b) They may enroll in any relevant graduate program for a career in public service.

(c) Foundation support for graduate study is restricted to three years of full-time study.

Subpart E—Payments to Finalists and Scholars

§ 1801.40 Travel expenses of finalists.

The Foundation will provide partial funding for intercity round-trip transportation from the finalist's nominating institution to the interview site. The Foundation does not reimburse finalists for lodging, meals, local transportation, or other expenses. The Foundation announces the terms and conditions of support on its website (http://www.truman.gov) and in the Bulletin of Information.

§ 1801.41 Scholarship stipends.

The Scholarship stipend may be used only for eligible expenses in the following categories: tuition, fees, books, and room and board. Payments from the Foundation may be received to supplement, but not to duplicate, benefits received by the Scholar from the educational institution or from other foundations or organizations. The designated benefits received from all

sources combined may not exceed the costs of tuition, fees, books, and room and board as determined by the Foundation. The Foundation's Bulletin of Information, current at the time of the Scholar's selection, contains additional information about the terms and conditions of scholarship support.

§ 1801.42 Definition of ''fee''.

As used in this part, *fee* means a typical and usual non-refundable charge by the institution for a service, a privilege, or the use of property which is required for a Scholar's enrollment and registration.

§ 1801.43 Allowance for books.

The cost allowance for a Scholar's books is $1000 per year, or such higher amount published on the Foundation's website (http://www.truman.gov).

§ 1801.44 Allowance for room and board.

The cost allowed for a Scholar's room and board is the amount the institution reports to the Foundation as the average cost of room and board for the Scholar's institution, given the type of housing the Scholar occupies.

§ 1801.45 Deduction for benefits from other sources.

The cost allowed for a Scholar's tuition, fees, books, room and board must be reduced to the extent that the cost is paid by another organization, or provided for or waived by the Scholar's institution.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Scholar must sign an acceptance of the scholarship and acknowledgement of the conditions of the award and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

(a) To receive a Scholarship stipend, a Scholar must submit a current transcript and Payment Request Form containing the following:

(1) A statement of the Scholar's costs for tuition, fees, books, room and board;

(2) A certification by an authorized official of the institution that the Scholar is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and is not engaged in gainful employment that interferes with the Scholar's studies; and

(3) A certification by an authorized official of the institution of whether the Scholar is in academic good standing.

(b) At the beginning of each academic year, the Scholar must have his or her institution submit a certified Educational Expense Form containing the following:

(1) A certification by an authorized official of the institution that the Scholar's statement of costs for tuition, fees, books, room and board and other expenses required for the academic year is accurate; and

(2) A certification of the amounts of those costs that are paid or waived by the institution or paid by another organization.

§ 1801.52 Payment schedule.

The Foundation will pay the Scholar a portion of the award of the Scholarship stipend (as described in the Foundation's Bulletin of Information) after each report submitted under § 1801.51.

§ 1801.53 Postponement of payment.

(a) A Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose conditions as it deems appropriate.

§ 1801.54 Annual report.

(a) Scholars with remaining eligibility for scholarship stipends must submit no later than July 15 an annual report to the Foundation.

(b) The annual report should be in narrative form and cover: courses taken and grades earned; courses planned for the coming year if Foundation support will be requested; public service and school activities; part-time or full-time employment and summer employment or internships; and achievements, awards and recognition, publications or significant developments.

(c) Newly selected Scholars are required to submit by the July 15 following their selection an annual report updating the Foundation on their activities and accomplishments since the time they submitted their applications for the Truman Scholarship.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation to provide scholarship awards for a period not to exceed a total of four academic years, only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may suspend or terminate a scholarship under the following specific conditions:

(1) Unsatisfactory academic performance for two terms, failure to pursue preparation for a career in public service, or loss of interest in a career in public service;

(2) Failure to meet the criteria in § 1801.3(d), § 1801.30(a) § 1801.31(a) and (b), or § 1801.51;

(3) Failure to submit a report or request required by the Foundation or providing false, misleading, or materially incomplete information on any report, payment request or other submission to the Foundation; or

(4) Failure to begin use of the graduate portion of the scholarship within four years of the date of receipt of a baccalaureate degree unless granted an extension in writing by the Foundation.

(b) Before it terminates a scholarship, the Foundation will notify the Scholar of the proposed action and will provide an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

(a) When a Truman Scholarship is terminated for any reason, the Scholar must return to the Foundation any stipend funds which have not yet been spent or which the Scholar may recover.

(b) A Scholar who fails for any reason to complete, as a full-time student, a school term for which he or she has received a Foundation stipend, must return the amount of that stipend to the Foundation. The Foundation may waive this requirement upon application by the Scholar showing good cause for doing so.

Dated: December 14, 2000.

Louis H. Blair,

Executive Secretary.

[FR Doc. 00–32638 Filed 12–22–00; 8:45 am]

BILLING CODE 6820–AB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2828; MM Docket No. 97–252; RM–9602]

Radio Broadcasting Services; Columbia City, Florida

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a partial appeal of the *Report and Order,* 64 FR 70671 (December 17, 1999) in this proceeding,

this document overrules the conclusion in the *Report and Order* that Columbia City, Florida, is not a community entitled to a broadcast allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended. This document finds that Columbia City, Florida, is a community entitled to a broadcast allotment and allots Channel 243A to Columbia City, Florida, as the community's first local broadcast service. The coordinates for that channel are 30–04–12 North Latitude and 82–41–42 West Longitude.

DATES: Effective January 29, 2001. A filing window for Channel 243A at Columbia City, Florida, will not be opened at this time. Instead, the issue of opening a filing window for that channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 97–252, adopted December 6, 2000, and released December 15, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Columbia City, Channel 243A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–32790 Filed 12–22–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 199

[Docket RSPA–97–2995; Notice 8]

Research and Special Programs Administration

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

ACTION: Notice of random drug testing rate.

SUMMARY: Each year, a minimum percentage of covered pipeline employees must be randomly tested for illegal drugs. The percentage, either 50 percent or 25 percent, depends on the positive rate of random testing reported to RSPA in the previous year. In accordance with applicable standards, we have determined that the positive rate of random testing reported this year for testing in calendar year 1999 was less than 1.0 percent. Therefore, in calendar year 2001, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2001, through December 31, 2001, at least 25 percent of covered employees must be randomly drug tested.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow; phone (202) 366–4559.

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.25(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly drug test all covered employees during the next calendar year (49 CFR 199.11(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.25(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.25(c)(4)). Part 199 defines ''positive rate'' as ''the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *''

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997), 1999 (63 FR 58324; Oct. 30, 1998), and 2000 (64 FR 66788; Nov. 30, 1999).

Using the MIS reports received this year for drug testing done in 1999, we calculated the positive rate of random testing to be 0.7 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2001, through December 31, 2001.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 19, 2000.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 00–32854 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2000–8509]

RIN 2127–AI23

Motor Vehicle Safety; Reporting the Sale or Lease of Defective or Non-Compliant Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements Section 3(c) of the Transportation Recall Enhancement, Accountability, and Documentation Act (the TREAD Act). Section 3(c) directs us to issue a final rule by January 30, 2001, implementing that Act's requirement of the submission of reports concerning sales and leases of defective or noncompliant tires by certain persons. Accordingly, we are publishing a rule requiring any person who knowingly

and willfully sells or leases for use on a motor vehicle a defective tire or a tire not in compliance with applicable safety standards and has actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance, to report that sale or lease to NHTSA.

DATES: *Effective date:* This rule is effective January 25, 2001.

Comments: Comments must be received on or before February 26, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in our comments.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jennifer T. Timian, Office of Chief Counsel, NCC–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–5263.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2000, the TREAD Act, Public Law 106–414, was enacted. The statute was, in part, a response to congressional concerns related to manufacturers' inadequate reporting to NHTSA of information regarding possible defects in motor vehicles and motor vehicle equipment, with specific reference to tires. The TREAD Act directs the Secretary of Transportation (''the Secretary'') to issue various rules to improve reporting of information that is or could be related to defects and noncompliances with applicable Federal motor vehicle safety standards. The authority to carry out Chapter 301 of Title 49 of the United States Code, under which the rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Under pre-TREAD law, 49 U.S.C. 30120(i), when a manufacturer of a motor vehicle or replacement equipment has notified a dealer (including a retailer of motor vehicle equipment) that a new motor vehicle or new item of replacement equipment does not comply with a safety standard or contains a safety-related defect, the dealer may not sell or lease the noncompliant or defective vehicle or equipment, absent certain exceptions. Section 30120(i) does not apply to the sale or lease of used vehicles or equipment, and there had been media reports during congressional consideration of the bill that eventually was adopted as the TREAD Act that some persons were selling defective Firestone ATX or Wilderness tires that had been returned to dealers for replacement tires under an ongoing safety recall. Although Congress chose not to explicitly prohibit such sales, it imposed the reporting requirement contained in Section 3(c) of the TREAD Act.

Section 3(c) of the TREAD Act adds a new subsection (n) to 49 U.S.C. 30166. That subsection directs NHTSA to issue, within 90 days of enactment, a final rule requiring any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard, with actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance as required under 49 U.S.C. 30118(c) or as required by an order under 49 U.S.C. 30118(b), to report that sale or lease to NHTSA.[1] Under 30166(n)(2), reporting of such sales or leases is not required where: (A) Prior to delivery of any such tire pursuant to a sale or lease, the defect or noncompliance is remedied as required under 49 U.S.C. 30120; or (B) notification of the defect or noncompliance is required pursuant to an order issued under section 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

Under 49 U.S.C. 30165, as amended by section 3(a) of the TREAD Act, a person who violates section 30166 or a regulation promulgated thereunder, including the requirement being promulgated today, is liable for civil penalties of up to $5,000 per violation per day, with a maximum penalty for a related series of daily violations of $15,000,000.

In order to implement the statutorily-mandated final rule concerning the reporting of knowing and willful sales or leases of defective or noncompliant tires, we are amending 49 CFR Part 573 to add a new section 573.10. Below is a brief summary and explanation of particular requirements of today's rule.

Who Will Be Required to Comply With § 573.10

Subsection 30166(n) provides that the final rule shall require ''any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard * * * to report such sale or lease to the Secretary.'' (emphasis added). In this subsection, Congress chose to use the general terms ''any person,'' as opposed to the more restricted categories of ''manufacturer''and ''dealer'' used elsewhere within Section 30166 and Chapter 301. In view of the breadth of the terms ''any person,'' the subsection will not be limited to persons in particular classes or categories. Thus, the rule's reporting requirements will apply to the actions of all persons, including individuals and entities such as corporations.

To be covered by the rule, however, the person must engage in certain activities regarding tires. Subsection 30166(n) and the rule apply to all tires used on motor vehicles, including both new and used tires. Thus, unlike the limits in subsection 30120(i), subsection 30166(n) is not limited to new tires, and includes tires that are returned to dealers or other parties for replacement as part of a safety recall.

The activities that are covered by the statute and the rule are selling or leasing a defective or noncompliant tire ''*for use on a motor vehicle*'' (emphasis added). Congress' terminology in requiring reports from persons who sell or lease such tires ''*for use on a motor vehicle*'' effectively limits the applicability of the reporting requirement. Today's rule accordingly requires reports from those persons who sell or lease defective or noncompliant tires for use on a motor vehicle, but not from persons who sell or lease a new or used vehicle with a defective or noncompliant tire.[2] Thus, for example, a motor vehicle dealer is not subject to the reporting requirements of today's rule except with respect to tires that the dealer sells or

[1] Section 30118(c) requires manufacturers of motor vehicles or equipment to provide notification of safety-related defects or noncompliances with motor vehicle safety standards to NHTSA, as well as to the owners, purchasers and dealers of the vehicle or equipment.

Section 30118(b) authorizes the Secretary to make a final decision that a motor vehicle or equipment contains a safety-related defect and/or does not comply with an applicable motor vehicle safety standard and, in that event, order the manufacturer to give notification of the defect or noncompliance to owners, purchasers, and dealers of the vehicle or equipment, and order the manufacturer to remedy the defect or noncompliance without charge.

[2] As noted above, the sale or lease of a new vehicle with a defective or noncompliant tire is already prohibited by 49 U.S.C. 30120(i).

leases separately from a vehicle. Similarly, motor vehicle lessors and motor vehicle rental companies are not subject to the rule because these groups are not selling or leasing tires for use on motor vehicles, but rather are selling and leasing vehicles. Thus, we would expect that today's rule will generally apply to tire retailers, including individuals.

To be covered by the reporting requirement, the person must have ''actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance * * *'' Thus, the person need not have received the defect or noncompliance notification directly from the manufacturer. It is sufficient the person have actual knowledge that the notification was made to dealers.

Employers, principals and other persons who are legally accountable for the actions of their employees or agents are also subject to § 573.10, and are required to report any covered sales or leases that their employees or agents cause while acting within the scope of their employment or agency. Compliance with § 573.10 is required regardless of whether the covered sale or lease was or was not approved or ratified by the legally responsible party. Therefore, for example, if an employee of a tire retailer sells or leases a tire that is defective or not in compliance with an applicable safety standard, both the employee and the tire retailer would be obligated to report the sale, and both would be accountable if the sale is not reported or reported in a manner not in compliance with § 573.10. Only one report per covered sale or lease is required, so that in the example above either the employee or the retailer could file a report.

Timing of Reports Under § 573.10

Reports required to be submitted pursuant to 573.10 must be mailed and/or submitted to NHTSA no more than five working days after the person to whom the tire was sold or leased took possession of the tire. We have chosen a five-day rule consistent with current 49 CFR 573.5, which requires defect and noncompliance information reports to be submitted within the same time frame. A five-day rule was also chosen in order to ensure the prompt reporting of covered sales or leases and to facilitate prompt follow up by the agency.

Reports must be submitted by any means which permits the sender to verify promptly that the report was in fact received by NHTSA and the day it was received by NHTSA.

What Information Will Be Required in a Report Submitted Pursuant to § 573.10

Reports submitted pursuant to section 573.10 must contain the following information, to the extent available to the reporting person: (1) A statement that the report is being provided pursuant to section 573.10 regarding the sale or lease of a defective or noncompliant tire; (2) the name, address and telephone number of the person who purchased or leased the tire; (3) the name of the manufacturer of the tire; (4) the tire's brand name, model name, and size; (5) the tire's DOT identification number (this is an alphanumeric code, unique to each tire, located on the sidewall of a tire); (6) the date of sale or lease; and (7) the name, address, and telephone number of the seller or lessor. Each report must be dated and signed, with the name of the person printed or typed below the signature. For corporations, the official position of the individual signing the report on behalf of the corporation must also be provided.

''Available'' information includes all information that a person who sells or leases a defective or noncompliant tire has within his or her possession or control, or could obtain using reasonable and diligent effort, as of the time of the report. Any person subject to § 573.10 is expected to take reasonable and diligent measures to learn or develop any information required to be reported of which he or she was not aware or did not have in his or her immediate custody at the time of the sale.

Regulatory Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reporting and the incidence of covered sales and leases of defective or noncompliant tires is expected to be small.

2. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will have no significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reporting and the incidence of covered sales and leases of defective or noncompliant tires is expected to be small.

3. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

4. Paperwork Reduction Act

NHTSA has determined that this interim final rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). Pursuant to 5 CFR 1320.13 *Emergency processing,* NHTSA is asking OMB for a temporary emergency clearance for this collection. In this interim final rule, NHTSA begins the process of requesting a 3-year clearance for this collection.

Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations, (5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i.) 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.) 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.) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv.) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the collection of

information—*i.e.,* the reporting requirement— in this interim final rule.

Reporting the Sale or Lease of Defective or Noncompliant Tire

Type of Request—New.

OMB Clearance Number—No clearance number has been provided for this collection.

Form Number—This proposed collection of information would not use any standard forms.

Requested Expiration Date of Approval—Three years from the date of the approval of the collection.

Summary of the Collection of Information—Any person required to report the sale or lease of a defective or noncompliant tire as prescribed under this rule will be required to report the following information to NHTSA: (1) A statement that the report is being submitted pursuant to 49 CFR 573.10(a); (2) the name, address and phone number of the person who purchased or leased the tire; (3) the name of the manufacturer of the tire; (4) the tire's brand name, model name, and size; (5) the tire's DOT identification number; (6) the date of the sale or lease; and (7) the name, address, and telephone number of the seller or lessor.

Description of the Need for the Information and Use of the Information—This information collection was mandated by Section 3(c) of the TREAD Act. The information collected will provide NHTSA with basic information relating to the defective or noncompliant tire that was sold or leased, such as the identities of both the seller and purchaser of the defective or noncompliant tire and a description of the tire. We anticipate using this information to do any of the following: Investigate the sale or lease of the tire; inform the purchaser of the tire of the existence of a defect or noncompliance; and/or facilitate the providing of a remedy to the purchaser of the tire.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This new collection of information would apply to any person who knowingly and willfully sells or leases a defective or noncompliant tire for use on a motor vehicle, with actual knowledge that the manufacturer of the tire has notified dealers of the defect or noncompliance. Thus, the collection of information applies to tire dealers, including tire retailers. The collection of information does not apply to the sale or lease of new or used vehicles which have placed upon them defective or noncompliant tires. It also does not apply to ordinary leasing activities of motor vehicle lessors or motor vehicle rental companies.

We estimate that there will be relatively few sales or leases of defective or noncompliant tires and therefore relatively few persons subject to this new collection of information. We estimate the number of reports that will be submitted will be less than 10.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting From the Collection of Information—As stated before, we estimate that no more than nine persons a year would be subject to this new reporting requirement. We estimate that it will take no longer than one-half of one hour for a person to compile and submit the information we are requiring to be reported. Therefore, the total burden hours on the public per year is estimated to be a maximum of 4.5 hours.

Since nothing in this rule would require those persons required to submit reports pursuant to this rule to keep copies of any records or reports submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

5. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The E.O. defines this phrase 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, which requires the reporting of knowing and willful sales or leases of defective or noncompliant tires where the person selling or leasing the tire has actual knowledge that the manufacturer of such a tire has notified its dealers of that defect or noncompliance pursuant to either section 30118(c) or 30118(b) of the Safety Act, will not have 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, as specified in E.O. 13132. This rule making does not have those implications because it applies to those persons who sell or lease defective or noncompliant tires, and not to the States or local governments.

6. Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

Interim Final Rule

NHTSA is promulgating this regulation as an interim final rule to comply with Section 3(c)'s mandate that the final rule be issued ''within 90 days of the enactment of the [TREAD Act].'' As an interim final rule, the regulation will be effective 30 days after the date of publication in the **Federal Register**. However, as described below, comments may be submitted for a period of 60 days from the date of publication in the **Federal Register**. NHTSA will review and respond to all timely comments, as appropriate.

Submission of Comments

How Can I Influence NHTSA's Thinking on This Rule?

In developing this interim final rule, we tried to address the anticipated concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on it, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid information to support your views.
- If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People and Other Materials Relevant to This Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include the written comments submitted by other interested persons and the preliminary regulatory evaluation prepared by this agency. You may read them at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 573

Motor vehicle safety, Reporting and recordkeeping requirements.

1. The authority citation for Part 573 of Title 49, CFR, continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50; 501.2.

2. Part 573 is amended by adding a new section 573.10 to read as follows:

573.10 Reporting the sale or lease of defective or noncompliant tires.

(a) *Reporting requirement.* Subject to paragraph (b) of this section, any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard with actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance as required under 49 U.S.C. 30118(c) or as required by an order under 49 U.S.C. 30118(b) must report that sale or lease to the Associate Administrator for Safety Assurance, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

(b) *Exclusions from reporting requirement.* Paragraph (a) of this section is not applicable where, before delivery under a sale or lease of a tire:

(1) The defect or noncompliance of the tire is remedied as required under 49 U.S.C. 30120; or

(2) Notification of the defect or noncompliance is required by an order under 49 U.S.C. 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

(c) *Contents of report; requirement of signature.* (1) A report submitted pursuant to paragraph (a) of this section must contain the following information, where that information is available to

the person selling or leasing the defective or noncompliant tire:

(i) A statement that the report is being submitted pursuant to 49 CFR 573.10(a) (sale or lease of defective or noncompliant tires);

(ii) The name, address and phone number of the person who purchased or leased the tire;

(iii) The name of the manufacturer of the tire;

(iv) The tire's brand name, model name, and size;

(v) The tire's DOT identification number;

(vi) The date of the sale or lease; and

(vii) The name, address, and telephone number of the seller or lessor.

(2) Each report must be dated and signed, with the name of the person signing the report legibly printed or typed below the signature.

(d) Reports required to be submitted pursuant to this section must be submitted no more than that five working days after a person to whom a tire covered by this section has been sold or leased has taken possession of that tire. Submissions must be made by any means which permits the sender to verify promptly that the report was in fact received by NHTSA and the day it was received by NHTSA.

Issued on: December 15, 2000.

Sue Bailey,

Administrator.

[FR Doc. 00–32528 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2000–8510]

RIN 2127–AI24

Motor Vehicle Safety: Criminal Penalty Safe Harbor Provision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This Interim Final Rule implements Section 5(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act by specifying the time period and manner for correction of improper reports and failures to report to the Secretary of Transportation (Secretary) relating to safety defects in motor vehicles and motor vehicle equipment. Section 5(b) adds a new section, which provides for criminal liability in circumstances where a person violated reporting requirements with the intention of misleading the Secretary with respect to safety-related defects in motor vehicles or motor vehicle equipment that have caused death or serious bodily injury. To encourage the correction of incorrect or incomplete information that was reported or should have been reported to the Secretary, Section 5 includes a ''safe harbor'' provision that offers protection from criminal prosecution to persons who meet certain criteria. To qualify for this protection, the person must have lacked knowledge at the time of the violation that the violation would result in an accident causing death or serious bodily injury and must correct any improper reports or failures to report to the Secretary within a reasonable time. Section 5 directs the Secretary to establish by regulation what constitutes a ''reasonable time'' and a sufficient manner of ''correction,'' within 90 days of the enactment of the TREAD Act, which occurred on November 1, 2000.

DATES: *Effective date:* This rule is effective January 25, 2001.

Comments: Comments must be received on or before February 26, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. Regardless of how you submit your comments, include the docket number of this document on your comments. You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven Cohen, Office of Chief Counsel, NCC–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone (202) 366–5263, Fax: 202–366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Public Law 106–414, was enacted in response, in part, to congressional concerns related to manufacturers' inadequate reporting to NHTSA of information regarding possible defects in motor vehicles and motor vehicle equipment, including tires. The TREAD Act expands 49 U.S.C. 30166, Inspections, investigations, and records, and provides for the Secretary to issue various rules thereunder. The authority to carry out Chapter 301 of Title 49 United States Code, under which the rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Section 5(b) of the TREAD Act, adds a new section, 49 U.S.C. 30170, to Chapter 301. Section 30170(a)(1) establishes criminal liability for a ''person who violates section 1001 of title 18 with respect to the reporting requirements of [49 U.S.C.] section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or serious bodily injury to an individual. . . .'' Section 1001 of title 18 provides that whoever ''. . . knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry'' in a matter within the jurisdiction of the federal government is subject to a fine and imprisonment.

Section 30170(a)(2)(A) contains a ''safe harbor'' provision, which states that a

> person described in paragraph (1) [of 49 U.S.C. 30170(a)] shall not be subject to criminal penalties * * * if (1) at the time of the violation, such person does not know that the violation would result in an accident causing death or serious bodily injury; and (2) the person corrects any improper reports or failure to report within a reasonable time.

This safe harbor applies only to criminal liability related to 49 U.S.C. 30170(a)(1). Section 30170(a)(2)(B) requires the Secretary to ''establish by regulation what constitutes a reasonable time for the purposes of [49 U.S.C. 30170(a)(2)(A)] and what manner of correction is sufficient for the purposes of [49 U.S.C. 30170(a)(2)(A)].''

NHTSA is promulgating this regulation on a reasonable time and on the manner of correction as an interim final rule to comply with 49 U.S.C. 30170(a)(2)(B)'s mandate that the final rule be issued ''within 90 days of the date of the enactment of this section.'' In order to implement the statutorily-mandated final rule concerning the safe harbor from criminal penalties under 49 U.S.C. 30170, we are amending 49 CFR

Part 578. As an interim final rule, the regulation will be effective 30 days after the date of publication in the **Federal Register**. However, comments may be submitted for a period of 60 days from the date of publication in the **Federal Register**. NHTSA will review and respond to all timely comments.

II. Discussion

A. Violations

49 U.S.C. 30170 creates a new criminal liability that is dependent on a violation of 18 U.S.C. 1001. The TREAD Act does not provide for the Secretary to engage in rulemaking with respect to the elements of 18 U.S.C. 1001 or the elements of the new 49 U.S.C. 30170. Accordingly, this rule does not do so.

B. Reasonable Time for Correction

The TREAD Act requires NHTSA to establish by regulation what constitutes a ''reasonable time'' for a person to correct any improper reports or failure to report. To delineate what constitutes a reasonable time, NHTSA considered its own rules and experiences with the current motor vehicle and motor vehicle equipment defects program. NHTSA also inquired about potentially comparable safe harbor rules and policies used by other federal agencies. NHTSA considered the Environmental Protection Agency's (EPA) evaluation of its Audit Policy, 64 FR 26745 (May 17, 1999), and the Final Policy Statement for its Audit Policy: ''Incentives for Self-policing: Discovery, Disclosure, Correction and Prevention of Violation,'' 65 FR 19618 (April 11, 2000); the Internal Revenue Service Chief Counsel's Directives Manual: Voluntary Disclosure, CCDM 31.3.3; and the Federal Aviation Administration's (FAA) Advisory Circulars on Aviation Safety Action Programs, AC120–66A, the Voluntary Disclosure Reporting Program, AC00–58, and the Aviation Safety Reporting Program, AC00–46D.

In considering the number of days available for compliance with the reasonable time requirement by a person seeking protection under the safe harbor provision, NHTSA considered various factors. First, the agency's mission under Chapter 301 is motor vehicle safety. Consistent with its mission, the agency needs to collect complete and accurate information in order to decide whether to open investigations of potential defects, to conduct those investigations efficiently and expeditiously, and to assure appropriate oversight of ongoing recalls. The reasonable time period should minimize the time that NHTSA is performing its safety responsibilities using an incorrect or incomplete factual record. Similarly, the time period must generate an urgency that will compel potential correctors to come forward before it expires. NHTSA has determined that this is best done by offering the protection of the safe harbor provision for a period that is not longer than reasonably necessary for such a person to decide to come forward and to do so.

Second, NHTSA does not intend to discourage the submission of corrected reports and reports that should have been submitted but were not submitted. This is not a new concept. Historically, NHTSA has allowed late submissions of information required under section 30166 where a late submission is justified. In order to encourage the use of the safe harbor provision, the time period must be long enough for the provision to be usable in real world situations. This includes allowing enough time for persons who would be willing to take corrective actions under the safe harbor provision to accept the responsibility associated with it and to come forward. We are mindful that the correction of a false report may involve complexities that do not arise in the instance of the initial report. There may be some contentious review and consultation within the company and/or with counsel, which may be compounded where a person may have to obtain or check information maintained by various corporate organizations and possibly contractors, and additional time may be required to prepare fully correct statements that conflict with the manufacturer's statement of record.

NHTSA has concluded that, in order to satisfy the ''reasonable time'' element of the safe harbor provision, the person seeking protection from criminal liability must correct each improper (i.e., incorrect, incomplete, or misleading) report required by 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, not more than twenty-one (21) calendar days after the date of the report to the agency and must correct each failure to report not more than twenty-one (21) calendar days after the information or documents were due to be sent to or received by the agency, as the case may be, pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder. These reports include, for example, answers and documents submitted in response to information requests propounded by NHTSA's Office of Defects Investigation or Special Orders issued by NHTSA's Chief Counsel, as well as information required to be submitted under the ''early warning'' provisions of the TREAD Act and the regulations to be issued thereunder.

The time period of ''not more than 21 days'' is similar to the window of opportunity of ''within 21 days (or within such shorter time as may be required by law)'' offered by the EPA in Section D(3) of its recently amended Audit Policy, which the EPA published as a Final Policy Statement at 65 FR 19618 (April 11, 2000). Under its Audit Policy, the EPA will waive or substantially reduce the ''gravity'' based component of civil penalties for violators of environmental requirements who discover, disclose, and correct these violations (the EPA's Audit Policy provides no basis for waiving civil liability associated with the ''economic benefits'' of an environmental violation or for any criminal liability). NHTSA did not include any language referring to shorter time periods from other legal requirements in this rule because Chapter 301 does not contain shorter periods that are applicable.

The time period of 21 days in the final Audit Policy, as published at 65 FR 19618 (April 11, 2000), is different from the original time period of 10 days used by the EPA in the previous version of its Audit Policy, as published at 60 FR 66705 (December 22, 1995). The EPA's recent changes to Audit Policy were based on its evaluation of the Audit Policy in use for the preceding three years, which the EPA published at 64 FR 26745 (May 17, 1999). One result of this evaluation was that the EPA increased the time period for coming forward to report violations from 10 days to 21 days after discovery of the violation because it found that ''the 10-day time frame [was] a common reason for ineligibility under the [initial] Policy'' and thus that ''the 10-day disclosure period may be a significant impediment to increased use of the Audit Policy'' by violators who otherwise would have come forward or did come forward soon after the 10 day period expired. The EPA's study of its Audit Policy concluded the ''10 days is not sufficient time to analyze and decide whether to disclose potential violations, especially for larger corporations with several layers of management.'' NHTSA believes that the EPA's appraisal of what time period constitutes a ''reasonable time'' for correction is reasonably applicable to the safe harbor provision of Section 30170(a)(2).

Finally, NHTSA believes that the starting point for calculating the 21-day period should be consistent with the underlying predicate crime. The predicate crime involves a violation of 18 U.S.C. 1001. As noted above, the

standard under 18 U.S.C. 1001 is knowingly and willfully. Also, 49 U.S.C. 30170 applies to a person who acts ''with the specific intention of misleading the Secretary.'' Thus, any person subject to possible criminal liability under 49 U.S.C. 30170 would have known of the impropriety at the time that the person executed the improper report or failed to report to NHTSA. In light of this knowledge, the time period will run from date of the report to NHTSA or the date of the failure to report to NHTSA.

In order for the correction to be timely, it must be received by NHTSA on or before the 21st day, not merely mailed or otherwise sent before that day. NHTSA has also determined that the integrity of the process and the 21-day due date requires that submissions be made by a means which permits the sender to verify promptly that the correction was in fact received by NHTSA and the day it was received by NHTSA. These means include certified mail, an overnight delivery service, or delivery by hand.

C. Sufficient Manner of Correction

The TREAD Act requires NHTSA to establish by regulation what constitutes a ''correction'' for a person to obtain protection under the safe harbor provision. To delineate what constitutes a correction, NHTSA considered its own rules and experiences with the current motor vehicle and motor vehicle equipment defects program. NHTSA has concluded that, in order for a correction of improper reports or a failure to report to be sufficient under the safe harbor provision's protections from criminal penalties, it must accomplish the following: (1) Identify with specificity all items of information and documents that were improper or were not provided and (2) correct all reporting improprieties and/or failures for which the protections of the safe harbor provision are sought, including providing NHTSA with all missing or corrected documents and information. Therefore, each person seeking protection from criminal penalties under 49 U.S.C. 30170 must sign and submit to NHTSA one or more reports identifying each previous item of information and/or document that was improper or not provided to NHTSA and is related to a required submission under 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, for which protection is sought. This report must also identify the specific predicate under which the missing or improper report should have been submitted (e.g., the report was required by a specific regulation, a NHTSA Information Request, a NHTSA Special Order, etc.). Further, the report must include or be accompanied by the complete and correct information and documents that should have been submitted.

Because NHTSA collects a range of information under 49 U.S.C. 30166, corrections could be made by a wide range of persons. For a corporation to make a correction, it must be signed by an authorized person (ordinarily the individual officer or employee who submitted the information and/or who should have provided missing information, or someone in the company with authority to make such a submission). If the person making the correction cannot submit the correct information, the individual must provide a full detailed description of that information or of the content of those documents and the reason why he or she cannot provide them to NHTSA (e.g., the information or documents are not in the individual's possession or control).

Regulatory Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves a safe harbor for criminal sanctions associated with a criminal provision that NHTSA does not expect to be invoked often.

2. Regulatory Flexibility Act

We have also considered the impact of this notice under the Regulatory Flexibility Act. I certify that this rule will have no significant economic impact on a substantial number of small entities. As stated above, this provision only involves a safe harbor for criminal penalties which NHTSA does not expect to be invoked often.

3. National Environmental Policy Act

We have analyzed this proposal for the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

4. Paperwork Reduction Act

NHTSA has determined that this interim final rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). Pursuant to 5 CFR 1320.13, *Emergency processing,* NHTSA is asking OMB for a temporary emergency clearance for this collection. In this interim final rule, NHTSA begins the process of requesting a 3-year clearance for this collection.

Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i.) 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.) 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.) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv.) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the collection of information in this interim final rule.

Reporting an improper Report or a Failure to Report.

Type of Request—New.

OMB Clearance Number—None assigned.

Form Number—This proposed collection of information would not use any standard forms.

Requested Expiration Date of Approval—Three years from the date of the approval of the collection.

Summary of the Collection of Information—Any person seeking protection from criminal liability under 49 U.S.C. 30170 related to an improper report or failure to report pursuant to 49

U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, will be required to report the following information to NHTSA: (1) Each improper item of information or document and each failure to report an item of information or document that was required under 49 U.S.C. 30166, or a regulation, requirement, request or order issued thereunder, (2) the specific predicate under which the missing or improper report should have been provided, and (3) complete and correct reports that include all information that should have been submitted, including relevant documents that were not previously submitted to NHTSA or, if the person cannot do so, provide a full detailed description of that information or of the content of those documents and the reason why the individual cannot provide them to NHTSA.

Description of the Need for the Information and Use of the Information—This information collection was mandated by Section 5 of the TREAD Act. The information collected will provide NHTSA with information the agency should have received previously and will also promptly provide the agency with correct information to do its analyses, such as, for example, conducting tests or drawing conclusions about possible safety-related defects. NHTSA anticipates using this information to help it to accomplish its statutory assignment of identifying safety-related defects in motor vehicles and motor vehicle equipment and, when appropriate, seeking safety recalls.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This new collection of information would apply to any person who seeks a ''safe harbor'' from potential criminal liability for knowingly and willfully acting with the specific intention of misleading the Secretary by an act or omission that violates section 1001 of title 18 with respect to the reporting requirements of 49 U.S.C. 30166, regarding a safety-related defect in motor vehicles or motor vehicle equipment that caused death or serious bodily injury to an individual. Thus, the collection of information could apply to the manufacturers, and any officers or employees thereof, who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

We believe that there will be very few criminal prosecutions under section 30170, given its elements. Accordingly, it is not likely to be a substantial motivating force for a submission of a proper report. We estimate that no more than nine such persons a year would invoke this new collection of information, and we do not anticipate receiving more that one report a year from any particular person.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting From the Collection of Information—As stated before, we estimate that no more than nine persons a year would be subject to this new collection of information. Incrementally, we estimate that on average it will take no longer than two hours for a person to compile and submit the information we are requiring to be reported. Therefore, the total burden hours on the public per year is estimated to be a maximum of 18 hours.

Since nothing in this rule would require those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

5. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The E.O. defines this phrase 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, which defines terms in a safe harbor provision for criminal penalties for a person who acts with the specific intention of misleading the Secretary regarding safety defects in motor vehicles or motor vehicle equipment, will not have 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, as specified in E.O. 13132. This rule making does not have those implications because it applies to those persons who are required by 49 U.S.C. 30166 to provide information to NHTSA.

6. Civil Justice Reform

This rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments.

Interim Final Rule

NHTSA is promulgating this regulation on a reasonable time and on the manner of correction as an interim final rule to comply with Section 5(b)'s mandate that the final rule be issued ''within 90 days of the enactment of the [TREAD Act].'' As an interim final rule, the regulation contained herein will be effective 30 days after the date of publication in the **Federal Register**. However, as described below, comments may be submitted for a period of 60 days from the date of publication in the **Federal Register**. NHTSA will review and respond to all timely comments, as appropriate.

Submission of Comments

How Can I Influence NHTSA's Thinking on This Rule?

In developing this interim final rule, we tried to address the anticipated

concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on it, new approaches we have not considered, new data, how this rule may affect you, or other relevant information. We welcome your views on all aspects of this rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid information to support your views.
- If you estimate potential numbers of reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People and Other Materials Relevant to This Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include the written comments submitted by other interested persons and the preliminary regulatory evaluation prepared by this agency. You may read them at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on ''search.''

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Civil and criminal penalties, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 578 is amended as follows:

1. The authority citation for Part 578 of Title 49 is revised to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 106–414, 49 U.S.C. 30165, 49 U.S.C. 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

2. The heading of Part 578 is revised to read as follows:

PART 578—CIVIL AND CRIMINAL PENALTIES

3. Section 578.1 is revised to read as follows:

§ 578.1 Scope.

This part specifies the civil penalties for violations of statutes administered by the National Highway Traffic Safety Administration, as adjusted for inflation. This part also sets forth the requirements regarding the reasonable time and the manner of correction for a person seeking safe harbor protection from criminal liability under 49 U.S.C. 30170(a).

4. Section 578.2 is revised to read as follows:

§ 578.2 Purpose.

One purpose of this part is to preserve the remedial impact of civil penalties and to foster compliance with the law by specifying the civil penalties for statutory violations, as adjusted for inflation. The other purpose of this part is to set forth the requirements regarding the reasonable time and the manner of correction for a person seeking safe harbor protection from criminal liability under 49 U.S.C. 30170(a).

5. Section 578.3 is revised to read as follows:

§ 578.3 Applicability.

This part applies to civil penalties for violations of Chapters 301, 305, 323, 325, 327, 329, and 331 of Title 49 of the United States Code. This part also applies to the criminal penalty safe harbor provision of section 30170 of Title 49 of the United States Code.

6. Section 578.4 is amended by revising the definition of ''civil penalty'' to read as follows:

§ 578.4 Definitions.

* * * * *

Civil penalty means any non-criminal penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed, compromised, collected, or enforced by NHTSA pursuant to Federal law.

* * * * *

7. A new section 578.7 is added to read as follows:

§ 578.7 Criminal Safe Harbor Provision.

(a) *Scope.* This section sets forth the requirements regarding the reasonable time and the manner of correction for a person seeking safe harbor protection from criminal liability under 49 U.S.C. 30170(a)(2), which provides that a person described in 49 U.S.C. 30170(a)(1) is not subject to criminal penalties thereunder if:

(1) At the time of the violation, such person does not know that the violation would result in an accident causing death or serious bodily injury; and

(2) The person corrects any improper reports or failure to report, with respect to reporting requirements of 49 U.S.C. 30166, within a reasonable time.

(b) *Reasonable time.* A correction is considered to have been performed within a reasonable time if the person seeking protection from criminal liability makes the correction to any improper (i.e., incorrect, incomplete, or misleading) report not more than twenty-one (21) calendar days after the date of the report to the agency and corrects any failure to report not more than twenty-one (21) calendar days after the report was due to be sent to or received by the agency, as the case may be, pursuant to 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder. In order to meet these reasonable time requirements, all submissions required by this section must be received by NHTSA within the time period specified in this paragraph, and not merely mailed or otherwise sent within that time period.

(c) *Sufficient manner of correction.* Each person seeking safe harbor protection from criminal penalties under 49 U.S.C. 30170(a)(2) must comply with the following with respect to each improper report and failure to report for which safe harbor protection is sought:

(1) Sign and submit to NHTSA a dated document identifying:

(i) Each previous improper report (e.g., informational statement and document submission), and each failure to report as required under 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought, and

(ii) The specific predicate under which the improper or omitted report should have been provided (e.g., the report was required by a specified regulation, NHTSA Information Request, or NHTSA Special Order).

(2) Submit the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted, or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA (e.g., the information or documents are not in the individual's possession or control).

(3) For a corporation, the submission must be signed by an authorized person (ordinarily, the individual officer or employee who submitted the improper report or who should have provided the report that the corporation failed to submit on behalf of the company, or someone in the company with authority to make such a submission).

(4) Submissions must be made by a means which permits the sender to verify promptly that the report was in fact received by NHTSA and the day it was received by NHTSA.

(5) Submit the report to Chief Counsel (NCC–10), National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: December 15, 2000.

Sue Bailey,

Administrator.

[FR Doc. 00–32527 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF33

Endangered and Threatened Wildlife and Plants; Final Rule to List Nine Bexar County, Texas Invertebrate Species as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine nine cave-dwelling invertebrates from Bexar County, Texas, to be endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Rhadine exilis* (no common name) and *Rhadine infernalis* (no common name) are small, essentially eyeless ground beetles. *Batrisodes venyivi* (Helotes mold beetle) is a small, eyeless beetle. *Texella cokendolpheri* (Robber Baron Cave harvestman) is a small, eyeless harvestman (daddy-longlegs). *Cicurina baronia* (Robber Baron cave spider), *Cicurina madla* (Madla's cave spider), *Cicurina venii* (no common name), *Cicurina vespera* (vesper cave spider), and *Neoleptoneta microps* (Government Canyon cave spider) are all small, eyeless or essentially eyeless spiders.

These species (referred to in this final rule as the nine invertebrates) are known from karst topography (limestone formations containing caves, sinks, fractures and fissures) in north and northwest Bexar County. Threats to the species and their habitat include destruction and/or deterioration of habitat by construction; filling of caves and karst features and loss of permeable cover; contamination from septic effluent, sewer leaks, run-off, pesticides, and other sources; predation by and competition with nonnative fire ants; and vandalism. This action will implement Federal protection provided by the Act for these species. We based our decision on the best available information, including that received during public comment on the proposal to list these species.

EFFECTIVE DATE: The effective date of this rule is December 26, 2000 (see **EFFECTIVE DATE** section under below).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Supervisory Fish and Wildlife Biologist, Austin Ecological Services Field Office (see **ADDRESSES** section) (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

Rhadine exilis and *Rhadine infernalis* were first collected in 1959 and described by Barr and Lawrence (1960) as *Agonum exile* and *Agonum infernale,* respectively. Barr (1974) assigned the species to the genus *Rhadine. Batrisodes venyivi* was first collected in 1984 and described by Chandler (1992). *Texella cokendolpheri* was first collected in 1982 and described in Ubick and Briggs (1992). *Cicurina baronia, Cicurina madla, Cicurina venii,* and *Cicurina vespera* were first collected in 1969, 1963, 1980, and 1965, respectively. In 1992, Gertsch described these species. *Neoleptoneta microps* was first collected in 1965 and described by Gertsch (1974) as *Leptoneta microps.* The species was reassigned to *Neoleptoneta* following Brignoli (1977) and Platnick (1986).

These nine invertebrates are obligate (capable of surviving in only one environment) karst or cave-dwelling species (troglobites) of local distribution in karst terrain in Bexar County, Texas. ''Karst'' is a type of terrain in which the rock is dissolved by water so that much of the drainage occurs into the subsurface rather than as runoff. The subsurface drainage leads to passages or other openings within the underground rock formations. Some of the features that develop in karst areas include cave openings, holes in rocks, cracks, fissures, and sinkholes.

Habitat required by the nine karst invertebrate species consists of underground, honeycomb limestone that maintains high humidity and stable temperatures. The surface environment of karst areas is also an integral part of the habitat needed by the animals inhabiting the underground areas. Openings to the surface allow energy and nutrients, in the form of leaf litter, surface insects, other animals, and animal droppings to enter the underground ecosystem. Mammal feces provide a medium for the growth of fungi and, subsequently, localized population blooms of several species of tiny, hopping insects. These insects reproduce rapidly on rich food sources and may become prey for some predatory cave invertebrates (Service 1994). While the life habits of the nine invertebrates are not well known, the species probably prey on the eggs, larvae, or adults of other cave invertebrates.

We funded a status survey (Veni 1994a; Reddell 1993) of all nine species through a grant to the Texas Parks and Wildlife Department (TPWD) under section 6 of the Act. Researchers obtained landowner permission to study and assess threats to 41 caves in north and northwest Bexar County, Texas. Landowners denied permission to access an additional 36 caves that biologists believed likely to contain species of concern. Researchers described all 77 caves, to some extent, before the status survey was conducted and some were already known to contain at least one of the nine invertebrates.

During the status survey, the researchers made a collection of the invertebrate fauna at each cave studied, assessed the condition of the cave environment and threats to the species, and collected geological data. They used this information to prepare two reports. One report discusses the overall karst geography in the San Antonio region and the potential geologic and geographic barriers to karst invertebrate migration (on an evolutionary time scale) and limits to their distribution (Veni 1994a). The other report (Reddell 1993) details the fauna of each cave visited during the study and presents information obtained from invertebrate collections.

Veni's (1994a) report delineates six karst areas (hereafter referred to as karst regions) within Bexar County. The karst regions he discusses are Stone Oak, UTSA (University of Texas at San Antonio), Helotes, Government Canyon, Culebra Anticline, and Alamo Heights. The boundaries of these karst regions are geological or geographical features that may represent obstructions to troglobite movement (on a geologic time scale) which has resulted in the present-day distribution of endemic (restricted in distribution) karst invertebrates in the San Antonio region.

The harvestman *Texella cokendolpheri,* Robber Baron Cave harvestman, is known only from Robber Baron cave in the Alamo Heights karst region on private property. The cave entrance has been donated to the Texas Cave Management Association (George Veni, Veni & Associates, pers. comm. 1995), which will likely be interested in protection and improvement of the cave habitat. However, this cave is relatively large, and the land over and around the cave is heavily urbanized. The cave has also been subject to extensive commercial and recreational use (Veni 1988). No confirmed specimens of *T. cokendolpheri* were collected during the 1993 status survey, but one *Texella* harvestman collected at Robber Baron Cave since completion of the status survey, the species of which could not be positively identified, is highly likely to be *T. cokendolpheri* (James Reddell, Texas Memorial Museum, and Dr. Darrell Ubick, California Academy of Sciences, pers. comm. 1995).

Batrisodes venyivi, the Helotes mold beetle, is known from only three caves in the vicinity of Helotes, Texas, northwest of San Antonio. Two of these caves are located in the Helotes karst region on private property. We do not have reliable information on the collection from the third cave. The collector of the specimen declined to give us a specific site collection record, but we believe it is located on private property.

Rhadine exilis is known from 35 caves in north and northwest Bexar County. Twenty-one are located on Department of Defense (DOD) land in the Stone Oak karst region. The remainder are distributed among the Helotes, UTSA, and Stone Oak karst regions, while one location lies in the Government Canyon region. One of the non-DOD sites is located in a county road right-of-way, one is located in a state-owned natural area, and the remainder are located on private property. Ongoing efforts by the DOD to locate and inventory karst features on Camp Bullis and to document the karst fauna communities in caves on Camp Bullis resulted in discovery of 18 of the 35 caves mentioned above (Veni 1994b; James Reddell, pers. comm. 1997).

Rhadine infernalis is known from 25 caves. This species occurs in five of the six karst regions— Helotes, UTSA, Stone Oak, Culebra Anticline, and Government Canyon. Scientists have delineated three subspecies (*Rhadine infernalis ewersi, Rhadine infernalis infernalis, Rhadine infernalis* ssp.), and described and named two of these in scientific literature (Barr 1960, Barr and Lawrence 1960). In a recent report, scientists characterized the third subspecies as distinct, but not named (Reddell 1998). Only three caves, all on DOD land, contain the subspecies *Rhadine infernalis ewersi.* Sixteen caves contain the subspecies *Rhadine infernalis infernalis* and lie in the Government Canyon, Helotes, UTSA, and Stone Oak regions. Six caves in the Culebra Anticline region contain the unnamed subspecies.

Cicurina venii is known from only one cave, which is located on private property in the Culebra Anticline karst region. The species was collected in 1980 and 1983, but the cave itself was not initially described until 1988

(Reddell 1993). The cave entrance was filled during construction of a home in 1990. Without excavation, it is difficult to determine what effect this incident had on the species; however, there may still be some nutrient input, from a reported small side passage.

Cicurina baronia, the Robber Baron cave spider, is known only from Robber Baron Cave in the Alamo Heights karst region. Although the cave entrance is owned and operated by the Texas Cave Management Association, it is located in a heavily urbanized area.

Cicurina madla, Madla's cave spider, is known from six caves. One cave is within the Government Canyon karst region in Government Canyon State Natural Area, one is on DOD land, three are located in the Helotes karst region on private property, and one is located on private property in the UTSA karst region.

Biologists have found *Cicurina vespera,* the vesper cave spider, in two caves. One cave is Government Canyon Bat Cave in the Government Canyon State Natural Area, and the other is a cave 5 miles northeast of Helotes. The location and name of this latter cave have not been revealed to us, but we believe it is located on private property.

Neoleptoneta microps is known only from the Government Canyon karst region, from two caves within Government Canyon State Natural Area.

In the course of conducting the 1993 status survey, Veni contacted landowners and requested access to as many caves as possible that were believed to be potential habitat for the nine invertebrates. It is possible that these species occur in some of the caves that could not be visited and that new locations of the nine invertebrates will be discovered in the future. Although these new discoveries may increase the number of locations where the species are found, they are expected to fall within the same general range and are expected to face the same threats as the known occurrences of these species. The listing of these species is not based on a demonstrable decline in the number of individuals or the number of known locations of each species, but rather on reliable evidence that each species is subject to threats to its continued existence throughout all or a significant portion of its range.

Previous Federal Action

On January 16, 1992, we received a petition dated January 9, 1992, to add the nine invertebrates to the List of Threatened and Endangered Wildlife. Patricia K. Cunningham of the Helotes Creek Association and individuals representing the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association submitted the petition. On December 1, 1993, we announced in the **Federal Register** (58 FR 63328) a 90-day finding that the petition presented substantial information that listing may be warranted. This 90-day finding resulted in the requirement under the Act that we review the status of the species and, within 12 months of receipt of the petition, issue a finding as to whether the petitioned action is warranted (12-month finding).

We added eight of the nine invertebrates to the Animal Notice of Review as category 2 candidate species in the **Federal Register** on November 15, 1994 (59 FR 58982). We intended to include *Rhadine exilis* in the notice of review, but an oversight occurred and it did not appear in the published notice. Category 2 candidates, a classification since discontinued, were those taxa for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support proposed listing rules.

The endangered species listing program was disrupted by a listing moratorium (Public Law 104–6, April 10, 1995) and rescission of listing program funding in Fiscal Year 1996. The moratorium was lifted and listing program funding restored on April 26, 1996. On May 16, 1996 (61 CFR 24722), we issued guidance for priorities in restarting the listing program that included four tiers. New proposed listings and petition findings fell under tier three, the second-lowest priority. This precluded completion of the 12-month finding for these species in that Fiscal Year.

The 12-month petition finding and publication of the proposed rule were again precluded by higher priority activities under the listing priority guidance for fiscal year 1997, finalized December 5, 1996 (61 CFR 64475). Processing administrative findings on petitions and processing new proposals to add species to the lists were again a tier three priority.

With the publication of listing priority guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 CFR 25502), we returned to a more balanced listing program. Processing administrative findings on petitions to add species to the lists became a tier two priority, and we resumed work on the 12-month finding. This 12-month finding resulted in a proposal to list the 9 invertebrates as endangered, which we published in the **Federal Register** on December 30, 1998 (63 FR 71855).

The processing of this final rule conforms with our current Listing Priority Guidance, published in the **Federal Register** on October 22, 1999 (64 FR 57114). Priority 1 (highest priority) is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Priority 2 is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Priority 3 is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action. We updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

In 1994, we began discussions with a coalition of landowners, developers, and other interested parties about creating a conservation agreement that might preclude the need for listing these species. We continued working with interested parties to develop a conservation strategy and agreement. The issues that needed to be addressed in a conservation agreement related primarily to determining the needs for the species' conservation, responsibility and commitment for implementation and funding, and the amount of time required to implement the conservation measures. In January 1999, we provided a handout titled ''Criteria and Measures for Long-term Conservation of Karst Invertebrates in Bexar Co., TX,'' to the coalition as a guide for conservation of species-inhabited caves. However, actions required to address the above issues and to reach this goal have not yet occurred.

Summary of Comments and Recommendations

In the December 30, 1998, proposed rule and associated notifications, we requested that all interested parties submit factual reports or information that might contribute to the development of a final rule. We originally scheduled the comment period to close on April 29, 1999, but we extended it to May 31, 1999 (64 FR 16890). We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested that they comment. We requested comments on the proposed rule and literature cited from nine scientific experts. We received no comments from those nine. We

published a newspaper notice in the *San Antonio Express News* on December 30, 1998, in which we invited general public comment. We received 38 comment letters through the mail.

Alan Glen, of Drenner and Stuart, and San Antonio Water System requested a public hearing. We published a notice of the public hearing in the **Federal Register** (64 FR 16890) and gave written notice to those on our mailing list for this topic. We held the public hearing in San Antonio at Lee High School on April 29, 1999; a court reporter made a verbatim transcript of the hearing testimony. Approximately 75 people attended. Of the 22 oral commenters, 8 also submitted written comment letters at the public hearing.

We updated the final rule to reflect comments and information we received during the comment period. We address both the written and oral comments in the following summary. These comments addressed a range of issues regarding the proposal. Because multiple respondents offered similar comments in some cases, we combined those comments in the following summary. Of the 60 comments (some commenters commented more than once) we received from the public hearing and through the mail, 5 directly opposed the listing, 27 supported continued efforts on the conservation agreement to preclude the need to list, 6 both directly opposed the listing and supported continued efforts on the conservation agreement, 19 supported the listing, and 3 were neutral. In this summary, we do not address comments that are not related to the listing decision, such as comments on habitat conservation plans (HCPs) or recovery planning.

Issue 1. So little is known about the species that the Service has not even defined habitat for the invertebrates beyond cave openings.

Our Response: We took this comment into consideration in this final rule and included more detailed habitat descriptions (see the Background section under Supplementary Information). The Available Conservation Measures portion of this final rule discusses criteria for habitat preservation and preserve design. Under section 4(b)(1) of the Act, we must make our listing decision on the best scientific and commercial information available. We believe that substantial evidence exists to support a listing determination for these species, but also recognize that additional research is important to assist in making sound management recommendations.

Issue 2: These nine invertebrates are insignificant to mankind.

Our Response: We are responsible for protecting species in danger of extinction and ecosystems on which they depend. The Act recognizes the importance of all species to properly functioning ecosystems and requires us to base listing decisions on the best scientific information available. Based on best available scientific information, we determined that the Bexar County invertebrates are in danger of extinction and warrant protection as endangered species.

Issue 3: It is inaccurate to describe these species as troglobitic without surveys conducted outside of the caves in the surrounding leaf litter. Evidence in support of additional habitats for these species includes the lack of collected specimens of pupae or larvae from within the caves, few records of some species from caves, and closely related species (including some with troglobitic features) known to exist in non-cave environments.

Our Response: The scientific literature, published by species experts and cited in this final rule, describe the nine Bexar County karst invertebrates as troglobitic. There has been no information submitted to us to indicate otherwise. As for lack of collections of pupae and larvae in caves, we have no evidence discounting the occurrence of reproduction and initial life phases in the humanly inaccessible recesses of caves. Barr (1974) states that there are significantly more caves than entrances, and that approximately ninety percent of them are closed off from human access.

Issue 4: Six of the nine species have common names that are not registered with the Entomological Society of America or the American Arachnological Society, and may not be accurate descriptors for those species.

Our Response: The official name for these species is the scientific name; we list them by their scientific name. The common names we used in this rule are for ease of reference for the general public. We understand that they are not officially registered common names. If the process to register common names is completed in the future, we will refer to those common names, but the listing of these species will not be affected. Until such time we will continue to use the names listed in this document.

Issue 5: It is believed *Batrisodes venyivi* is restricted to the Helotes karst region, based on past collections. ''In Texas, each obligate cave species of [this beetle family] has been restricted to small geographic areas, and each is found in only a small number of closely situated caves.''

Our Response: In the ''Background'' section, we refer to three locations for this species; two are located in the Helotes karst region on private property. We do not have reliable information on the location of the third cave. The collector of the specimen declined to give us a specific site collection record, but we believe it is located on private property.

Issue 6: How can the threats be so imminent when so many caves are owned by governmental entities?

Our Response: We understand that for some of these species a significant number of locations are owned by governmental entities. Many of the government-owned sites have some limited protection, but fire ants are still a threat. Human activities facilitate movement of certain predators, such as fire ants, into an area. Both Camp Bullis and Government Canyon State Natural Area are increasingly being surrounded by development which provides habitat (construction areas, lawns, roadways, and landscaped areas) from which fire ants can disperse. The relative accessibility of the shallow caves in Bexar County leaves them especially vulnerable to invasion by nonnative species. Without continuously implemented management plans in place, this threat is still imminent.

Issue 7: Continued efforts toward developing a conservation agreement to preclude the need to list the species was desired. Many were disappointed that efforts to develop a conservation agreement were terminated in 1998 and the Service continued with publishing the proposed rule.

Our Response: Please see our discussion under the Previous Federal Action portion of this final rule. We agree that cooperative, voluntary efforts to conserve these species that remove or reduce threats would be an alternative to Federal listing if sufficient conservation measures were implemented so that the species were no longer in danger of extinction. Since 1994, we have been working with a coalition of interested parties to develop a conservation strategy and agreement. While, we acknowledge that some progress toward conservation of these species has been made by this coalition, actions required to address the above issues and to reach this goal have not yet occurred.

Issue 8: With regard to evidence of threats, some believe that in the time it has taken the proposed rule to be published there has been habitat loss and no protection for the species. Others believe that all of the known locations of the nine invertebrate species have been left undisturbed throughout the

entire process, indicating a lack of evidence for perceived habitat-destruction threats. Additionally, the Service has not provided any evidence of contamination, predation on these species, and adverse effects from impervious (resistant to seepage of water) cover, closing of caves, and vandalism.

Our Response: During the comment period, we received San Antonio Water System (SAWS) documentation that recharge features were sealed since the petition was filed to preserve water quality and avoid contamination of the aquifer. The Texas Natural Resources Conservation Commission (TNRCC), the State agency responsible for water quality and filling karst features, does not require that any invertebrate surveys be done in assessing karst features and, therefore, may approve the filling of the feature even when the species may be present. We believe that habitat-destruction is a viable threat when sealing of features occurs without investigations for invertebrates.

In the ''Summary of Factors Affecting the Species'' section of this rule, we cite examples of other threats and their negative effects. We believe that these threats still exist. We included additional examples of contamination on caves under Factor A. Throughout the world there are many documented cases describing the effects of contamination on caves (IUCN 1997). Under Factor C, we also included additional information and citations regarding fire ants and their effects on the species and their habitat. In addition, as indicated in the ''Background'' section of this final rule, some of the known invertebrate locations suffered degradation prior to the petition to list them.

In addition, even where existing caves have not been filled or polluted, development that encroaches on the area around the cave entrance can significantly degrade the surface habitat, decreasing the potential for long-term persistence of the population of karst invertebrates in that cave. According to data provided by SWCA, Inc., ten of the known locations for these species have less than 10.1 hectares (ha) (25 acres (ac)) of undeveloped area remaining surrounding the caves and several of these have as little as 0.4 to 2 ha (1 to 5 ac). In February 2000, Service personnel observed construction within 30 meters (m) (100 feet (ft))of 2 known locations of *Rhadine exilis,* which is currently reducing the potential for preservation around these sites. We believe that such small areas of native, surface habitat are not sufficient for sustainable support of karst invertebrate populations.

Issue 9: How can fire ants be a predator on the nine invertebrates when Veni *et al.* (1995) found fire ants in different zones, or physical divisions within the cave, than the invertebrates during a survey at Camp Bullis, and Porter and Savignano (1990) found that crickets and roaches increased in the presence of fire ants?

Our Response: Veni (pers. comm. 1999) has since done additional work at Camp Bullis and believes the reduced observations of fire ants are due to low population numbers on the property as a result of minimal ground disturbance. Elliott (*in litt* 1993–1997) found several instances, in two caves in the Austin area, when fire ants and troglobites were located within the same zones. Reddell (1993, *in litt*) documented observations of fire ant predation on three species of troglobites and on cave crickets. Even if fire ants did not prey on the nine invertebrates, heavy predation on cave crickets would reduce available food for the nine invertebrates. As for Porter's and Savignano's (1990) findings, the crickets that increased in abundance with fire ants were ground crickets (Gryllidae: Nemobiinae), not cave crickets (*Ceuthophilus* sp.), which are the species critical for nutrient input for the nine karst invertebrate species. Only very few species, including the ground cricket, the roach, and a beetle that is symbiotic with the imported fire ants, increased in abundance in infested areas. However, even when including the increase in these few species, the total abundance of arthropods (excluding fire ants) in infested areas was 75 percent less than uninfested areas. In addition, fire ant infestation reduced biodiversity; there were 40 percent fewer species in infested areas.

Issue 10: Some commenters believe the existing regulations of the TNRCC, City of San Antonio (City), and SAWS, the primary water and wastewater purveyor in Bexar County, are adequate to protect the species and their habitat, while other commenters believed they are inadequate.

Our Response: Our analysis of the adequacy of existing regulatory mechanisms found that additional measures are needed to protect these species from extinction. Although certain rules and regulations provide some protection, they do not alleviate all of the identified threats. We reviewed current programs and regulations of the TNRCC, the City, and SAWS. The purpose of the existing regulations is to protect water quality and the regulations are not adequate to fully protect the species from all threats. For further information please see Factor D in the ''Summary of Factors Affecting the Species'' section of this final rule.

Issue 11: SAWS initiated a Land Acquisition Program that is currently purchasing land in the karst regions. Certainly, this ongoing program serves to provide substantial protection to these species and their habitat.

Our Response: The focus of this program is preservation of lands for water quality in the Edward's Aquifer and not for caves containing the species. This program may have potential to contribute to species conservation. However, we have no information that indicates SAWS has located and/or preserved caves supporting the nine invertebrates.

Issue 12: Even if the perceived threats did have an impact on the species, the decision to list as endangered will not prevent future negative effects from occurring.

Our Response: Please see our discussion under the Available Conservation Measures section of this final rule. The Act provides numerous conservation mechanisms for listed species.

Issue 13: Some believe the listing is primarily for stopping development over the Edwards Aquifer and not for the species themselves. Others believe that protection of the species and their habitat will provide ancillary benefits by protecting their sole-source water supply.

Our Response: We are obligated under the Act to address the status of species in relation to the five factors discussed under the Summary of Factors Affecting the Species section of this final rule. Other benefits or effects of listing cannot be considered in our determination whether to list a species.

Issue 14: The proposed rule does not indicate the nine karst invertebrates are bred or hunted for commercial purposes, or that they move in interstate commerce. The nine karst invertebrates are intrastate species having no effect in commerce and, therefore, are beyond Congress' authority to regulate. Thus, the Service lacks authority under the Act pursuant to the Commerce Clause of Article 1, Section 8 of the United States Constitution to regulate the nine proposed karst invertebrates.

Our Response: A decision in the United States Court of Appeals for the District of Columbia circuit (*National Association of Homebuilders* v. *Babbitt,* 130 F. 3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, United States v. Lopez, 514 U.S. 549 (1995), that regulation of species

limited to one State under the Act is within Congress' commerce clause power. On June 22, 1998, the Supreme Court declined to review this case (118 S. Ct. 2340 1998). Therefore, our application of the Act to the nine karst invertebrates, currently known to be endemic to only one county in the State of Texas, is constitutional.

Issue 15: Listing the nine karst invertebrates as endangered will add additional costs and delays to urban development projects.

Our Response: While economic effects and related concerns cannot be considered in listing decisions, such factors are considered in recovering listed species. In a **Federal Register** notice published July 1, 1994 (59 FR 34272), the Secretaries of Interior and Commerce established an interagency policy to minimize social and economic impacts consistent with timely recovery of listed species. Thus, it is our desire that any recovery actions associated with these nine invertebrates minimize adverse social and economic impacts to the extent practicable.

In addition, we have been encouraging voluntary consideration of these invertebrates in development planning for several years. We believe early coordination can avoid unnecessary increases in costs or delays for construction-related activities in areas containing the listed species. We encourage Federal or State agencies, private developers, and others to contact us during early phases of project design so that the necessary measures to minimize or avoid impacts to listed species can be incorporated into development projects as early as possible. We are committed to working with landowners and others to develop cooperative solutions to species conservation that avoid or minimize the need for regulatory burdens on landowners.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determined that nine Bexar County karst invertebrates should be classified as endangered species. We followed procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the nine invertebrates are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The ranges of the nine invertebrates are limited to limestone karst strata in the northern portion of Bexar County, which includes a portion of northern San Antonio, Texas. Their historical ranges are unknown, but were likely similar to their present ranges with the exception of caves that have been destroyed or suffered adverse impacts due to the factors discussed in the proposed rule and this final rule.

The proximity of the caves and karst features inhabited by these species to the City of San Antonio makes them vulnerable to negative impacts as a result of continuing expansion of the San Antonio metropolitan area. Destruction of caves in Bexar County and throughout central Texas is common (Elliott 1990, Veni 1991). Veni (1991) estimated that about 26 percent of known caves in Bexar County have been destroyed through filling with dirt, rocks, concrete, or other materials; capping or covering by roads or buildings; and blasting by construction and quarrying operations.

Several sources of information from 1991 to 1997 illustrate that considerable development has occurred and is expected to continue in the San Antonio area in general and in the karst regions in particular. For example, a report prepared by the City of San Antonio (1991) indicates that 69 percent of the increase in human population that occurred in Bexar County between 1980 and 1990, occurred in the northwest and northeast quadrants, where the nine invertebrates occur. The report describes this period as characterized by ''tremendous growth'' in the residential sector with significant increases also occurring in non-residential growth. A City of San Antonio Department of Planning (2000) map shows that growth of San Antonio from 1971 to 1999 has been primarily to the northwest. During the 1980s, Bexar County saw a 26 percent increase in the single family housing market (88 percent of which occurred in the northwest and northeast quadrants), a 46 percent increase in the multi-family housing market, and an approximate 150 percent increase in availability of non-residential space (City of San Antonio 1991).

Overall, the northwest and northeast quadrants of Bexar County contain 69 percent of the county's population and 73 percent of the available housing (City of San Antonio 1991). From 1980–1990, changes in population for the specific census tracts where the nine invertebrates occur (census tracts numbering in the 1200s, 1700s, 1800s, and 1900s) range from a 2.4 percent decrease (tract 1208, Alamo Heights) to a 201 percent increase (tract 1720, Culebra Anticline area). For the 1200, 1700, 1800, and 1900 census tracts the average population increase has been 35.4 percent, 13.1 percent, 54.3 percent, and 24.1 percent, respectively. The majority of the increase in development and population during that period occurred during the early 1980s with a drastic decline by 1989.

A report by the City of San Antonio (1993) showed a steady increase in building permit activity, number of plats approved, number of acres and lots platted, and new electrical connections during the period from 1990–1992. That report also indicated that the majority of the growth (about 81 percent, as measured by new electrical connections) occurred in the northwest and northeast quadrants.

The recent revitalization of the real estate market and the construction industry has intensified the threat to the nine invertebrates. A review of new electrical connections for all Bexar County census tracts from 1990–1996 (San Antonio Planning Department 1997) reveals that tracts within the northwest and northeast quadrants of the city continued to be the fastest growing areas in the county. Census tracts numbering in the 1200s, 1700s, 1800s, and 1900s accounted for 21 percent, 10 percent, 31 percent, and 21 percent, respectively, of the new electrical connections in the county from 1990 to 1996 (San Antonio Planning Department 1997). Further review of the data reveals that the majority of the fastest growing sub-tracts are located in karst areas.

Population growth in Texas and Bexar County is expected to continue at a rapid rate. The Texas Water Development Board (1997) estimated that the current Texas human population size is 19 million; it is expected it to nearly double in the next 50 years, reaching over 36 million residents in the year 2050. Bexar County alone experienced an estimated 1.3% population increase between 1998 and 1999, with a 1999 population estimate of 1.37 million (US Census Bureau 2000). Estimates from the Texas State Data Center and the Center for Demographic and Socioeconomic Research and Education (2000) indicate that the total population size in Bexar County from the year 2000 to the year 2030 would increase anywhere from 17.2% (assuming no net migration) to 56.9% (assuming migration rates are consistent with those observed between 1990 and 1998), with population sizes of 1.54 million to 2.25 million people by the year 2030.

Plotting cave locations on 1993 land use maps prepared by the Bexar County Appraisal District for northwest Bexar County and the Edwards Aquifer recharge zone shows that most of the privately owned caves lie on land classified as one of the following: single family residential, vacant platted, vacant mixed-use, tax exempt, or ranchland (Table 1). Land classified as single family residential is currently occupied by single-family dwellings. Land classified as vacant platted is mostly interspersed with or surrounded by single family residential areas and, since plats have been approved, can be developed at any time. Vacant mixed-use land either has no agricultural exemption or includes areas where rollback taxes have been paid in preparation for a change in land use. Caves located on single family residential, vacant platted, or vacant mixed-use land are most vulnerable to negative impacts related to development.

TABLE 1.—NUMBERS OF KARST FEATURES CONTAINING THE NINE INVERTEBRATES BY LAND USE

[1993 Land use according to Bexar County Appraisal District maps for northwest Bexar County and the Edwards Aquifer recharge zone]

Species	Single-family	Vacant platted	Vacant mixed-use	Ranchland	Tax exempt [2]	Unknown	Ttl
Rhadine exilis	2	1	3	[1] 2	21 DOD 1 GCSNA 1 Co. ROW	4	35
Rhadine infernalis							25
R. i. ewersi					3 DOD		
R. i. infernalis	2		6	2	4 GCSNA 1 Church	1	
R. i. new species	2		1	3			
Batrisodes venyivi	1			1		[3] 1	3
Texella cokendolpheri	1						1
Cicurina baronia	1						1
Cicurina madla	1		2	1	1 DOD 1 GCSNA		6
Cicurina venii	1						1
Cicurina vespera					1 GCSNA		1
Neoleptoneta microps					2 GCSNA		2

[1] 1 in county road right-of-way and 1 across the street from residential neighborhood
[2] DOD = Department of Defense; GCSNA = Government Canyon State Natural Area; Co.ROW = county road right-of-way
[3] Exact location unknown

Ranchland is land with an existing agricultural exemption. These areas may be vulnerable to fire ant infestations, siltation due to overgrazing, or to chemicals such as pesticides.

Tax exempt land is government-owned or otherwise tax exempt, and is owned primarily by Federal, State, and local governments or church groups. These caves may be subject to any of the threats associated with other land-use types, depending on the landowner and current land use practices. Five caves in TPWD's Government Canyon State Natural Area contain a total of five of the nine invertebrates (Reddell 1993). The TPWD will likely protect habitat at these sites; however, fire ants are present in some of the caves and throughout the property (see discussion under Factor C, below). Thus, the invertebrate species within those caves are at risk because methods of controlling fire ants are only partially effective. To date, there is no management or maintenance plan in place that adequately reduces these threats to the species.

A total of 23 caves containing the species are located on Federal property at the Camp Bullis Training Site. Twenty caves contain only *Rhadine exilis,* two caves contain only *Rhadine infernalis,* and one cave contains both *Rhadine* species and *Cicurina madla.* Efforts are underway through the Department of Defense's Legacy program to inventory karst features within the recharge zone on Camp Bullis and to determine adequate areas for protection of biologically and/or hydrologically significant karst features. While the habitat on DOD lands is fairly secure, complete protection of the species in these features may require additional steps, such as control of fire ants, cave gates, and long-term management. Currently DOD is drafting a management plan, but until the plan is completed and implemented these threats may not be adequately reduced.

A number of the caves containing the nine invertebrates occur within the recharge zone for the Edwards Aquifer. The Edwards Underground Water District (1993) presented data suggesting that the Edwards Aquifer recharge zone in northwest Bexar County is ''poised for explosive development as the economy rebounds.'' Spills, leaking storage tanks, and other sources of surface and groundwater pollution can harm cave and karst communities as pollutants pass through the karst. Since karst systems are affected by both surface and subsurface drainage, it is necessary to protect these areas to avoid infiltration of contaminants. In a study of small invertebrates that live in underground spaces too small to allow human access (interstitial spaces), Danielopol (1981) found with increased infiltration of pollution into the interstitial spaces, the invertebrates were replaced by surface species. He concluded that the ratio between surface and interstitial species is proportional to pollution.

The Texas Water Commission (TWC), now part of the TNRCC, reported that in 1988 within the San Antonio segment of the Edwards Aquifer, 28 oil and chemical spills occurred in Bexar County. This represented the greatest number of land-based spills in central Texas that affect surface and/or groundwater (TWC 1989). As of July 1988, Bexar County had between 26 and 50 confirmed leaking underground storage tanks (TWC 1989), placing it second among central Texas counties in the number of confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of

contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the State (TWC 1989).

Increasing urbanization in Bexar County will increase the risk that leaks and spills may harm karst ecosystems. The TNRCC (1994) summarizes information on groundwater contamination and lists contaminant spills on a county-by-county basis as reported by the TNRCC, the Texas Department of Agriculture, the Railroad Commission of Texas, the Texas Alliance of Groundwater Districts, and the Interagency Pesticide Database. Table 1 in TNRCC (1994) lists 350 groundwater contamination cases that occurred in Bexar County within the past 2 decades. The majority of these cases involve spills or leaks of petroleum products, and many of them remain unresolved at present.

While a number of the cave entrances concerned may not be in imminent danger from development at the entrance site, cave environments can be negatively impacted by runoff, chemical spills, sewer leaks, pesticide use, and septic effluent associated with development on nearby properties within the karst zone. Many of these caves are situated within the porous limestone that forms the Edwards Aquifer and are susceptible to contamination originating on properties containing the cave entrances, as well as on properties that lie above and adjacent to subterranean reaches of the caves.

Attributes of cave environments that are conducive to occupation by karst invertebrates include a relatively constant high humidity, stable temperature, and some energy input (Howarth 1983; Holsinger 1988; Elliott and Reddell 1989). Nutrient availability and moisture are critical limiting factors for karst animals occupying terrestrial cave environments (Barr 1968). Adaptations to the high relative humidity and low nutrient availability typical of caves are common among troglobites (Howarth 1983; Mitchell 1967; Barr 1968), and the nine invertebrates exhibit many of these adaptations (Barr 1960; Barr 1974; Gertsch 1974).

Nearly all food energy in caves must be imported from the exterior (Holsinger 1988). Energy enters areas near the cave entrance via species that move between the surface and the cave (including cave crickets, bats, racoons, and other small mammals) and by means of organic matter that washes or falls into the caves. In deeper reaches of the cave, primary input of energy is through water containing dissolved organic matter percolating through the karst vertically through fissures and solution features (Howarth 1983; Holsinger 1988; Elliott and Reddell 1989).

Culver (1986) discusses several documented threats to caves, and indicates that the covering or closing of caves greatly affects nutrient input because major food sources for troglobites come in through cave entrances. Many caves extend beyond humanly accessible points, thereby restricting our knowledge of other access points not readily noticeable from the surface. Rapid urbanization in northern Bexar County would likely result in a dramatic increase in impermeable cover in areas surrounding many of the caves. An increase in impermeable cover could result in decreased percolation of water into the caves via the karst and have a detrimental effect on the moisture regime and nutrient input critical to karst-dwelling species.

Several of the caves containing the nine invertebrates have been subject to vandalism, trash dumping, and other threats that may be associated with visitation by humans. Excessive visitation by humans can result in habitat disturbance or loss of habitat due to soil compaction or changes in atmospheric conditions as well as direct mortality of invertebrates. Vandalism may result in the destruction or deterioration of the karst ecosystem. Dumping of trash (such as alkaline batteries) can lead to contamination of the karst ecosystems. Disposal of household and other wastes may attract fire ants or other surface-dwelling species harmful to the karst ecosystem.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These species are of little interest in the insect trade or to amateur collectors. They are collected only occasionally by scientists conducting studies of cave fauna. While it is true that positive identification of karst invertebrates usually requires collection and permanent preservation of individual specimens, the number of individuals taken for this purpose is small, and such collections are made infrequently. We do not believe that collection of a few individuals has significantly reduced their numbers. Habitat disturbance resulting from searching for species is relatively minor when done by experienced collectors, and usually involves turning over rocks on the cave floor, which are then returned to their previous positions. Thus, we do not consider scientific collecting to be a threat at this time. Consequently, any threat from overutilization of these species for commercial, recreational, scientific, or educational purposes is insignificant at this time.

C. *Disease or predation.* Human activities facilitate movement of certain predators, such as fire ants, into an area. Construction areas, lawns, roadways, and landscaped areas provide habitat from which these species can disperse. The relative accessibility of the shallow caves in Bexar County leaves the nine invertebrates especially vulnerable to invasion by nonnative species.

Nonnative fire ants are a major threat to the nine invertebrates. Fire ants are voracious predators and there is evidence that overall arthropod diversity drops in their presence (Vinson and Sorensen 1986, Porter and Savignano 1990). Reddell (*in litt.* 1993) lists ten cave-inhabiting species he has observed being preyed upon by fire ants. Although none of the species covered in this final rule are the species he observed being preyed upon, several of those observed are closely related to the nine invertebrates or to endangered karst invertebrates in Travis and Williamson Counties, Texas. It is reasonable to expect that the nine Bexar County invertebrates are similiarly affected in areas where fire ants are present.

Elliott (1992) cites other examples of predation and notes that fire ant activity has increased dramatically in central Texas since 1989. Even in the unlikely event that fire ants do not affect the listed species directly, their presence in and around caves could have a drastic detrimental effect on the cave ecosystem through loss of species, inside the cave and out, that provide nutrient input and critical links in the food chain. Elliott (1994) found fire ants competing intensively with cave crickets during foraging; since cave crickets transport nutrients from outside to inside the caves, this will probably lead to the eventual decline of cave communities. Porter and Savignano (1990) found arthropod species richness and abundance was lower in fire ant-infested areas compared to uninfested areas.

Of 36 caves Veni and Reddell visited while conducting a status survey for the nine invertebrates, fire ants were found in 26 caves (Reddell 1993). The 1993 status survey revealed that, of 24 caves confirmed to contain one or more of the nine invertebrates, at least 15 had fire ant infestations at the time the study was conducted (Reddell 1993). Most of the collections for the status survey were done between April and June of 1993, at a time during that year when fire ants had likely not reached peak densities (Reddell, pers. comm. 1995).

Consequently, fire ant infestations could be worse than reflected by the status survey. The rate of infestation is expected to be similar for the rest of the 57 caves known to contain one or more of the nine invertebrates.

Controlling fire ants once they have invaded a cave and its vicinity is difficult. Chemical control methods have some effectiveness, but the effect of these agents on non-target species is unclear. Consequently, use of chemicals to control fire ants in and close to caves is not currently advisable. At present, we recommend only boiling water treatment for control of fire ant colonies near caves inhabited by endangered karst invertebrates. This method is labor-intensive and only moderately effective. Carefully controlled chemical treatment may be appropriate in certain circumstances. Although control methods are available, the burden of carrying out such practices in areas occupied by these species is not a designated or mandated duty of any agency, organization, or individual. This type of control will likely be needed indefinitely or until a long term method of fire ant control is developed.

D. *The inadequacy of existing regulatory mechanisms.* Invertebrates are not included on the TPWD list of threatened and endangered species and are provided no protection by the State. Furthermore, TPWD's regulations do not contain provisions for protecting habitat of any listed species.

The TNRCC regulations may give some degree of protection to significant aquifer recharge features, but may apply to only a few of the caves in which the nine invertebrates are found since the majority do not meet TNRCC's definition of ''sensitive feature''. TNRCC defines a sensitive feature as a ''permeable geologic or manmade feature located on the recharge zone or transition zone where: (A) A potential for hydrologic interconnectedness between the surface and the Edwards Aquifer exists, and (B) rapid infiltration to the subsurface may occur.''

The TNRCC regulations are designed to protect the water quality of the Edwards Aquifer. This is typically accomplished by prohibiting certain activities (for example, locating waste disposal wells or concentrated animal feed lots on the recharge zone), filing a Water Pollution Abatement Plan, and through the use of Best Management Practices. Complying with TNRCC regulations may also entail the capping (concrete sealing) of some features to prevent contaminated water from entering the aquifer. Such alteration or blocking of natural drainage patterns could result in drying of the subterranean habitat and a reduction in nutrient input into the karst feature. Karst features supporting the nine invertebrates may also be exempted from TNRCC regulations because a number are not found in either the recharge or transition zone.

The City of San Antonio regulates development and impervious cover within the recharge area of the Edwards Aquifer through Ordinance #81491, made effective January 23, 1995. This Ordinance limits types of development and impervious cover within the city limits, the extraterritorial jurisdiction, and the recharge zone. This Ordinance requires, in part, identification of critical environmental features and may provide some protection for caves and karst features that provide recharge to the Edwards Aquifer. Development setbacks provided for in the Ordinance range from 18.3 to 30.5 m (60 to 100 ft). These setback distances translate into buffer areas of 0.13 to 0.37 ha (0.33 to 0.92 ac). Setbacks from recharge features required by the Ordinance may not always be adequate to protect entire hydrogeological areas that provide surface and subsurface moisture to the karst habitat and surface communities that provide nutrient input into the cave. We believe that the amount of surface habitat needed for perpetual sustainability of the karst ecosystem is on the order of 40 ha (100 ac) based upon such factors as foraging distances of cave crickets; minimum viable population sizes of the dominant, native plant species; and the distance of edge effects on both the floral and faunal communities. In addition, most of the caves known to contain the nine invertebrates are relatively small and do not provide significant recharge, so it is uncertain how these caves would be considered under the Ordinance. Many of the caves known to have the nine invertebrates lie outside the recharge zone.

The Ordinance classifies property into three categories. Category 1 is any property having already filed official documents; such as development plats, water or sewer contracts, water pollution abatement plans, or zoning changes, or having a valid permit with the City prior to the effective date of the Ordinance. The Ordinance does not apply to these properties, allowing up to 100 percent impervious cover. Category 2 properties are those not already designated as Category 1 and that lie within the corporate limits of the City of San Antonio. This category allows 30 percent, 50 percent, and 65 percent impervious cover, respectively, for single-family residential, multi-family, and commercial development. Category 3 property is not within Category 1 or 2, but is within the extra-territorial jurisdiction (ETJ) of the City of San Antonio and within the Edwards Aquifer Recharge Zone. Impervious cover is limited to 15 percent on Category 3 property. In an update by SAWS on January 14, 1998, they noted that from January 23, 1995 to the end of 1997, 29.25 percent (9,695 ha (23,958 ac)) of development within the recharge zone was redesignated from Category 2 or 3 to Category 1. As San Antonio grows and extends the corporate limits, impervious cover limits for non-developed land will increase with those extensions.

We are not aware of other regulations that will specifically address the protection of the karst features that serve as habitat for these invertebrate species. At present, adequate, long term conservation of the karst fauna is not assured in any of the caves containing one or more of the nine invertebrates.

E. *Other natural or manmade factors affecting their continued existence.* Just as human activities may facilitate movement of fire ants into an area (see discussion under Factor C, above), competitors such as cockroaches and sow bugs can also be introduced into cave ecosystems in association with human activity. Native and nonnative species may increase and compete with the nine invertebrates directly by consuming the same foods and using the same habitats, or they may compete indirectly by using resources needed by species such as cave crickets that provide nutrient input to karst ecosystems. Fire ants can be considered both predators and competitors (see discussion under Factor C, above).

Possible impacts from human entry into caves for recreational purposes include habitat disturbance or loss due to soil compaction or changes in atmospheric conditions; abandonment of the cave by animals, including bats, that inhabit caves but must return to the surface for food or other necessities, and in so-doing provide nutrient input to the cave ecosystem; and direct mortality of karst fauna. These impacts may be reduced or avoided depending on the caving skills and caution of the person(s) entering the cave.

Vandalism is also a threat to karst ecosystems and can contribute to an alteration of the cave ecosystem through soil compaction, temperature changes, and contamination from household chemicals such as insecticides (Reddell 1993). Additionally, disturbance of habitat and introduction of excess nutrients, such as garbage, may facilitate the establishment or increase the numbers of competitors and/or

predators (including nonnative species) as discussed above. Certain caves have frequently been used for parties and other unauthorized activities. Trash dumping has occurred in numerous Bexar County caves. Reddell (1993) noted that vandalism contributed to the degradation of several caves that contain one or more of the nine invertebrates.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Rhadine exilis, Rhadine infernalis, Batrisodes venyivi, Texella cokendolpheri, Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera,* and *Neoleptoneta microps* as endangered.

The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. We believe that these species are endangered because of the high degree and immediacy of threats and their limited ranges.

Effective Date

In accordance with 5 U.S.C. 553(d)(3), we find good cause to make this rule effective immediately. Because of the extremely isolated nature of the populations of these species, the corresponding negligible possibility for recolonization of destroyed habitat, and our knowledge that permanent destruction of habitat quality for at least two caves, in which some of these invertebrates live, is imminent, the protection provided by the Act is granted to the nine invertebrates in Bexar County immediately upon publication of this final rule. We believe that habitat destruction would temporarily intensify if the final rule does not become effective until 30 days after rule publication. Through consultations for other threatened and endangered species, we are currently aware of numerous developments in the range of the nine invertebrates.

Several in-progress developments have known karst features on the property, but it is unknown whether these features support any of the nine invertebrates. By making this rule effective immediately, developers may experience temporary delays in order to conduct any needed surveys for karst features and for the nine invertebrates, and to determine how their projects may proceed in compliance with the Act. However, the majority of these developments would experience these delays regardless of the effective date. Making the rule effective immediately upon publication may prevent the destruction of a number of significant but as yet unknown locations for these species and speed the recovery of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' as defined in the Act means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. The regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the nine invertebrates because the publication of precise species locations and maps and descriptions of critical habitat in the **Federal Register** would make the nine invertebrates more vulnerable to incidents of vandalism through increased recreational visits to their cave habitat and through purposeful destruction of the caves. We also indicated that designation of critical habitat was not prudent because it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned a number of our determinations that designation of critical habitat for other species would not be prudent (for example, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for the nine invertebrates would be prudent.

We examined the available evidence for the nine invertebrates and did not find specific evidence of collection or trade of these or any similarly situated species. There have been instances of vandalism to caves due to recreational cave use. By designating critical habitat in a manner that does not identify specific cave locations, the threat of vandalism by recreational visits to the cave or purposeful destruction by unknown parties should not be increased.

In the absence of a finding that critical habitat would demonstrably increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action they carry out, authorize, or fund does not jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat. Our implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' (a species) and ''destruction or adverse modification of'' (critical habitat) in very similar terms. To jeopardize the continuing existence of a species means to engage in an action ''that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species by reducing the reproduction, numbers, or distribution

of that species.'' Destruction or adverse modification of critical habitat means a ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild.'' Both definitions describe an action that would result in an appreciable detrimental effect to both the survival and recovery of a listed species.

A critical habitat designation for habitat currently occupied by these species would usually result in the same outcome under section 7 consultation as if the critical habitat had not been designated because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy for these species. However, there may be a few instances where section 7 consultation would be triggered only if critical habitat is designated, such as areas where the primary constituent elements of critical habitat are present but adequate surveys have not yet been conducted to find any of the nine invertebrates. Because the nine species are small, inconspicuous, and reclusive, and their population levels are low, surveys may have been inadequate to detect them based on insufficient number of surveys, insufficient effort in surveying, inappropriate climatic conditions for surveying, or other factors. It is common that no individuals are seen in surveys of caves where they are known to be present.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

We find that critical habitat designation is prudent for the nine invertebrates due to the increased benefits to the species described above. We find that these benefits are not outweighed by potential increased threats of designating critical habitat.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that we will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing these nine invertebrate species without designation of critical habitat will allow us to concentrate our limited resources on higher-priority listing actions, while allowing us to invoke protections needed for the conservation of the nine invertebrates without further delay. We will propose designation of critical habitat in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

In addition, section 7(a)(1) of the Act requires all Federal agencies to review the programs they administer and use these programs in furtherance of the purposes of the Act. All Federal agencies, in consultation with us, are to carry out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the Act.

Examples of Federal agency actions that may require consultation as described in the preceding paragraphs include operations at Camp Bullis Military Reservation; Environmental Protection Agency authorization, registration, and regulation of pesticides and of discharges under the Clean Water Act (33 U.S.C. 1344 *et seq.*) such as Construction General Permits and any applicable National Pollution Discharge and Elimination System permits; Federal Highway Administration and Army Corps of Engineers (Corps) involvement in such projects as road and bridge construction and maintenance; other Corps projects subject to section 404 of the Clean Water Act; and U.S. Department of Housing and Urban Development activities, funding, and authorizations.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Because these species are not in trade, we do not expect requests for hardship exemption permits.

To obtain a copy of regulations regarding listed wildlife or to ask about prohibitions and permits, contact the Legal Instruments Examiner, U.S. Fish and Wildlife Service, Division of Endangered Species, P. O. Box 1306, Albuquerque, NM 87103–1306 (telephone 505/248–6920; facsimile 505/248–6788).

The karst features inhabited by these species and the ecosystems on which they depend have developed slowly over millions of years and cannot be recreated once they are destroyed. Protection of the ecosystems that support the nine invertebrates requires maintaining moist, humid conditions and stable temperatures in the air-filled voids; maintaining an adequate nutrient supply; preventing contamination of the water entering the ecosystem;

preventing or controlling invasion of nonnative species such as fire ants; maintaining of a healthy ecosystem surrounding the karst features; and other actions as deemed necessary.

Protecting the karst features inhabited by the nine invertebrates entails protecting sufficient natural surface and subsurface area surrounding the karst features to maintain the integrity of the karst ecosystem. Due to the paucity of light and limited capability for photosynthesis, karst ecosystems are almost entirely dependent upon surface plant and animal communities for nutrient and energy input.

Water quality is also an important factor in the conservation of karst invertebrates. Caves and karst features are susceptible to pollution from contaminated water entering the ground because karst has little capacity for purification. Transmission of groundwater flows in karst is comparatively rapid and provides little opportunity for natural filtering or other purifying effects (IUCN 1997). The area that has the greatest potential to contribute water-borne contaminants into the karst ecosystem is the surface and subsurface drainage basin that supplies water to the ecosystem. Certain activities within this hydrologically sensitive area, such as application of pesticides and fertilizers, leakage from sewer lines, and urban runoff, could contaminate the karst ecosystem. The potential for contaminants to travel through karst systems may be increased in some areas relative to others due to local geologic features. Areas surrounding the karst features providing habitat for the nine invertebrates should be maintained so as to minimize the possibility of introducing contaminants into the karst ecosystem.

In addition to providing nutrients to the karst ecosystem, the surface plant community also serves to buffer the karst ecosystem against changes in temperature and moisture regimes, pollutants entering from the surface (Biological Advisory Team 1990, Veni & Associates 1988), and other factors such as sedimentation resulting from soil erosion. Protecting native vegetation may also help control certain nonnative species (such as fire ants) that may compete with and/or prey upon the listed species and other karst fauna (Service 1994). Soil disturbance, introduction of nursery plants and sod containing fire ants, dumping of garbage (a potential food source), and installation of electrical equipment (fire ants appear to be attracted to electrical fields) are some of the factors contributing to fire ant infestations.

It is our policy (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

Veni 1994(a) defines five karst zones in the San Antonio area based on geology, distribution of known caves, distribution of cave fauna, and primary factors that determine the presence, size, shape, and extent of caves with respect to cave development (see map 1). The five zones reflect the likelihood of finding a karst feature that will provide habitat for endemic invertebrates as follows:

Zone 1: Areas known to contain one or more of the nine invertebrates;

Zone 2: Areas having a high probability of suitable habitat for the invertebrates;

Zone 3: Areas that probably do not contain the invertebrates;

Zone 4: Areas that require further research but are generally equivalent to zone 3, although they may include sections that could be classified as zone 2 or zone 5; and

Zone 5: Areas that do not contain the invertebrates.

Veni (1994a) includes detailed discussion of the geologic makeup of these karst zones. Map 1 simplifies Veni's karst zone maps to show where actions may or may not be likely to take karst invertebrates. Zones 1 and 2 are combined in the shaded areas, zones 3 and 4 are combined in the hatched areas, and the remaining area falls in zone 5. Zone 5 does not have karst-forming strata and the nine invertebrates are not expected to occur in these areas.

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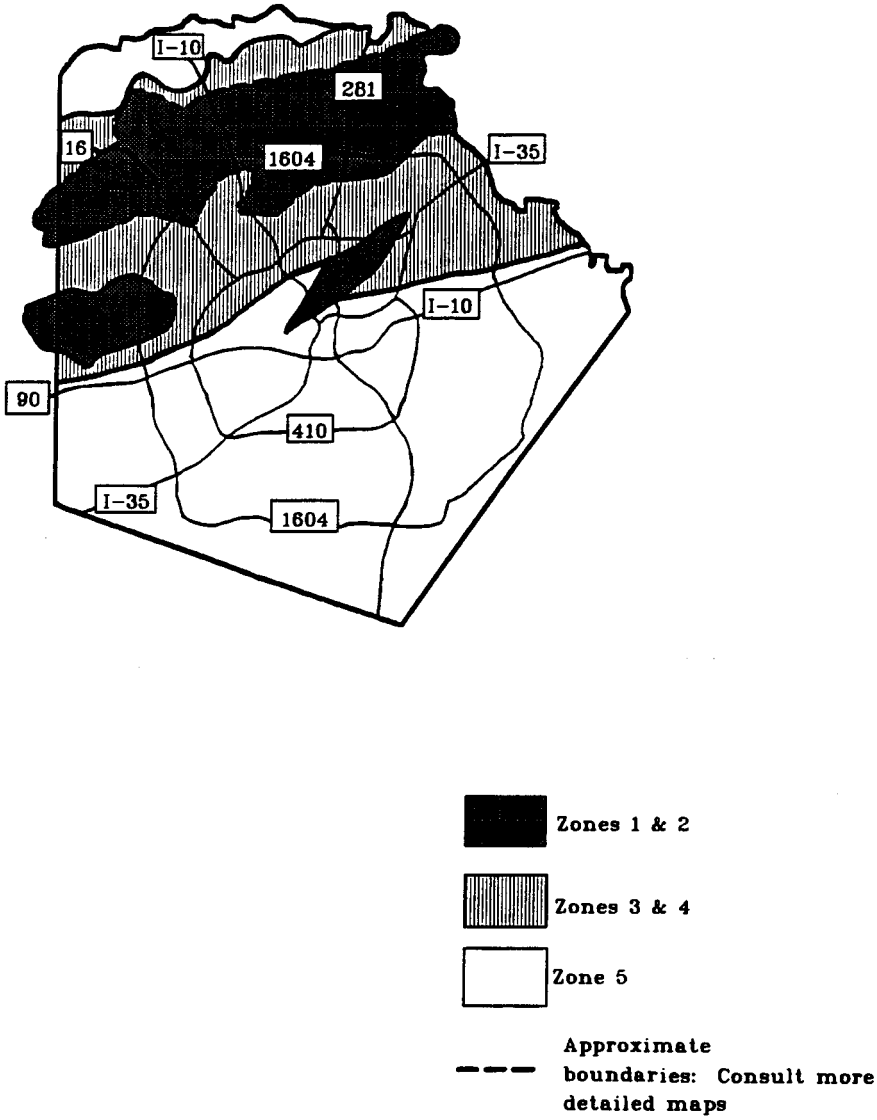
Map 1
Bexar County, Texas
Karst Zones



The likelihood that activities in zones 1–4 will result in take of listed invertebrates is related to the likelihood of species occurrence, which in turn is related to the likelihood of karst features being present and may require specialized knowledge and familiarity with caves, geology of karst areas, and local geology to determine. The following paragraphs outline steps suggested to avoid the possibility of taking karst invertebrates for properties that lie entirely or partially within zones 1, 2, 3, or 4. If a property is in zone 5, then no precautions to avoid taking these species should be necessary.

In zone 1 or 2, a survey by a qualified geologist or geohydrologist to search for karst features is recommended. In zones 3 and 4, where the presence of karst features is possible, but less likely, we recommend that landowners visually inspect their property for obvious karst features, noticeable sinks, or caves. If the inspection reveals no karst features, and no subterranean voids are encountered during subsequent activities, then no further precautions should be necessary. However, if an inspection reveals caves, noticeable sinks, or karst features on the property, and/or caves, karst features, or subterranean voids are discovered during the course of any activity carried out on the property, the features should be examined by a qualified biologist, who has a U.S. Fish and Wildlife Service section 10(a)(1)(A) scientific permit, for the presence of the listed karst invertebrates. If karst invertebrates are found, contact us for additional advice and information on how to avoid

taking the species or, if taking cannot be avoided, the process for obtaining incidental take authorization (see **ADDRESSES**).

If property is adjacent to a known occupied cave and within geohydrologically sensitive zones of influence on that cave, then activities discussed below could lead to take of species on that adjacent property. If you are in or adjacent to zone 1 karst, consultation with us is advisable to determine if you are adjacent to a known occupied cave or within geohydrologically sensitive zones of influence on that cave.

Persons qualified to identify and evaluate the significance of karst features may include professional geologists or hydrogeologists, biological consultants familiar with cave and karst ecosystems, and other similarly knowledgeable persons. Property owners should take care in conducting karst surveys or selecting a person to conduct a karst survey so as to obtain the most accurate information possible and to avoid doing any damage to a karst feature or the karst ecosystem during the survey.

Collection and identification of karst invertebrates requires specialized knowledge and familiarity with cave biology and ecology and the life histories of karst invertebrates. Identification of some specimens will require microscopic examination and expert taxonomic assistance. Persons qualified to search for karst invertebrates and make preliminary identifications of specimens should also be able to evaluate various karst features' suitability as habitat for the species. Extreme care must be taken when surveying for invertebrates in karst ecosystems, and these invertebrate surveys must only be done by qualified individuals who are permitted by the Fish and Wildlife Service to conduct such surveys.

We believe that, based on the best available information, activities in zones 1–4 that could potentially result in take include, but are not limited to:

(1) Collecting or handling of the species;

(2) Surface or subsurface activities that may directly result in destruction or alteration of species' habitat (such as trenching for installation of utility or sewer lines, excavation, etc.);

(3) Alteration of the topography within the surface or subsurface drainage area or other alterations to any cave or karst feature providing habitat for the species that results in changes to the cave environment. This may include, but is not limited to, such activities as filling cave entrances or otherwise reducing airflow, which limits oxygen availability; increasing airflow that results in drying; altering natural drainage patterns with the result of changing the amount of water entering the cave or karst feature; removal or disturbance of native surface vegetation; increasing impervious cover within the surface or subsurface drainage areas of the cave or karst feature; and altering the entrance or opening of the cave or karst feature in a way that would disrupt movements of raccoons, opossums, cave crickets, or other animals that provide nutrient input, or otherwise negatively altering the movement of nutrients into the cave or karst feature;

(4) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other harmful material into karst features or areas that drain into karst features or that affect surface plant and animal communities that support karst ecosystems;

(5) Pesticide or fertilizer application in or near karst features containing the nine invertebrates or areas that drain into these karst features or that affect surface plant and animal communities that support karst ecosystems. Careful use of pesticides in the vicinity of karst features may be necessary in some instances to control nonnative fire ants. Guidelines for controlling fire ants in the vicinity of karst features are available from us (see **ADDRESSES** section);

(6) Activities within caves that lead to soil compaction, changes in atmospheric conditions, abandonment of the cave by bats or other fauna, or direct mortality of the species; and

(7) Activities that attract or increase access for fire ants, cockroaches, or other invasive predators or competitors to caves or karst features (for example, dumping of garbage in or around caves or karst features).

We believe that, based on the best available information, the following actions will not result in take, provided such activities do not result in any of the situations described above:

(1) Construction activities in non-karstic areas;

(2) Maintenance of existing roads (this does not include widening);

(3) Recreational activities on the surface, including camping, hiking, and hunting; and,

(4) Chemical-free maintenance of established lawns and other landscaping features, including mowing, pruning, seeding, removing dead trees, and planting trees and shrubs that are free of fire ants, particularly using native plant species.

We welcome the involvement of landowners in conservation efforts for the nine invertebrates. Conservation measures for these species may include careful fire ant control in the vicinity of occupied karst features (following Service-recommended methods); construction/disturbance setbacks from caves; and avoidance of the use of chemical pesticides or fertilizers, surface topography alteration, and trenching within specific areas.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with Habitat Conservation Plans (HCP) is covered by an existing OMB approval, and is assigned OMB Control Number 1018–0094. The Service 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.

National Environmental Policy Act

We determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references we cited in this rule is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this final rule is Christina Longacre, Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following to the List of Endangered and Threatened Wildlife in alphabetical order under ''ARACHNIDS'' and ''INSECTS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Common name	Scientific name					
*	*	*	*	*	*	*
INSECTS						
*	*	*	*	*	*	*
Beetle, [no common name]	*Rhadine exilis*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Beetle, [no common name]	*Rhadine infernalis*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Beetle, Helotes mold	*Batrisodes venyivi*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
ARACHNIDS.						
*	*	*	*	*	*	*
Harvestman, Robber Baron Cave.	*Texella cokendolpheri*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Spider, Government Canyon cave.	*Neoleptoneta microps*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Spider, [no common name]	*Cicurina venii*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Spider, Madla's cave	*Cicurina madla*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Spider, Robber Baron cave	*Cicurina baronia*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*
Spider, vesper cave	*Cicurina vespera*	U.S.A. (TX)	E	706	NA	NA
*	*	*	*	*	*	*

Dated: December 19, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–32809 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 65, No. 248
Tuesday, December 26, 2000

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 JUSTICE

8 CFR Parts 3 and 240

[AG Order No. 2345–2000]

RIN 1125–AA27; EOIR No. 125P

Authorities Delegated to the Director of the Executive Office for Immigration Review, the Chairman of the Board of Immigration Appeals, and the Chief Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would outline the authorities and powers delegated by the Attorney General to the Director of the Executive Office for Immigration Review, the Chairman of the Board of Immigration Appeals, and the Chief Immigration Judge. Members of the Board of Immigration Appeals would be designated as Appellate Immigration Judges.

DATES: Written comments must be submitted on or before February 26, 2001.

ADDRESSES: Please submit written comments to Charles K. Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0470.

FOR FURTHER INFORMATION CONTACT: Charles K. Adkins-Blanch, (703) 305–0470.

SUPPLEMENTARY INFORMATION: In a January 1983 Departmental reorganization, the Attorney General created the Executive Office for Immigration Review (EOIR). This reorganization consolidated the Department's immigration review programs by placing the Immigration Judges (formerly special inquiry officers within the Immigration and Naturalization Service (INS)) with the Board of Immigration Appeals (BIA) in a newly-created organization, the EOIR. The Office of the Chief Administrative Hearing Officer (OCAHO) was also added to EOIR, placing similar quasi-judicial functions within a single Departmental organization.

This proposed rule concerns the authorities of EOIR's Director, the Chief Immigration Judge, and the Chairman of the BIA, and the limitations on those authorities. The rule will assist EOIR in implementing consolidated management directives to handle more effectively and efficiently its immigration caseload, which has increased dramatically since 1983. The rule also will assist the public and those individuals who come before EOIR adjudicators in understanding how the Attorney General's authority is delegated to EOIR and among its management officials. The language of the proposed rule is intended to reflect the dynamic immigration arena in which EOIR employees work together, and with other components and agencies, to serve the public, implement statutes and regulations, and comply with Departmental directives and programs (*e.g.,* Comprehensive Asylum Reform Initiative, Expedited Deportation of Criminal Aliens Initiative).

The proposed rule contains amendments to 8 CFR 3.0 that would enumerate both the powers of the Director and limitations on his authority. These amendments highlight the Director's role as EOIR's manager and, as such, his responsibility for the uniform implementation of applicable statutes and regulations, including his authority to issue operational instructions and policies to all EOIR components to promote and advance the components' missions.

The Director is tasked with ensuring the efficient disposition of all pending cases. The Director is given the power, in his discretion, to set priorities or time frames for the resolution of cases, to regulate the assignment of adjudicators to cases, and otherwise to manage the docket of matters to be decided by the BIA, the Immigration Judges, the Chief Administrative Hearing Officer, or the Administrative Law Judges (ALJs). The Director does not have the authority, however, to direct the result of an adjudication assigned to the BIA, an Immigration Judge, the Chief Administrative Hearing Officer, or an ALJ.

The Director is also responsible for coordinating with other Departmental components, such as the INS, and with federal agencies, such as the State Department. He has the authority to evaluate the performance of EOIR's components, and to take corrective action where necessary. In addition to these powers, which allow the Director to manage uniformly the operations of the components, the Director exercises any other authority delegated to him by the Attorney General.

In addition to enumerating the powers of the Director, the amendments to 8 CFR 3.0 would include information on the role of EOIR's Deputy Director and its General Counsel, and on the citizenship requirement for employment at EOIR.

The proposed rule contains amendments to 8 CFR 3.1 that would add specific information on the organization of the BIA, the powers delegated to its Chairman, and the purpose of this quasi-judicial appellate body. The majority of the administrative decisions reviewed on appeal by the BIA are adjudications made by Immigration Judges. Therefore, to underscore the Board Members' role as appellate reviewers of Immigration Judges' decisions, and to treat EOIR adjudicators uniformly, the members of the BIA would be called Appellate Immigration Judges.

The powers delegated to the Chairman of the BIA would be enumerated. The list is similar to that of the authorities vested in the EOIR's Director, but confined to the BIA. The amendments also would set forth the purpose of the BIA—to review administrative decisions issued by the INS and the Immigration Judges, as assigned by the Attorney General—and would indicate that the BIA shall resolve questions before it in a timely and impartial manner, consistent with the Immigration and Nationality Act (Act) and regulations. The BIA is tasked with providing clear and uniform guidance on the proper interpretation and administration of the Act and regulations to the INS, the Immigration Judges, and the general public through precedent decisions. The BIA's independent judgment and discretion would be recognized. Information on BIA panels and the designation of temporary BIA members would also be included.

The proposed rule would change the title of subpart B of part 3 from ''Immigration Court'' to the ''Office of the Chief Immigration Judge'' (OCIJ) to accurately reflect the structure of the agency, with the OCIJ as the component head of the Immigration Courts. The rule also would make the titles of the subparts in title 8 regarding EOIR's components consistent with the titles of such subparts in Title 28. The rule would define the term ''Immigration Court'' as local sites of the OCIJ where proceedings are held before Immigration Judges and records of proceedings are created.

The proposed rule also contains amendments to 8 CFR 3.9 that would add specific information on the organization of the OCIJ, the powers delegated to the Chief Immigration Judge, the Immigration Courts, and the powers and duties of Immigration Judges. As in the case of the Chairman of the BIA, the powers delegated to the Chief Immigration Judge would be enumerated. The list is similar to that of the authorities vested in EOIR's Director, but confined to the OCIJ. The Chief Immigration Judge is responsible for the supervision, direction, and scheduling of the Immigration Judges in the conduct of the hearings and other duties assigned to them. The Chief Immigration Judge also issues operational instructions and policy, including procedural guidance on the implementation of new statutory or regulatory authority. Immigration Judges would continue to exercise their independent judgment and discretion, and take any action consistent with the Act and regulations that is appropriate and necessary for the disposition of the cases before them.

Finally, the proposed rule would delete two sentences from section 240.1 of title 8 to make that section consistent with the proposed redesignations and revisions to part 3 of that title.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this proposed rule and, by approving it, certifies that it will affect only Departmental employees, individuals in immigration proceedings before the EOIR, and practitioners who appear before EOIR. Therefore, this proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This proposed rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, it has not been submitted to OMB for review.

Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles K. Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0470.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, parts 3 and 240 of chapter I of title 8 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for 8 CFR part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Revise § 3.0 to read as follows:

§ 3.0 Executive Office for Immigration Review.

(a) Organization. Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and by a General Counsel. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and such other staff as the Attorney General or Director may provide.

(b) Powers of the Director. (1) The Director shall manage EOIR and its employees and shall be responsible for the direction and supervision of the Board, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer in the execution of their respective duties pursuant to the Act and the provisions of this chapter. Unless otherwise provided by the Attorney General, the Director shall report to the Deputy Attorney General and the Attorney General. The Director shall have the authority to:

(i) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(ii) Direct the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the

resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of adjudicators to cases; and otherwise to manage the docket of matters to be decided by the Board, the Immigration Judges, the Chief Administrative Hearing Officer, or the Administrative Law Judges;

(iii) Provide for appropriate administrative coordination with the other components of the Department of Justice, including the Immigration and Naturalization Service, and with the Department of State;

(iv) Evaluate the performance of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and other EOIR activities, making appropriate reports and inspections, and take corrective action where needed; and

(v) Exercise such other authorities as the Attorney General may provide.

(2) The Director may delegate the authority given to him by this part or by the Attorney General to the Deputy Director, the General Counsel, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, or any other EOIR employee.

(c) *Limit on the Authority of the Director.* The Director shall have no authority to adjudicate cases arising under the Act or regulations and shall not direct the result of an adjudication assigned to the Board, an Immigration Judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge; provided, however, that nothing in this part shall be construed to limit the authority of the Director under paragraph (b) of this section.

(d) *Deputy Director.* The Deputy Director shall advise and assist the Director in the management of EOIR and the formulation of policy and guidelines. Unless otherwise limited by law or by order of the Director, the Deputy Director shall exercise the full authority of the Director in the discharge of his or her duties.

(e) *General Counsel.* Subject to the supervision of the Director, the General Counsel shall serve as the chief legal counsel of EOIR. The General Counsel shall provide legal advice and assistance to the Director, Deputy Director, and heads of the components within EOIR, and shall supervise all legal activities of EOIR not related to adjudications arising under the Act or this chapter.

(f) *Citizenship Requirement for Employment.* (1) An application to work at EOIR, either as an employee or a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. If requested, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an EOIR position when necessary to accomplish the work of EOIR.

3. Amend § 3.1 by:

a. Revising the heading;

b. Revising paragraphs (a)(1), (2), and (3);

c. Redesignating paragraphs (a)(4), (5), and (6) as paragraphs (a)(8), (9), and (10), respectively and revising newly designated paragraph (a)(10);

d. Adding new paragraphs (a)(4), (a)(5), (a)(6), and (a)(11);

e. Removing paragraph (d)(1); and

f. Redesignating paragraphs (d)(2), (3), and (4) as (d)(1), (2), and (3), respectively, to read as follows:

Subpart A—Board of Immigration Appeals

§ 3.1 Organization and powers of the Board of Immigration Appeals.

(a)(1) *In general.* Within the Executive Office for Immigration Review (EOIR), there shall be a Board of Immigration Appeals consisting of a Chairman, two Vice Chairmen, and 18 other Board Members. The Board shall be subject to the supervision of the Director of EOIR and shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign it. The Board Members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. The Board Members shall be known as Appellate Immigration Judges. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise the powers of the Board.

(2) *Position and Powers of the Chairman and Vice Chairmen*—(i) The Attorney General shall appoint a Chairman who, subject to the supervision of the Director, shall manage the Board. The Attorney General shall also appoint two Vice Chairmen to assist the Chairman. The Vice Chairmen may exercise all of the powers and duties of the Chairman in the Chairman's absence or unavailability. The Chairman shall have the authority to:

(A) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(B) Provide for appropriate training of Board members and staff on the conduct of their powers and duties;

(C) Direct the conduct of all employees assigned to the Board to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of Board Members to cases; and otherwise to manage the docket of matters to be decided by the Board;

(D) Evaluate the performance of the Board by making appropriate reports and inspections, and take corrective action where needed;

(E) Adjudicate cases as a Board Member; and

(F) Exercise such other authorities as the Director may provide.

(ii) *Limit on the Authority of the Chairman.* The Chairman shall have no authority to direct the result of an adjudication assigned to another Board Member or panel of members; provided, however, that nothing in this part shall be construed to limit the authority of the Chairman under paragraph (a)(2)(i) of this section.

(3) *Purpose.* The Board shall review administrative decisions assigned to it by the Attorney General through regulation. In reviewing those cases, the Board shall seek to resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and regulations. In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to the Service, the Immigration Judges, and the general public on the proper interpretation and administration of the Act and regulations. In deciding the individual cases before them, Board Members shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.

(4) *Panels.* The Chairman may divide the Board into three-member panels and designate a Presiding Member of each panel. The Chairman may from time to time make changes in the composition of such panels and of Presiding Members. A three-member panel may include one Temporary Board Member designated by the Director pursuant to paragraph (a)(6) of this section. Each panel shall review and decide cases by majority vote. Each panel may exercise the appropriate authority of the Board that is necessary for the adjudication of cases before it. In the case of an unopposed motion or a motion to

withdraw an appeal pending before the Board, a single Board Member may exercise the appropriate authority of the Board that is necessary for the adjudication of such motions. In addition, a single Board Member may exercise the same authority in disposing of the following matters:

(i) A Service motion to remand an appeal from the denial of a visa petition where the Regional Service Center Director requests that the matter be remanded to the Service for further consideration of the appellant's arguments or evidence raised on appeal;

(ii) A case where remand is required because of a defective or missing transcript; and other procedural or ministerial adjudications as provided by the Chairman.

(5) Motions to reconsider or to reopen. A motion to reconsider or reopen a decision that was rendered by a single Board Member may be adjudicated by that Member.

(6) *Designation of Temporary Board Members.* In his discretion, the Director may from time to time designate other individuals to serve as Temporary Board Members as follows:

(i) The Director may designate Immigration Judges, retired Board Members, retired Immigration Judges, and Administrative Law Judges employed within EOIR to act as temporary, additional members of the Board for terms not to exceed six months.

(ii) Whenever Temporary Board Members are designated to serve, their participation in a case shall continue to its normal conclusion, provided that Temporary Board Members shall have no role in the actions of the Board en banc.

* * * * *

(10) *Board Staff.* The Board may be assisted in its work by attorneys and other personnel as the Director provides.

(11) *Governing Standards.* The authorities of the Board are those provided in this chapter. The Board shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the precedent decisions of the Board, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

* * * * *

4. Revise the heading to Subpart B to read as follows:

Subpart B—Office of the Chief Immigration Judge

5. Revise § 3.9 to read as follows:

§ 3.9 Office of the Chief Immigration Judge.

(a) *Organization.* Within the Executive Office for Immigration Review, there shall be an Office of the Chief Immigration Judge (OCIJ), consisting of the Chief Immigration Judge, the Immigration Judges, and such other staff as the Director deems necessary. The Attorney General shall appoint the Chief Immigration Judge and such Deputy Chief Immigration Judges and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge.

(b) *Powers of the Chief Immigration Judge.* Subject to the supervision of the Director, the Chief Immigration Judge shall be responsible for the supervision, direction, and scheduling of the Immigration Judges in the conduct of the hearings and duties assigned to them. The Chief Immigration Judge shall have the authority to:

(1) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Provide for appropriate training of the Immigration Judges and other OCIJ staff on the conduct of their powers and duties;

(3) Direct the conduct of all employees assigned to OCIJ to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases, to direct that the adjudication of certain cases be deferred, to regulate the assignment of Immigration Judges to cases, and otherwise to manage the docket of matters to be decided by the Immigration Judges;

(4) Evaluate the performance of the Immigration Courts and other OCIJ activities by making appropriate reports and inspections, and take corrective action where needed;

(5) Adjudicate cases as an Immigration Judge; and

(6) Exercise such other authorities as the Director may provide.

(c) *Limit on the Authority of the Chief Immigration Judge.* The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another Immigration Judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section.

(d) *Immigration Court.* The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before Immigration Judges and where the records of those proceedings are created and maintained.

6. Revise § 3.10 to read as follows:

§ 3.10 Immigration Judges.

(a) *Appointment.* Immigration Judges shall be attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration Judges shall act as the Attorney General's delegates in the cases that come before them.

(b) *Powers and duties.* In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, Immigration Judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, Immigration Judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases. Immigration Judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine aliens and any witnesses. Subject to §§ 3.35 and 287.4 of this chapter, they may issue administrative subpoenas for the attendance of witnesses and the presentation of evidence. In all cases, Immigration Judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.

(c) *Review.* Decisions of Immigration Judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction as provided in subpart A of this part.

(d) *Governing standards.* Immigration Judges shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the decisions of the Board, and by the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

7. The authority citation for 8 CFR part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

Subpart A—Removal Proceedings

8. Amend § 240.1 by removing the first and second sentences of paragraph (a)(2).

Dated: December 10, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–32216 Filed 12–22–00; 8:45 am]

BILLING CODE 4410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1090]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to the provisions of Regulation Z (Truth in Lending) that implement the Home Ownership and Equity Protection Act (HOEPA). HOEPA was enacted in 1994, in response to evidence of abusive lending practices in the home-equity lending market. HOEPA imposes additional disclosure requirements and substantive limitations (for example, restricting short-term balloon notes) on home-equity loans bearing rates or fees above a certain percentage or amount. The amendments would broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage under the act. The rate-based trigger would be lowered by two percentage points and the fee-based trigger would be revised to include optional insurance premiums and similar credit protection products paid at closing. Certain acts and practices in connection with home-secured loans would be prohibited, including rules to restrict creditors from engaging in repeated refinancings of their own HOEPA loans over a short time period when the transactions are not in the borrower's interest. HOEPA's prohibition against extending credit without regard to consumers' repayment ability would be strengthened. Disclosures received by consumers before closing for HOEPA-covered loans would be enhanced.

DATES: Comments must be received on or before March 9, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1090, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for the hearing impaired only, contact Janice Simms, Telecommunication Device for the Deaf, (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. Background

Much attention has been focused on ''predatory lending practices'' in connection with mortgage loans. The term encompasses a variety of practices. Homeowners in certain communities oftentimes are targeted with offers of high-cost credit, particularly the elderly, minorities, and women. In the case of elderly homeowners, they may be living on fixed incomes and have little or no home-secured debt. The loans may be based on consumers' equity in their homes and not their ability to make the scheduled payments. When homeowners have trouble repaying, they are often encouraged to refinance the loan into another unaffordable, high-fee loan that increases the loan amount owed primarily due to financed fees and decreases the consumers' equity in their homes. (This practice is referred to as ''loan flipping'' or ''equity stripping.'') The loan transactions also may involve fraud, misrepresentations, and other deceptive practices.

The Home Ownership and Equity Protection Act

In response to the anecdotal evidence about abusive practices involving high-cost home-secured loans, in 1994 the Congress enacted the Home Ownership and Equity Protection Act (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160, as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* TILA is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the ''finance charge'') and as an annual percentage rate (the ''APR''). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z, 12 CFR part 226.

HOEPA does not prohibit creditors from making any type of home-secured loan, nor does it limit or cap rates that creditors may charge. Instead, HOEPA identifies a class of high-cost mortgage loans through rate and fee triggers, and it provides consumers entering into these transactions with special protections. A loan is covered by HOEPA if (1) the APR exceeds the rate for Treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. The $400 figure is adjusted annually based on the Consumer Price Index; for 2001 it is $465. 65 FR 70465, Nov. 24, 2000.

HOEPA is implemented in § 226.32 of the Board's Regulation Z, effective in October 1995. 60 FR 15463, March 24, 1995. HOEPA also amended TILA to require additional disclosures for reverse mortgages, that are contained in '' § 226.33 of Regulation Z. For purposes of this notice of proposed rulemaking, however, the term ''HOEPA-covered loan'' or ''HOEPA loan'' generally refers only to mortgages covered by '' § 226.32 that meet HOEPA's rate or fee-based triggers.

Creditors offering HOEPA-covered loans must give consumers an abbreviated disclosure statement at least three business days before the loan is closed, in addition to the disclosures generally required by TILA before or at closing. The HOEPA disclosure informs consumers that they are not obligated to complete the transaction and could lose their home if they take the loan and fail to make payments. It includes a few key cost disclosures, including the APR. In loans where consumers have three business days after closing to rescind the loan, the HOEPA disclosure affords consumers a minimum of six business days to consider key loan terms before receiving the loan proceeds.

HOEPA also restricts certain loan terms based on evidence that they had been associated with abusive lending practices. These terms include short-

term balloon notes, prepayment penalties, non-amortizing payment schedules, and higher interest rates upon default. Creditors are prohibited from engaging in a pattern or practice of making HOEPA loans without regard to the borrower's ability to repay the loan. HOEPA imposes a strict liability rule that holds purchasers and assignees, as well as creditors, liable for any violations of law. In addition, HOEPA authorizes the Board, under defined criteria, to prohibit specific acts or practices.

Continued Concerns About Predatory Lending Practices

Concerns about predatory lending practices persist, but information about predatory lending is essentially anecdotal. There are no precise data and no ready means for measuring its prevalence. Yet there have been sufficient reports of actual cases to indicate that a problem exists.

Since the enactment of HOEPA in 1994, the volume of home-equity lending has increased significantly in the subprime mortgage market. Based on data reported under the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*, the number of subprime loans made by lenders that identify themselves primarily as subprime lenders increased about six times—from 138,000 in 1994 to roughly 856,000 in 1999. This growth in subprime lending has expanded the availability of home-secured credit for consumers having less-than-perfect credit histories and other consumers who do not meet the underwriting standards of prime lenders. On the other hand, because consumers who obtain subprime mortgage loans have, or may perceive they have, fewer credit options than other borrowers, they may be more vulnerable to unscrupulous lenders or brokers. There is concern that with the increase in the number of subprime loans, there has been a corresponding increase in the number of predatory loans.

In June 1997 the Board held hearings in Los Angeles, Atlanta, and Washington, DC, pursuant to HOEPA's mandate that the Board periodically hold public hearings on home-equity lending and HOEPA. Participants were asked to address several topics, including the effect of HOEPA on homeowners seeking home-equity credit and on credit opportunities in the communities that had been targeted by unscrupulous lenders prior to HOEPA's enactment (for example, whether there had been changes to the volume or cost of home-equity installment loans); the effectiveness of the disclosures and suggestions for improvements; and whether any exemptions or prohibitions would be appropriate for the Board to consider under its HOEPA rulemaking authority. 62 FR 23189, April 29, 1997. Those testifying at the hearings were in general agreement that it was too soon after HOEPA's enactment to determine the effectiveness of the new law; however, consumer representatives reported continuing abusive practices by home-equity lenders against consumers of all degrees of sophistication.

The hearings formed the basis for a detailed analysis of the problem of abusive lending practices in mortgage lending contained in a July 1998 report to the Congress by the Board and the Department of Housing and Urban Development (HUD) on possible reforms to TILA and the Real Estate Settlement Procedures Act regarding mortgage-related disclosures. The 1998 report is posted at the Board's website: *www.federalreserve.gov/boarddocs/press/general/1998*. Chapter 6 of the report suggested a multifaceted approach to curbing predatory lending practices, including some legislative action, stronger enforcement of current laws, and nonregulatory strategies such as community outreach efforts and consumer education and counseling. *See also* Chapter 2 at page 17, Chapter 7 at page 76, and Appendix D.

Many initiatives to address predatory lending have been undertaken. Several bills have been introduced in the Congress, and several states have enacted or are considering legislation or regulations. The Board convened a federal task force of ten agencies and offices (the five agencies supervising depository institutions, the Federal Housing Finance Board, the Office of Federal Housing Enterprises Oversight, the Federal Trade Commission, the Department of Justice, and HUD) to attempt to establish a coordinated approach to deterring abusive and predatory practices and to enforcing existing laws that address them. HUD and the Department of Treasury (''Treasury'') held five public forums on predatory lending this spring and issued a report in June 2000. The report contained legislative recommendations to the Congress and recommendations to the Board regarding the use of its regulatory authority to address predatory lending.

The Board held hearings last summer in Charlotte, Boston, Chicago, and San Francisco to consider approaches it might take in exercising regulatory authority under HOEPA. The hearings focused on expanding the scope of mortgage loans covered by HOEPA, prohibiting specific acts or practices, improving consumer disclosures, and educating consumers. In the notice announcing the hearings, the Board also solicited written comment on possible revisions to Regulation Z's HOEPA rules. 65 FR 45547, July 24, 2000 (hereinafter referred to as the July notice). The Board received approximately 450 comment letters. About two-thirds of the letters were general letters from consumers encouraging Board action to curb predatory lending. Of the letters that specifically addressed possible revisions under HOEPA, views representing the mortgage lending industry and consumer and community development interests were roughly even in numbers.

During the hearings and in the comment letters, most creditors and others involved in the mortgage lending industry opposed expanding the scope of mortgage loans covered by HOEPA. If the scope were to be broadened, however, many of these commenters preferred that the APR trigger be lowered but that the points and fees trigger remain unchanged. Creditors also urged the Board to act cautiously in crafting any new rules and stated that existing laws should be more vigorously enforced before additional regulation is considered. They expressed concern about the potential for reducing the availability of credit in the subprime market if more loans become subject to HOEPA and to additional restrictions.

Consumer representatives and community development organizations support revisions that would broaden HOEPA's scope. (Some believe that predatory lending is responsible for a substantial increase in foreclosures in certain communities.) They asked the Board to lower the APR trigger to the maximum extent possible, and to add a variety of costs to the points and fees tests, including lump-sum premiums for credit insurance and similar products, prepayment penalties, and lender-paid broker compensaion (yield spread premiums). They recommend that the Board ban certain acts or practices associated with predatory loans. They were particularly concerned about certain loan terms such as prepayment penalties and balloon payments, single-premium credit insurance, and ''loan flipping.'' To address concerns about creditors that extend credit based on homeowner's equity without regard to repayment ability, consumer representatives and others asked the Board to require that consumers' income be verified. Additionally, some commenters suggested imposing a maximum debt-to-income ratio for determining whether creditors appropriately considered a consumer's

repayment ability. Transcripts of the hearings can be accessed at *http://www.federalreserve.gov/community.htm.*

Although not specifically addressed in the Board's notice announcing the hearings on home-equity lending and possible revisions under HOEPA, commenters also recommended the following actions, among others: (1) Under the Board's Regulation C (Home Mortgage Disclosure, 12 CFR Part 203), require additional information for certain home loans to be collected; (2) under interagency rules implementing the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*, ensure that ''predatory loans'' by a financial institution or its affiliates cannot be used to demonstrate that the financial institution is meeting the credit needs of the community; and (3) under the Board's authority to monitor the activities of bank holding companies, examine nonbank subsidiaries that engage in subprime lending for compliance with consumer financial services and fair lending laws.

II. Summary of Proposal

The Board is proposing amendments to Regulation Z to address predatory lending and unfair practices in the home-equity market. Proposed revisions are issued pursuant to the Board's authority to adjust the APR trigger and add additional charges to the points and fees test. *See* 15 U.S.C. 1602(aa). Proposed revisions are also issued pursuant to the Board's authority under HOEPA to prohibit certain acts or practices affecting (1) mortgage loans if the Board finds the act or practice to be unfair, deceptive or designed to evade HOEPA, or (2) refinancings if the Board finds the act or practice to be associated with abusive lending or otherwise not in the interest of the borrower. 15 U.S.C. 1639(l)(2). Revisions are also proposed pursuant to section 105(a) of TILA to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a).

The proposed amendments would (1) extend the scope of mortgage loans subject to HOEPA's protections, (2) prohibit certain acts or practices, (3) strengthen HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability, and (4) enhance HOEPA disclosures received by consumers before closing, as follows.

Under the proposal, the APR trigger would be adjusted from 10 percentage points to 8 percentage points above the rate for Treasury securities having a comparable maturity, the maximum amount that the trigger may be lowered by the Board. The fee-based trigger would be adjusted to include premiums paid at closing for optional credit life and disability insurance and other credit protection products.

The proposed amendments also address some ''loan flipping'' within the first twelve months of a HOEPA loan by prohibiting the creditor or assignee (or an affiliate) that is holding the loan from refinancing it unless the refinancing is in the borrower's interest. The proposal would also prohibit creditors in the first five years of a zero interest rate or other low-cost loan from replacing that loan with a higher-rate loan, unless the refinancing is in the interest of the borrower. The proposed rule would define ''low-cost'' loans differently for fixed-rate and variable-rate transactions. For fixed-rate transactions, a low-cost loan is one that carries a rate that is two percentage points or more below the yield on Treasury securities with a comparable maturity. For variable-rate transactions, a low-cost loan is one where the current rate is at least two percentage points below the index or formula used by the creditor for making rate adjustments. This rule is designed primarily to protect low-cost home loans offered through mortgage assistance programs that give low- and moderate-income borrowers the opportunity for homeownership.

Creditors would also be prohibited from including ''payable on demand'' or ''call provisions'' in HOEPA loans. The proposal seeks to prevent evasion of HOEPA by prohibiting creditors from representing that a mortgage loan is an open-end credit line if it does not meet Regulation Z's definition for open-end credit. (HOEPA covers only closed-end credit transactions.) For example, a high-cost mortgage could not be structured as a home-secured line of credit to evade HOEPA if there is no reasonable expectation that repeat transactions will occur under a reusable line of credit.

The proposal would seek to strengthen HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability. A rebuttable presumption would be created that the creditor has engaged in a pattern or practice of making HOEPA loans based on homeowners' equity without regard to repayment ability, if a creditor does not document and verify consumers' repayment ability. Regarding disclosures, the proposal would revise the HOEPA disclosures to alert consumers in advance of loan closing that the total amount borrowed may be substantially higher than the amount requested due to the financing of insurance, points, and fees.

III. Section-by-Section Analysis of Proposed Rule

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(b) on the purpose of the regulation would be revised to reflect the addition of prohibited acts and practices in connection with credit secured by a consumer's dwelling. Section 226.1(d) on the organization of the regulation would be revised to reflect the restructuring of Subpart E (rules for certain home mortgage transactions).

Subpart C—Closed-end Credit

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

Under section 125 of TILA, consumers have the right to rescind certain home-secured loans for three business days after becoming obligated on the debt. The right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place their home at risk by offering it as security for credit.

If the required rescission notice or the ''material disclosures'' required by TILA are not delivered or are inaccurate, a consumer's right to rescind may extend beyond the three business days, for up to three years. For HOEPA-covered loans, the term ''material disclosures'' includes disclosures required to be given three days before consummation. Section 129(j) of TILA also provides that any mortgage that contains a provision prohibited by HOEPA is also deemed to be a failure to deliver material disclosures. The loan provisions prohibited by HOEPA are currently listed in § 226.32(d) of the regulation, and a reference to those provisions is included in footnote 48 to § 226.23(a)(3).

As discussed below, the Board is proposing to use its authority under HOEPA to prohibit certain acts or practices. The new prohibitions would affect the ability of creditors to include certain provisions in loans covered by HOEPA. These provisions would be contained in proposed § 226.34. Accordingly, the proposed rule would also amend footnote 48 to § 226.23(a)(3) to include a reference to § 226.34.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of Disclosures

31(c)(1)(i) Change in Terms

Section 226.31(c)(1) requires a three-day ''cooling off'' period between the time consumers are furnished with disclosures required under § 226.32 and the time the consumer becomes obligated under the loan. If the creditor changes any terms that make the disclosures inaccurate, new disclosures and another three-day cooling off period must be given.

Based on hearing testimony, it appears that some creditors offer credit insurance and other optional products at loan closing. If the consumer finances the purchase of such products and as a result the monthly payment differs from what was previously disclosed under § 226.32, the terms of the extension of credit have changed; redisclosure is required and a new three-day waiting period applies. Comment § 226.31(c)(1)(i)–2 would be added to clarify this redisclosure requirement. *See* discussion below concerning § 226.32(c)(3) on when optional items may be included in the regular payment disclosure.

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

HOEPA covers mortgage loans that meet one of the act's two ''high-cost'' triggers—a rate trigger and a points and fees trigger. Under the proposed rule, both triggers would be extended to cover more loans.

APR Trigger—Currently, a loan is covered by HOEPA if the APR exceeds by more than 10 percentage points the rate for Treasury securities with a comparable maturity. Section 103(aa) of TILA authorizes the Board to adjust the APR trigger by 2 percentage points from the current standard of 10 percentage points above Treasury securities with comparable maturities, upon a determination that the adjustment is consistent with the consumer protections against abusive lending contained in HOEPA and is warranted by the need for credit.

In the July notice, the Board invited comment on whether lowering the APR trigger to 8 percentage points would be effective in furthering the purposes of HOEPA. Comment was also solicited on whether such action would have any significant impact on the availability or cost of subprime mortgage loans.

Consumer representatives and community development organizations recommended lowering the APR trigger to 8 percent to extend HOEPA's protections to a broader class of transactions. Many stated that under the current 10 percent test, few subprime loans are covered by HOEPA. They believed that lowering the APR trigger by 2 percentage points would not affect credit availability. A number of these commenters suggested even further adjustments by the Congress.

Creditors that make subprime loans were generally opposed to broadening HOEPA's scope. Some believed that lowering the APR trigger will not curb the actions of unscrupulous lenders. Some stated that if the Board were to broaden the category of loans subject to HOEPA, lowering the APR trigger would be more consistent with the purpose of HOEPA than including additional costs in the points and fees test.

Based on an analysis of hearing testimony, written comments received, and other information, and pursuant to its authority under section 103(aa) of TILA, the Board is proposing to revise § 226.32(a)(1)(i) to lower the APR trigger to 8 percentage points. With this change, based on current rates for Treasury securities, loans with an APR of approximately 14 percent or higher would be subject to HOEPA.

Data are not available on the number of home-equity loans currently subject to HOEPA, or the number of loans that would be covered if the APR trigger were lowered. Data compiled by the Office of Thrift Supervision reflects that based on interest rate alone, if the HOEPA rate trigger were lowered by 2 percentage points, HOEPA's coverage would expand from approximately 1 percent to 5 percent of subprime mortgage loans. These numbers omit the other costs included in the APR trigger, such as points and brokers fees; if those costs were included the number of HOEPA-covered loans would be larger.

If HOEPA's rate trigger were lowered, more consumers with high-cost loans would receive HOEPA disclosures and would be covered by HOEPA's prohibitions against loan terms such as non-amortizing payment schedules, balloon payments on short-term loans, or interest rates that increase upon default. More loans would be subject to the rule against unaffordable lending. A creditor's ability to impose prepayment penalties would also be restricted in most cases. In addition, more high-cost loans would be subject to HOEPA's strict liability rule that holds purchasers and assignees, as well as creditors, liable for any violations of law.

Some subprime lenders do not make HOEPA loans due to their concerns about compliance burdens, potential liability, and reputational risks. They believe that expanding HOEPA's coverage will reduce credit availability. The extent to which lowering the HOEPA APR trigger may affect the availability of credit is difficult to ascertain. Some creditors who do not make HOEPA loans may withdraw from making loans in the range of rates that would be covered by the expanded triggers. Other creditors may fill any void left by creditors that choose not to make HOEPA loans. And others may have the flexibility to lower rates or fees for some loans to avoid HOEPA's coverage.

The subprime lending market has grown substantially and has increased the availability of credit to borrowers having less-than-perfect credit histories and other consumers who are underserved by prime lenders. A borrower does not benefit from this expanded access to credit if the credit is offered on unfair terms or involves predatory practices. Because consumers who obtain subprime mortgage loans have fewer credit options than other borrowers, or because they perceive that they have fewer options, they may be more vulnerable to unscrupulous lenders or brokers. The proposed revisions are intended to ensure that the need for credit by subprime borrowers will be fulfilled more often by loans that are subject to HOEPA's protections against predatory practices. To avoid coverage by the HOEPA rules, some creditors may choose not to make loans covered by the revised rate triggers but there is no evidence to date that the impact on credit availability would be significant.

APR trigger based on lien status—When a consumer seeks a loan to consolidate debts or finance home repairs, some creditors may require consumers to borrow additional funds to pay off the existing first mortgage as a condition of providing the loan. This ensures that the creditor will be the senior lien-holder, but also will increase, perhaps significantly, the points and fees paid for the new loan. In addition, the existing first mortgage may have been at a lower rate. Some commenters, including creditors and consumer groups, suggested a two-tiered APR trigger, to encourage creditors to offer subordinate-lien mortgages rather than to refinance existing mortgages to obtain a first-lien position. To illustrate, the APR trigger for first-lien mortgages could be lowered to 8 percentage points above Treasury securities with comparable maturities, and the APR trigger for subordinate-lien mortgages could remain unchanged at 10 percentage points. The Board requests

comments on this approach, including the benefits and compliance burdens associated with this approach to adjusting the APR trigger.

32(b) Definition

Points and fees test—The fee-based trigger is met if the points and fees payable by the consumer at or before loan closing exceed the greater of 8 percent of the total loan amount or $451 ($465 for 2001). Except for interest, ''points and fees'' cover all finance charges (including brokers' fees). The act specifically excludes reasonable closing costs that are paid to unaffiliated third parties. HOEPA also authorizes the Board to add ''such other charges'' to the points and fees test as the Board deems appropriate. The proposed rule would expand the points and fees test to include amounts paid at or before closing for optional credit life, accident, health, or loss-of-income insurance and other credit-protection products such as debt-cancellation coverage.

The Board requested comment on the merits of including the following fees in the points and fees test: (1) Lump-sum premiums for optional credit life insurance or similar products collected at closing; (2) prepayment penalties (assessed on the original loan) when the loan is refinanced with the same creditor or an affiliate; and (3) points paid by the consumer for the existing loan when the same creditor (or an affiliate) refinances the loan within a specified time period. The Board also solicited comment on whether a better approach would be to recommend a statutory amendment that would include all closing costs in the points and fees test.

Premiums for credit insurance, disability insurance, and similar products—Concerns have been raised about high-pressure sales tactics associated with single-premium credit life insurance and ''insurance packing,'' where creditors automatically include the insurance in the loan amount without the consumer's request. As a result, consumers may perceive that the insurance is a required part of the loan. Consumer advocates assert that because these premiums are excluded from the finance charge (and thus excluded from HOEPA's triggers), predatory lenders may avoid HOEPA coverage by ''packing'' loans with high-priced credit insurance that represents a significant source of fee income, in lieu of charging fees that would be included under the current HOEPA trigger.

On the other hand, industry commenters have argued that optional credit insurance should not be considered a cost of the loan, and therefore should not be included in the HOEPA fee trigger. Because the cost of credit insurance is significant, some of these commenters assert that many mortgage loans with single-premium credit insurance could become HOEPA loans, regardless of the interest rate or points charged on the loan. They noted that creditors might cease offering single-premium credit insurance to avoid HOEPA's coverage.

To the extent that some creditors choose not to offer single-premium policies, consumer advocates note that credit insurance could be made available through other vehicles—for example, policies that collect premiums monthly based on the outstanding loan balance. Industry commenters responded that some borrowers find it more affordable to finance a single-premium policy over the full loan term rather than paying premiums monthly during the shorter term of the insurance policy, which is typically 60 months or less.

Section 103(aa) of TILA defines ''points and fees'' for purposes of HOEPA to include all items included in the finance charge except interest or the time-price differential. Under section 106 of TILA premiums for optional credit insurance are treated as finance charges, unless certain disclosures are provided to consumers. The Board may also include charges other than finance charges in HOEPA's fee-based trigger, if it determines that their inclusion would be appropriate. The legislative history of HOEPA specifically suggests that the Board might consider including the cost of credit insurance premiums in the HOEPA calculation.

The Board believes that including optional single-premium insurance and other credit protection products in the HOEPA points and fees trigger is appropriate when the amounts are paid by the consumer at or before closing. The creditor or the credit account is the beneficiary and the cost of the insurance may represent a significant cost of the credit transaction. In addition, creditors receive significant commissions for selling credit insurance. Moreover, including optional credit insurance and similar products in the points and fees test would prevent a creditor from evading HOEPA by packing a loan with such products in lieu of charging fees that would be included under the current HOEPA trigger.

Section 226.32(b)(1) would be revised to include in the points and fees test, the cost of premiums or other charges for credit life, accident, health, or loss-of-income insurance, debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law), or similar products paid by a borrower at or before closing. (Premiums paid for required credit insurance policies are considered finance charges and are already included in the points and fees trigger.) Under the proposal, premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment. Proposed comment 32(b)(1)(iv)–1 contains this guidance.

A mortgage loan is covered by HOEPA if the ''points and fees'' exceed 8 percent of the ''total loan amount.'' The total loan amount is based on the ''amount financed'' as provided in 226.18(b). Comment 32(a)(1)(ii)–1 discusses the calculation of the total loan amount. The comment would be revised to illustrate that premiums for credit life, accident, health, loss-of-income, debt cancellation coverage, or similar products that are financed by the creditor must be deducted from the amount financed in calculating the total loan amount.

Conditional inclusion of insurance and other credit protection products—Comment is solicited on whether exclusion of the optional premiums from the points and fees test would be warranted under some circumstances. Charges for optional insurance and similar products are finance charges under the TILA unless certain disclosures are provided to consumers. Would a similar approach be appropriate in connection with the points and fees trigger under HOEPA? For example, credit insurance or debt protection coverage might be excluded from the points and fees test based on the consumer's ability to cancel the coverage and obtain a full refund, where the consumer is also provided with adequate information about their rights after the loan closing.

Additional data—The Board seeks information about any further studies or data pertaining to subprime lending or HOEPA loans that would be useful in determining the effect of the proposal adjusting the HOEPA rate and fee triggers. Other data or studies relevant to the proposal, about subprime lending generally, and HOEPA loans in particular, are also requested.

Other fees—The Board is not proposing to include any other charges in the points and fees test at this time. Some commenters supported the inclusion of lender paid broker compensation (yield spread premiums) which are paid indirectly by the borrower in the form of a higher interest rate. It is not clear that an amount paid

over the life of the loan and included in HOEPA's APR trigger should also be included in the points and fees trigger as an amount paid at or before closing. Consumer representatives and others believed that prepayment penalties and points paid on an existing loan should be included in the points and fees test when the loan is refinanced by the same creditor or an affiliate, to expand HOEPA to more transactions. Many industry representatives opposed this approach. It is not clear that it is appropriate to include as part of a new loan, for purposes of the HOEPA fee trigger, fees paid in connection with an earlier transaction.

Views were mixed on whether the Board should recommend a statutory amendment to TILA that would include all closing costs in the points and fees test. Some commenters generally supported including closing costs typically charged by third parties; others believed that creditors may not be aware of costs charged to consumers by third parties and therefore should not be held accountable for including such costs in the points and fees calculation. One trade association representing creditors supported the recommendation as a part of any legislative reformation of existing consumer protection laws affecting mortgage lending.

32(c) Disclosures

Section 129(a) of TILA requires creditors offering HOEPA loans to provide abbreviated disclosures to consumers at least three days before the loan is closed, in addition to the disclosures generally required by TILA at or before closing. The HOEPA disclosures inform consumers that they are not obligated to complete the transaction and could lose their home if they obtain the loan and fail to make payments. The HOEPA disclosures also include a few key cost disclosures, such as the APR and the monthly payment (including the maximum payment for variable-rate loans and any balloon payment).

In the July notice, the Board requested comment on whether these disclosures could be improved. The Board referred to the Board and HUD's 1998 report to the Congress, where the agencies recommended adding references to the availability of credit counseling and requiring the consumer's monthly income to be stated in close proximity to the consumer's monthly payment. The Board asked specifically about the effect of adding to the HOEPA disclosures the total amount borrowed, to alert consumers to the fact that additional costs may have been included in the loan amount.

Creditors and consumer representatives question the benefit of requiring additional HOEPA disclosures to combat predatory lending. In addition, consumer representatives stated their preference for the Board to use its rulewriting authority to prohibit specific acts associated with predatory lending rather than to require additional disclosures. Industry commenters expressed concern about additional disclosures that might increase compliance costs without a commensurate benefit to consumers.

The Board believes, however, that an additional disclosure might be in the interest of borrowers. Pursuant to its authority under section 129(l)(2)(B) of TILA, the Board is proposing to add a disclosure for refinancings subject to HOEPA in § 226.32(c)(5).

32(c)(3) Regular Payment

Comment 32(c)(3)–1 would be revised for clarity. The rule allows creditors to include voluntary items in the regular payment disclosed under § 226.32 only if the consumer has previously agreed to such items. Comment is solicited on whether consumers should be required to request or affirmatively agree to purchase voluntary items in writing, to aid in enforcing the rule. Testimony and comments suggest that some consumers do not agree to the insurance in advance of closing although the HOEPA disclosures provided in advance of closing may already include insurance premiums in the monthly payment.

Section 226.32(c)(3) requires creditors to disclose to consumers the amount of the regular monthly (or other periodic) payment. Comment 32(c)(3)–2 requires creditors to disclose any balloon payment along with the regular periodic payment. Under the proposal, the disclosure requirement for the amount of the balloon payment would be moved from the commentary to the regulation, to aid in compliance. Also, Model Sample H–16, which illustrates the disclosures required under § 226.32(c), would be revised to include a model clause on balloon payments.

32(c)(5) Amount Borrowed

Under the proposal, § 226.32(c)(5) would be added to require disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note. Adding the total amount borrowed is intended to alert consumers in advance of the loan closing that the amount of the loan may be substantially higher than requested due to the financing of points, fees, and insurance. Consumers and consumer representatives note that consumers often seek a modest loan amount for medical or home improvement costs, only to discover at closing (or thereafter) that the note amount is substantially higher, due to fees and insurance premiums that are financed along with the requested loan amount. This disclosure may help some consumers avoid entering into unaffordable loans.

Creditors must provide the disclosures required by § 226.32(c) if, after giving the disclosures to the consumer and before consummation, the creditor changes any terms that make the disclosure inaccurate. § 226.31(c)(1). The Board requests comment on whether it would be appropriate to provide for a tolerance for insignificant changes to the amount borrowed, and if so, what is a suitable margin.

Counseling. Both consumer and creditor commenters acknowledged the benefits of pre-loan counseling as a means to counteract predatory lending. There was uniform concern, however, about requiring a referral to counseling for HOEPA loans because the actual availability of local counselors may be uncertain. The Board requests comment on whether a generic disclosure advising consumers to seek independent advice might encourage borrowers to seek credit counseling.

32(d) Limitations

32(d)(1) Balloon Payment

Section 129(e) of TILA prohibits balloon payments for loans covered by § 226.32 that have terms of less than five years. In the July notice, the Board noted that lenders that price their loans just below HOEPA's triggers might include balloon payments that force consumers to refinance the loan and pay additional points and fees. The Board requested comment on any restrictions or additional disclosures that might be appropriate in connection with balloon payments in order to prevent abusive practices.

Consumer representatives and others asked the Board to ban balloon payments for all HOEPA loans. They contend that consumers are just as unlikely to repay or refinance the loan on more affordable terms after five years than they are after two or three years. Creditors were generally opposed to adding restrictions for balloon payments beyond those currently in HOEPA. They believe that balloon notes can be as beneficial to consumers obtaining HOEPA loans, as they may be for other borrowers. Because HOEPA limits the prohibition on balloon payments to loans shorter than five years, the Board does not believe it is appropriate to impose restrictions on longer term loans

without evidence of a particular problem related to longer term balloon notes. The Board proposes to provide additional guidance on disclosing balloon payments where they are permitted under HOEPA. *See* § 226.32(c)(3) and Model Sample H–16.

32(d)(8) Due-On-Demand Clause

Balloon notes in loans shorter than five years are prohibited by HOEPA to prevent a creditor from forcing a consumer to refinance a loan and pay additional points and fees. The same concerns would be raised if a creditor could force the consumer to refinance by reserving the right to call the loan at any time and then demanding payment of the entire outstanding balance. Pursuant to the Board's authority under section 129(l)(2)(A), ''payable on demand'' or ''call'' provisions for HOEPA loans would be prohibited under § 226.32(d)(8), unless the clause is exercised in connection with a consumer's default. Although these terms currently do not appear to be widely used in HOEPA loans, demand clauses raise the same concerns as balloon notes. Moreover, TILA has a similar prohibition for home-secured lines of credit. Proposed commentary to § 226.32(d)(8) would provide guidance similar to the guidance to creditors offering home-equity lines of credit.

The Board requested comment in the July notice on the merits of prohibiting ''due on demand'' clauses for loans covered by § 226.32 unless such a clause is exercised in connection with a consumer's default. Creditors and consumer representatives that commented generally supported such a prohibition, although some creditors suggested that, similar to balloon notes, the prohibition be limited to loans with terms of less than five years.

Section 226.34—Prohibited Acts or Practices in Connection With Credit Secured by a Consumer's Dwelling

Section 129(l) of TILA authorizes the Board to prohibit specific acts or practices to curb abusive lending practices. The act provides that the Board shall prohibit practices: (1) In connection with *all mortgage loans*, if the Board finds the practice to be unfair, deceptive, or designed to evade HOEPA; and (2) in connection with *refinancings of mortgage loans*, if the Board finds that the practice is associated with abusive lending practices or otherwise not in the interest of the borrower. The Board has not previously exercised this authority.

The July notice requested comment on specific approaches to deal with predatory lending practices, both regulatory and legislative, and whether any new requirements or prohibitions should apply to all mortgage transactions, only to refinancings, or only to HOEPA-covered refinancings. Specific questions were posed about credit insurance, unaffordable lending, balloon payments, consolidation loans, prepayment penalties, foreclosure notices, misrepresentation about a borrower's qualifications, reporting borrowers' payment history, credit counseling, and disclosures. Consumer representatives, community organizations, and others offered numerous recommendations. Industry commenters generally opposed any new rules based on the view that better enforcement of existing law would be sufficient to address concerns about predatory lending.

HUD and Treasury held five public forums on predatory lending this spring and issued a report in June 2000. The report contained legislative recommendations to the Congress and recommendations to the Board regarding the use of its regulatory authority to address predatory lending. HUD and Treasury recommended rules to address ''loan flipping'' and fraudulent acts or practices, unaffordable lending, and the sale of single-premium credit insurance products.

Based on the written comments received, testimony provided at Board hearings on home-equity lending, and other information, the Board proposes to prohibit certain acts or practices that are deemed to be unfair, deceptive, designed to evade the provisions of section 129 of the TILA, associated with abusive lending practices, or otherwise not in the interest of the borrower in connection with mortgage loans, as described below. The rules are intended to target unfair or abusive lending practices without unduly interfering with the flow of credit, creating unnecessary credit burden, or narrowing consumers' options in legitimate transactions.

Organization of § 226.34. The proposed rule creates a new § 226.34 which contains prohibitions against certain acts or practices in connection with credit secured by a consumer's dwelling. This section would include the rules currently contained in § 226.32(e).

34(a) Prohibited Acts or Practices for Loans Subject to § 226.32

34(a)(1) Home Improvement Contracts

Section 226.32(e)(2) regarding home-improvement contracts would be renumbered as § 226.34(a)(1) without substantive change.

34(a)(2) Notice to Assignee

Section 226.32 (e)(3) regarding assignee liability for claims and defenses consumers may have in connection with HOEPA loans would be renumbered as § 226.34(a)(2).

Proposed comment 34(a)(2)–3 would be added to clarify the statutory provision on the liability of purchasers or other assignees of HOEPA loans. Section 131 of TILA provides that, with limited exceptions, purchasers or other assignees of HOEPA loans are subject to all claims and defenses with respect to a mortgage that the consumer could assert against the creditor. The comment would clarify that the phrase ''all claims and defenses'' is not limited to violations of TILA or HOEPA. This interpretation is based on the legislative history. *See* Conference Report, Joint Statement of Conference Committee, H. Rep. No. 103–652, at 22 (Aug. 2, 1994).

34(a)(3) Refinancings Within Twelve-Month Period

''Loan flipping'' refers to the practice by brokers and creditors of frequently refinancing home-secured loans to generate additional fee income even though the refinancing is not in the borrower's interest. Loan flipping is among the most flagrant of lending abuses. Victims tend to be borrowers who are having difficulty repaying a high-cost loan. The creditor holding the loan promises to refinance the loan on more affordable loan terms. The creditor relies on the consumer's remaining home equity to support the new, larger loan and to finance additional fees, sometimes without regard to the consumer's ability to make the new scheduled payments. These loans typically provide little benefit to the borrower because the loan amount increases mostly to cover fees and there may be no significant reduction in the interest rate. As a result, the monthly payment may increase, making the loan even more unaffordable.

In assessing possible approaches to address loan flipping, the Board has considered rules that would (1) be effective in curbing detrimental refinancings without limiting consumer choice in legitimate credit transactions, and (2) provide clear guidance to creditors on what acts or practices are prohibited.

The Board has received many suggestions on how it might address loan flipping. Those suggestions generally fall into two categories: (1) Limiting fees to a specified percentage of the total loan amount, requiring that

fees be charged solely on any additional funds being borrowed, or generally restricting fees on refinancings; and (2) prohibiting refinancings that do not provide a ''tangible benefit'' to borrowers. While loan flipping occurs in both HOEPA and non-HOEPA loans, the Board believes that any rule restricting refinancings to address loan flipping could be overly broad if it is not limited to HOEPA loans.

Limiting the amount of fees charged on a refinancing would reduce the economic incentive for creditors to flip loans, and thus would be the most direct way to curb loan flipping. While the Board has broad authority under HOEPA to prohibit specific acts and practices for all mortgage loans, it is questionable whether this authority includes restricting loan fees by capping them. Moreover, there are no clear standards for determining an appropriate level of fees. A rule permitting creditors to charge fees only on additional funds being borrowed could be effective only if the amount of fees is also capped, because creditors could impose fees that are excessive in relation to the new amount borrowed.

A rule prohibiting outright the imposition of upfront fees on a refinancing would remove the economic incentive for loan flipping (as the loan costs would be built into the interest rate and there would be no immediate benefit to the broker or creditor). But such a rule could unduly limit consumer choice in legitimate transactions. Some consumers may prefer to pay points to buy down the rate. Others may not qualify for monthly payments at a higher interest rate. Moreover, a ban on all up front fees, in conjunction with the current HOEPA restriction on prepayment penalties could prevent creditors from recovering their origination costs if the loan is paid off early; creditors would have to charge interest rates that are adequate to cover potential losses due to prepayments.

Under the second approach, setting a ''tangible benefit'' test, loan flipping would be addressed by prohibiting refinancings of HOEPA loans that do not provide benefit to the borrower or are not in the borrower's interest. This approach seeks to ensure that the borrower obtains benefits from the refinancing that would justify the additional costs. Because the rule is subjective, however, it does not provide creditors with clear guidance on what transactions are permitted. Without adequate guidance, it would be up to the courts to construe what constitutes a sufficient benefit on a case-by-case basis. This could affect the willingness of some creditors to refinance HOEPA loans.

Pursuant to its authority under § 129(l)(2)(B), the Board is proposing a rule based on a narrower benefits test that would only apply for a twelve month period. A creditor or assignee (or an affiliate) holding a HOEPA loan would be prohibited from refinancing it within the first twelve months unless the refinancing is in the borrower's interest. Anecdotal evidence suggests that creditors frequently flip loans by pressuring their existing customers who may be having difficulty making payments on their current mortgage. This more narrowly tailored rule should prevent abuses in the most egregious cases, where creditors or brokers flip loans shortly after loan consummation. Even under this approach, there is some uncertainty about what constitutes a benefit; however, the advantage of the rule in preventing loan flipping in the clearest cases of abuse seems to outweigh the effect of creating some uncertainty in marginal cases. The determination of whether or not a benefit exists would be based on the totality of the circumstances. For example, consideration should be given to the amount of any new funds advanced in comparison to the total loan charges on the refinancing (which may be based predominately on the pre-existing loan balance). Proposed comment 34(a)(3)–1 would provide guidance on this standard.

The proposed rule in § 226.34(a)(3) would not prevent a consumer from seeking a refinancing from another lender. Creditors would also be prohibited from engaging in acts or practices designed to evade the rule. For example, a creditor that arranged refinancings of its own loans with an unaffiliated creditor would be deemed to be seeking to evade the rule. Similarly, a creditor would be deemed to be seeking to evade the rule if the creditor modified the existing loan agreement (but did not replace the existing loan with the new loan) and charged a fee.

34(a)(4) Repayment Ability

34(a)(4)(i)

Under section 129(h) of TILA, a creditor may not engage in a pattern or practice of making HOEPA loans based on the equity in the borrower's home without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment status. The rule currently in § 226.32(e)(1) would be moved to 226.34(a)(4)(i) and revised to parallel the statutory language.

Comment 32(e)(1)–1 on determining repayment ability would be renumbered as comment 34(a)(4)(i)–1, and modified to address proposed documentation and verification requirements below.

Pattern or Practice—Section 129(h) of TILA does not define ''pattern or practice,'' nor does the legislative history provide any guidance as to how the phrase should be applied. In the July notice, the Board solicited comment on whether additional interpretive guidance on the ''pattern or practice'' requirement would be useful, or whether case-by-case determinations are more appropriate. Comment was also solicited on whether, if additional guidance would be useful, what elements of the requirement should the guidance address.

Some commenters believe guidance is not needed and a case-by-case approach is sufficient. Industry commenters requested that the pattern and practice standard be quantified. Consumer representatives suggested that the Board adopt the standard applied in cases under civil rights and fair lending laws.

Proposed comment 34(a)(4)(i)–2 provides that determining whether a pattern or practice exists depends on the totality of the circumstances and cites various statutes that may be helpful in analyzing factors that are relevant to a pattern or practice determination. The proposed comment does not identify individual factors raised in the case law, given the fact-specific nature of a pattern or practice determination.

Discounted Introductory Rates—Concern has been raised about creditors determining a consumer's repayment ability based on low introductory rates offered under some variable-rate programs. Comment 34(a)(4)(i)–3 would be added to provide that in transactions where the creditor sets the initial interest rate and the rate is later adjusted (whether fixed or later determined by an index or formula), in considering consumers' repayment ability, the creditor must consider increases to the consumer's payments assuming the maximum possible increases in rates in the shortest possible time frame.

34(a)(4)(ii)

Currently compliance with the prohibition against unaffordable lending is difficult to enforce because creditors may not be able to show how they considered the consumer's ability to repay. In addition, there have been reports of creditors relying on inaccurate information provided by unscrupulous loan brokers.

In the July notice, the Board invited comment on what standards the Board might adopt for determining whether a creditor has considered the consumer's ability to repay. Some commenters suggested that creditors be required to document and verify the basis for the creditor's consideration of the consumers' repayment ability. Many creditors stated that they routinely document and verify financial information. Commenters also suggested that creditors be prohibited from extending credit where the borrower's monthly debt-to-income ratio exceeds 50 percent, except perhaps in the case of high-income borrowers. However, there is no clear standard for an appropriate debt-to-income ratio, which may vary depending on a particular borrower's circumstance.

Proposed § 226.34(a)(4)(ii) would be added to require that creditors generally document and verify consumers' current or expected income, current obligations, and employment to the extent applicable. If a creditor engages in a pattern or practice of making loans without documenting and verifying consumers' repayment ability, there would be a presumption that the creditor has violated the rule. For borrowers who are self-employed, the verification rules would be more flexible. A creditor may rely on tax returns or any other source that provides the creditor with a reasonable basis for believing that the income exists and will support the loan. Proposed comment 34(a)(4)(ii)–1 contains this guidance.

34(b) Prohibited Acts or Practices for Dwelling-Secured Loans

34(b)(1) Limitations on Refinancing Certain Low-Rate Loans

When a consumer seeks a second mortgage to consolidate debts or to finance home improvements, some creditors also require the existing first mortgage to be paid off as a condition of providing the new funds. This ensures that the creditor will be the senior lien-holder, but may increase significantly the points and fees paid for the new loan. In the July notice of the hearings, the Board solicited comment on whether regulatory action is appropriate to protect consumers from abuses and, if so, what type of action could be taken without restricting credit in legitimate transactions?

Industry commenters stated that there is nothing inherently abusive about refinancing an existing first-lien mortgage loan when the creditor provides new funds, for example, to consolidate debt. To address any concerns, one trade association suggested requiring a disclosure reminding borrowers that funds are being borrowed to pay off the prior loan and that points and fees are charged on the total amount of the new financing. In response to creditors who will only make loans if they have first-lien priority, they noted that the mortgagee will often allow subordination of their security interest to lenders when the borrower seeks a second loan.

Hearing testimony reflects abuses in connection with the refinancing of loans that were made through mortgage assistance programs designed to give low- or moderate-income borrowers the opportunity for homeownership. Some of these homeowners who have unsecured debts have been targeted by unscrupulous lenders who consolidate the debts and replace the low-cost first-lien mortgage with a substantially higher cost loan. The replacement loans are often unaffordable, may involve ''loan flipping'' and, as a result, homeowners have lost their homes. In some cases, the low-cost loan is replaced even though the first-lien holder may be willing to subordinate its security interest. Where subordination does not occur, it might be more beneficial for the borrower to keep the original low-rate mortgage loan and obtain a second mortgage, if that option is available.

Pursuant to the Board's authority under section 129(l)(2)(B), to protect against abusive refinancings, the Board is proposing a rule that would prohibit creditors in the first five years of a zero interest rate or other low-cost loan from replacing that loan with a higher-rate loan, unless the refinancing is in the interest of the borrower. The proposed rule would define ''low-cost'' loans differently for fixed-rate and variable-rate transactions. For fixed-rate transactions, a low cost loan is one that carries an interest rate that is two percentage points or more below the yield on Treasury securities with a comparable maturity. For variable-rate transactions, a low-cost loan is one where the current interest rate is at least two percentage points below the index or formula used by the creditor for making rate adjustments. This rule, contained in § 226.34(b)(1), is designed primarily to protect low-cost, home loans offered through mortgage assistance programs that give low- and moderate-income borrowers the opportunity for homeownership. Proposed comment 34(b)(1)–1 would be added to provide that creditors may rely on a statement by the borrower regarding the current rate of interest on their existing loan.

34(b)(2) Open-end Credit

HOEPA covers only closed-end loans. If a consumer obtains a home-secured line of credit (''open-end'') with an APR or points and fees above HOEPA's rate and fee triggers, the loan is not subject to HOEPA's disclosure requirements or limitations. In the July notice, the Board solicited comment on the extent to which creditors may be using open-end credit lines to evade HOEPA. The FTC has brought two enforcement actions to prevent creditors from evading HOEPA in this manner. *See FTC* v. *CLS Fin. Services, Inc.,* No. C99–1215Z (W.D. Wash. July 30, 1999); *FTC* v. *Wasatch Credit Corp.,* No. 2–99CV579G (D. Utah Aug. 3, 1999).

Consumer representatives and others generally believe that HOEPA should cover home-secured lines of credit (''open-end credit''). If open-end credit is not covered under HOEPA, they support explicit rules to ban the use of open-end credit to evade HOEPA. Some consumer representatives at the Board's hearings reported cases where consumers applied for a closed-end home-secured loan but learned for the first time at closing that the loan documents were structured as open-end credit, with credit limits far in excess of the amount requested. Some consumer advocates have reported cases where creditors have documented loans as open-end ''revolving'' credit, even if there was no expectation of repeat transactions under a reusable line of credit. Some of the cases reported by consumer advocates involved loans with high rates and fees that exceeded HOEPA's price triggers for closed-end loans.

Industry commenters opposed any rules for open-end credit. They believe there is insufficient evidence that creditors are using open-end credit to evade HOEPA. Some commenters stated that additional rules are unnecessary because it is currently a violation of TILA to provide disclosures for an open-end credit plan if the legal obligation does not meet the criteria for open-end credit.

Where a loan is documented as open-end credit but the features and terms demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including HOEPA if the rate or fee trigger is met. Pursuant to its authority under section 129(2)(A), under § 226.34(b)(2), the Board is proposing a rule to clarify this point and apply HOEPA's remedies to such cases.

The Board is also soliciting comment on the need and feasibility of rules to prevent evasions of HOEPA in other

circumstances. For example, should there be a rebuttable presumption that a creditor intended to evade HOEPA, in violation of the law, if a consumer applies for a closed-end home-secured loan but receives an open-end line of credit that is priced above HOEPA's triggers.

Appendix H to Part 226—Closed-end Model Forms and Clauses

Model Form H–16—Mortgage Sample illustrates the disclosures required by 226.32(c), which must be provided to consumers at least three days before becoming obligated on a mortgage transaction subject to § 226.32. Under the proposal, Model Form H–16 would be amended to illustrate the additional disclosures required for refinancings proposed at § 226.32(c)(5). The Sample also includes an illustration for loans with balloon payments. A new comment app. H–20 would clarify that although the additional proposed disclosure is required for refinancings that are subject to '' 226.32, creditors may, at their option, include this disclosure for any loan subject to that section.

Other Matters

Credit Insurance—Some commenters urged the Board to (1) prohibit the financing of single premium credit insurance, or (2) delay the sale of credit insurance until after the loan is closed. The regulation of insurance has historically been a matter of state law. Under the McCarran-Ferguson Act, 15 U.S.C. 1012, unless a federal statute specifically relates to the business of insurance, it may not be construed to invalidate, impair, or supercede any state law enacted for the purpose of regulating the business of insurance. It is not clear the extent to which rules issued by the Board under HOEPA that seek to prohibit or regulate the sale of single premium credit insurance would be consistent with that standard.

In its July 1998 report to Congress on mortgage disclosure reform, the Board and HUD suggested that Congress consider whether adequate consumer protections currently exist. The report discussed possible approaches to regulating the sales of credit insurance in connection with mortgage loans to prevent abusive practices. The Congress might consider regulating the use of single-premium credit insurance policies in connection with HOEPA loans or other transactions.

Foreclosure Notice—State law and local practice generally govern the procedures followed for foreclosures. Most states require direct notice to the consumer but, in a few states, notice by publication is legally sufficient. Even when consumers do receive direct notice, they may not be aware of their legal options.

In the July notice, the Board solicited comment on whether it should set minimum federal standards for foreclosure involving a consumer's primary dwelling. Some commenters supported minimum foreclosure standards, citing statistics showing an increase in foreclosures of subprime loans. Some consumer representatives believe that consumers should be provided with a substantive right to cure the foreclosure. Industry commenters believed federal standards are unnecessary. Other commenters stated that state law generally governs property and foreclosure law, and that the Congress is the better forum to establish a federal minimum standard for notices.

The Board is not proposing rules governing foreclosure notices at this time. The process of determining ownership rights in real property is historically left to the states. It is unclear whether HOEPA was intended to effect a change in the relationship between state and federal law. HOEPA's legislative history does not directly address the issue of foreclosure.

In a 1998 joint report to Congress on mortgage disclosure reform, the Board and HUD recommended that Congress consider the adoption of certain minimum standards for the notice creditors must provide consumers prior to a home foreclosure. The goal would be to establish procedures that avoid unwarranted foreclosures by maximizing consumers' opportunities to cure a delinquency or arrange other financing. These procedures are especially important where a consumer who is overburdened by an abusive loan can qualify for financing on less onerous terms. *See* 1998 Joint Report, Chapter 6, at page 68.

Disclosures about Payment History—The July notice solicited comment on whether creditors that choose not to report borrowers' positive payment history should be required to disclose that fact. Consumer representatives that commented on the issue suggested that the Board should require lenders to report a borrower's payment history to a nationally recognized credit bureau, or, at a minimum, require lenders to disclose whether they do or do not report borrowers' payment histories to credit bureaus. Industry representatives commenting on the issue noted that they currently report payment histories; these commenters generally supported a rule requiring reports of positive payment histories, although some noted that legislative action is necessary to effect such a requirement.

The Fair Credit Reporting Act (FCRA) sets standards for the collection, communication and use of information bearing on, among other things, consumers' creditworthiness, credit standing, and credit capacity. 15 U.S.C. 1681 *et seq.* The Act does not, however, require creditors to report any information. The FCRA also contains detailed requirements for the information that consumers are entitled to receive regarding creditors use of consumer reports. Because the Congress has regulated this area in detailed fashion under the FCRA, the Board believes that adding any rules governing the reporting of credit information is a policy matter better left to the Congress.

Prepayment Penalties—For HOEPA loans, creditors' use of prepayment penalties is restricted during the first five years of a loan, and is prohibited after that. The July notice solicited comment on creditors' use of prepayment penalties, and whether it would be feasible to limit the use of prepayment penalties to transactions where consumers receive, in return, a benefit in the form of lower up-front costs or lower interest rates. In some cases, creditors impose prepayment penalties to ensure a minimum return on the transaction if loans are prepaid earlier than expected. In other cases, however, the penalty might be used only to deter the customer from refinancing the loan on more favorable terms. Because of the inherent difficulty in establishing a rule that addresses abusive practices without limiting consumer options in legitimate transactions, the Board is not proposing additional rules on prepayment penalties at this time.

Mandatory Arbitration—Consumer representatives asked the Board to prohibit mandatory arbitration clauses for all HOEPA loans. These commenters maintain that mandatory arbitration clauses often contain provisions that limit the consumer's remedies, particularly with respect to punitive damages and class actions, or that require the consumer to bear the filing fees and other costs of arbitration. In light of the Federal Arbitration Act (FAA), there is a substantial federal question raised by these recommendations. In a recent decision, the Supreme Court reaffirmed that under the FAA, federal statutory claims may be appropriately resolved through arbitration. *See Green Tree Financial Corp.* v. *Randolph,* No. 99–1235, 2000 U.S. LEXIS 8279 (Dec. 11, 2000).

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1090, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. The proposed amendments would: (1) Extend the protections of HOEPA to more loans; (2) prohibit certain acts or practices, to address some ''loan flipping'' within the first twelve months of a HOEPA loan, prohibiting the creditor or assignee that is holding the loan (or their affiliates) from refinancing it unless the holder demonstrates that it is in the borrower's interest; (3) strengthen HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability; and (4) improve disclosures received by consumers before closing. A regulatory flexibility analysis has been prepared by the Division of Research and Statistics. A final analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks, their subsidiaries, and subsidiaries of bank holding companies (not otherwise regulated). Other agencies account for the paperwork burden on their respective constituencies under this regulation. The proposed rule would broaden the scope of two ''high-cost'' triggers (the APR trigger and the fee-based trigger) for mortgage loans; and would require creditors to revise a disclosure currently implemented in § 226.32 of Regulation Z. There should be a minimal burden increase associated with this revision due to the fact that most institutions use an automated version of the model forms provided in Appendix H and the calculation revisions need only be incorporated into an automated system one time. The disclosure revision would cover refinancings subject to HOEPA and would state the total loan amount of the borrower's obligation (§ 226.32(c)(5)). Model clauses will be provided for this new disclosure to help minimize burden on the creditors.

With respect to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,863,754 hours. The Federal Reserve will estimate the burden hours for: Creating and distributing the three proposed disclosure requirements, programming systems with the proposed disclosures, revising the current disclosure affected by the APR trigger and the fee-based trigger changes, and updating systems with the new trigger figures. The staff will also reestimate the burden hours for all the current disclosure requirements. The Federal Reserve estimates that the annual burden hours imposed on creditors will increase by approximately 25 percent. The Federal Reserve believes that reverse and high-cost mortgages trigger special disclosures but are not typically offered by state member banks; thus the requirements have only a negligible effect on the paperwork burden for state member banks. The Federal Reserve solicits specific comments on: (1) Whether state member banks offer reverse and high-cost mortgages, (2) the length of time creditors will devote to these proposed changes, and (3) the length of time creditors spend complying with current Regulation Z requirements.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Brackets in proposed Model Form H–16 are not bold-faced; brackets are employed in the Board's model clauses and samples to illustrate how creditors may adapt the required disclosures to the particular transaction.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

2. Section 226.1 would be amended by:

a. Revising paragraph (b); and

b. Revising paragraph (d)(5).

* * * * *

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) ►Purpose.◄ The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. ►The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.◄

* * * * *

(d) Organization. * * *

* * * * *

(5) Subpart E ►contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above a specified amount. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions.◄ [relates to mortgage transactions covered by § 226.32 and reverse mortgage transactions. It contains rules on disclosures, fees, and total annual loan cost rates.]

* * * * *

Subpart C—Closed-End Credit

3. Section 226.23 would be amended by revising footnote 48 to read as follows:

* * * * *

§ 226.23 Right of rescission.

* * * * *

[48]The term ''material disclosures'' means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, [and] the disclosures and limitations referred to in § 226.32(c) and (d)►, and provisions in a mortgage that are prohibited under § 226.34.◄

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

4. Section 226.32 would be amended by:

a. Republishing paragraph (a)(1) introductory text and revising paragraph (a)(1)(i);

b. Republishing paragraphs (b) introductory text and (b)(1) introductory text and adding paragraph (b)(1)(iv);

c. Republshing paragraph (c) introductory text, revising paragraph (c)(3) and adding paragraph (c)(5);

d. Republishing paragraph (d) introductory text and adding paragraph (d)(8); and

e. Removing paragraph (e).

* * * * *

§ 226.32 Requirements for certain closed-end home mortgages.

(a) *Coverage.*

(1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(i) The annual percentage rate at consummation will exceed by more than [10] ►8◄ percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

* * * * *

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* mean:

* * * * *

►(iv) premiums or other charges for credit life, accident, health, or loss-of-income insurance, debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law), or similar products.◄

* * * * *

(c) *Disclosures.* In addition to other disclosures required by this part, in a mortgage subject to this section, the creditor shall disclose the following:

* * * * *

(3) *Regular payment*►*balloon payment*◄. The amount of the regular monthly (or other periodic) payment ► and the amount of a balloon payment◄

* * * * *

►(5) *Amount borrowed.* For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note.◄

* * * * *

(d) *Limitations.* A mortgage transaction subject to this section may not provide for the following terms:

* * * * *

►(8) *Due-on-demand clause.* A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(i) There is fraud or material misrepresentation by the consumer in connection with the loan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) Any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.◄

* * * * *

5. A new '' 226.34 would be added to read as follows:

<§ 226.34 Prohibited acts or practices in connection with credit secured by a consumer's dwelling.

(a) *Prohibited acts or practices for loans subject to ''226.32.* A creditor extending mortgage credit subject to § 226.32 may not—

(1) *Home improvement contracts.* Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by § 226.32, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) *Notice to assignee.* Sell or otherwise assign a mortgage subject to § 226.32 without furnishing the following statement to the purchaser or assignee: ''Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.''

(3) *Refinancings within twelve-month period.* Refinance a loan subject to § 226.32 within the first twelve months

unless the refinancing is in the borrower's interest, if the creditor (or its affiliate) holds the existing loan. Creditors are prohibited from engaging in acts or practices to evade this provision, including arranging for the refinancing of its own loans with unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) *Repayment ability.* (i) Engage in a pattern or practice of extending credit subject to § 226.32 to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment.

(ii) If a creditor engages in a pattern or practice of making loans subject to § 226.32 without documenting and verifying consumers'' repayment ability, such as the consumer's current or expected income, current obligations, and employment status, there is a presumption that the creditor has violated paragraph (a)(4)(i) of this section.

(b) *Prohibited acts or practices for dwelling-secured loans.* A creditor may not engage in the following acts or practices in connection with credit secured by the consumer's dwelling:

(1) *Limitations on refinancing certain low-rate loans.* Replacing or consolidating a zero interest rate or other low-cost loan with a higher-rate loan within the first five years, unless the refinancing is in the borrower's interest. For purposes of this paragraph, a ''low-cost'' loan is:

(i) A fixed-rate loan that carries an interest rate two percentage points or more below the yield on Treasury securities with a comparable maturity; or

(ii) A variable-rate loan where the current interest rate is at least two percentage points below the index or formula used to make rate adjustments.

(2) *Open-end credit.* Structuring a home-secured loan as an open-end plan to evade the requirements of § 226.32, if the credit does not meet the definition in § 226.2(a)(20).◄

6. Appendix H to Part § 226 would be amended by revising Model Form H–16.

Appendix H to Part 226—Closed-End Model Forms and Clauses

* * * * *

H–16—Mortgage Sample

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

If you obtain this loan, the lender will have a mortgage on your home.

You could lose your home, and any money you have put into it, If you do not meet your obligations under the loan.

[You are borrowing $_____]◄.

The annual percentage rate on your loan will be: ____%.

Your regular frequency] payment will be: $____.

►[At the end of your loan, you will still owe us: $ [*balloon amount*].◄

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $____.]

* * * * *

7. In Supplement I to Part 226, the following amendments would be made:

a. Under *Section 226.31—General Rules,* under *Paragraph 31(c)(1)(i),* paragraph 2. would be added;

b. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(ii)*, paragraph 1. introductory text would be revised and paragraph 1. iv. would be added;

c. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* a new heading *Paragraph 32(b)(1)(iv)* would be added and a new paragraph 1. would be added;

d. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* under *Paragraph (32)(c)(3),* paragraph 1. introductory text would be revised and paragraph 2. would be removed;

e. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, a new heading *Paragraph* 32(d)(8) would be added; a new heading *Paragraph 32(d)(8)(ii)* would be added and a new paragraph 1. would be added; and a new heading *Paragraph 32(d)(8)(iii)* would be added and new paragraphs 1. and 2. would be added.

f. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages, 32(e) Prohibited Acts and Practices* would be removed;

g. A new Section *226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling* would be added; and

h. Under *Appendix H—Closed-End Model Forms and Clauses,* paragraphs 20. through 23. would be redesignated as paragraphs 21. through 24., and new paragraph 20. would be added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 226.31—General Rules

31(c) Timing of disclosure.

* * * * *

Paragraph 31(c)(1)(i) Change in terms.

* * * * *

►2. *Sale of optional products at consummation.* If the consumer finances the purchase of optional products such as credit insurance and as a result the monthly payment differs from what was previously disclosed under § 226.32, redisclosure is required and a new three-day waiting period applies. (See comment 32(c)(3)–1 on when optional items may be included in the regular payment disclosure.)◄

* * * * *

§ 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) ► and § 226.32(b)(1)(iv) ◄ that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points[:] ►. A $500 premium for optional credit life insurance is used in one example.◄

* * * * *

►iv. If the consumer financed a $300 fee for a creditor-conducted appraisal and a $500 single premium for optional credit life insurance, and pays $400 in points at closing, the amount financed under § 226.18(b) is $10,400 ($10,000, plus the $300 appraisal fee that is paid to and financed by the creditor, plus the $500 insurance premium that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii), and the $500 insurance premium is added under 226.32(b)(1)(iv). The $300 and $500 costs are deducted from the amount financed ($10,400) to derive a total loan amount of $9,600.◄

* * * * *

32(b) Definitions.

* * * * *

►*Paragraph 32(b)(1)(iv).*

1. *Premium amount.* In determining ''points and fees'' for purposes of this section, premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.◄

* * * * *

32(c) Disclosures.

* * * * *

Paragraph 32(c)(3) Regular payment.

1. *General.* The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at

such intervals that they fully amortize the amount owed. In disclosing the regular payment, creditors may rely on the rules set forth in § 226.18(g); however, the amounts for voluntary items ►, such as credit life insurance, may be included in the regular payment disclosure only if the consumer has previously agreed to the items.◄ [not agreed to by the consumer such as credit life insurance may not be included in the regular payment.]

* * * * *

32(d) Limitations.

* * * * *

►*32(d)(8) Due-on-demand clauses.*

Paragraph 32(d)(8)(ii).

1. *Failure to meet repayment terms.* A creditor may terminate a loan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right to cure notice, or otherwise places a duty on the creditor before it can terminate a loan and accelerate the balance.

Paragraph 32(d)(8)(iii).

1. *Impairment of security.* A creditor may terminate a loan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the loan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* i. A creditor may terminate and accelerate, for example, if:

A. The consumer transfers title to the property or sells the property without the permission of the creditor.

B. The consumer fails to maintain required insurance on the dwelling.

C. The consumer fails to pay taxes on the property.

D. The consumer permits the filing of a lien senior to that held by the creditor.

E. The sole consumer obligated on the plan dies.

F. The property is taken through eminent domain.

G. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the loan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a loan dies, the creditor may terminate the loan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the loan and that action adversely affects the security, the creditor may terminate a loan and accelerate the balance.◄

* * * * *

§ 226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling

34(a) Prohibited Acts or Practices for Loans Subject to § 226.32.

34*(a)(1) Home-improvement contracts.*

34*(a)(1)(i).*

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

Paragraph 34(a)(2) Notice to assignee.

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to § 226.32 must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

3. *Assignee liability.* Pursuant to section 131(d) of the Act, the Act's general holder-in-due course protections do not apply to purchasers and assignees of loans covered by § 226.32.

Paragraph 34(a)(3) Refinancings within twelve-month period.

1. *Benefit to the borrower.* The determination of whether or not a benefit exists would be based on the totality of the circumstances. For example, consideration should be given to the amount of any new funds advanced in comparison to the total loan charges on the refinancing (which may be based predominately on the pre-existing loan balance).

Paragraph 34(a)(4) Repayment ability.

Paragraph 34(a)(4)(i).

1. *Determining repayment ability.* The information provided to creditors in connection with § 226.32(d)(7) may be used to show that creditors considered the consumer's income and obligations before extending the credit. Any expected income can be considered by the creditor, except equity income that the consumer would obtain through the foreclosure of the consumer's principal dwelling. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from housecleaning or childcare.

2. *Pattern or practice of extending credit—repayment ability.* Whether a creditor has engaged in a pattern or practice of violations of this section depends on the totality of the circumstances in each particular case. General guidance, however, on pattern or practice for purposes of this section can be found in case law interpreting pattern or practice provisions in the Truth in Lending Act, the Equal Credit Opportunity Act (ECOA), the Fair Housing Act (FHA), and Title VII of the Civil Rights Act of 1964 (equal employment opportunity).

3. *Discounted introductory rates.* In transactions where the creditor sets the initial interest rate and the rate is later adjusted (whether fixed or later determined by an index or formula), in determining repayment ability the creditor must consider increases to the consumer's payments based on the maximum possible increases in rates in the shortest possible time frame.

Paragraph 34(a)(4)(ii).

1. *Documenting and verifying income.* Creditors may document and verify a consumer's repayment ability in various ways. For example, a creditor may document and verify a consumer's income and current obligations through a consumer's signed financial statement, a credit report, and payment records for employment income. For the self-employed, in lieu of employment payment records, a creditor may rely on tax returns or any other source that provides the creditor with a reasonable basis for believing that the income exists and will support the loan.

* * * * *

Paragraph 34(b)(1) Limitation on refinancing certain low-rate loans.

1. *Borrower's statement.* A creditor may rely on a statement by the borrower regarding the current rate of interst on their existing loan.◄

* * * * *

Appendix H—Closed-End Model Forms and Clauses

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►20. *Sample H–16.* This sample illustrates the disclosures required under § 226.32(c). The sample includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment. The sample also illustrates the disclosures required for refinancings under § 226.32(c)(5) and § 226.32(c)(6). Although these disclosures are required for refinancings that are subject to § 226.32, creditors may, at their option, include these disclosures for all loans subject to that section.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 15, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–32504 Filed 12–22–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–20]

Proposed Establishment of Class D Airspace; Shreveport Downtown Airport, Shreveport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class D airspace extending upward from the surface to but not including 1,600 feet mean sea level (MSL), within a 4.4-mile radius of the Shreveport Downtown Airport, Shreveport, LA. An air traffic control tower will provide air traffic control services for pilots operating at Shreveport Downtown Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Shreveport Downtown Airport, Shreveport, LA.

DATES: Comments must be received on or before February 26, 2001.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–20, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An information docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this proposal must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 2000–ASW–20.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace, controlled airspace extending upward from the surface to but not including 1,600 feet mean sea level (MSL), within a 4.4-mile radius of the Shreveport Downtown Airport, Shreveport, LA. An air traffic control tower will provide air traffic control services for pilots operating at Shreveport Downtown Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Shreveport Downtown Airport, Shreveport, LA.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5,000 Class D airspace areas.

* * * * *

ASW TX D Shreveport Downtown Airport, LA [New]

Shreveport Downtown Airport, LA
(Lat. 32°32′25″N., long. 93°44′42″W.)
Shreveport, Barksdale AFB, LA
(Lat. 32°0′07″N., long. 93°39′46″W.)
Shreveport Regional Airport, LA
(Lat. 32°26′48″N., long. 93°49′32″W.)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.4-mile radius of Shreveport Downtown Airport, excluding that airspace within the Barksdale AFB, LA and Shreveport Regional Airport, LA Class C Airspace areas. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Fort Worth, TX on December 8, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–32515 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35, 36, 40, 301, 601

[REG–107176–00]

RIN 1545–AY10

Removal of Federal Reserve Banks as Federal Depositaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations which remove the Federal Reserve banks as authorized depositaries for Federal tax deposits. The regulations affect taxpayers who make Federal tax deposits using paper Federal Tax Deposit (FTD) coupons (Form 8109) at Federal Reserve banks.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 26, 2001.

ADDRESSES: Send submissions to: CC (REG–107176–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC (REG–107176–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brinton T. Warren, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR parts 1, 31, 35, 36, 40, 301, and 601 relating to Federal tax deposits under section 6302(c) of the Internal Revenue Code (Code). Section 6302(c) provides that the Secretary may authorize Federal Reserve banks, and incorporated banks, trust companies, domestic building and loan associations, or credit unions that are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as the Secretary may prescribe. Pursuant to this authority, various regulations provide that Federal Reserve banks, as well as other authorized financial institutions, may receive certain Federal tax deposits.

In cooperation with the Treasury Department's Financial Management Service (FMS), the Federal Reserve System has been streamlining its Treasury Tax and Loan (TT&L) Operation to respond to the fact that the overwhelming majority of Federal Tax Deposits (FTDs) are now received electronically. The widespread adoption of electronic deposits by taxpayers is an important aspect of improving the efficiency, reliability, and cost-effectiveness of the Treasury Department's financial management. In general, compared to the universe of all tax deposits, the percentage of FTDs made with paper coupons has significantly declined. FTDs made with paper coupons at Federal Reserve banks now constitute only a tiny percentage of all tax deposits. For example, in Fiscal Year 1999, of the approximately 100 million Federal tax deposits, made by paper coupon and electronically, only about 270,000, or less than one half of one percent, were paper coupons presented at Federal Reserve banks. Additionally, the number of paper coupons presented at Federal Reserve banks has declined over twenty-five percent since 1997.

The Treasury Department has developed an array of other deposit options that are more convenient for taxpayers to use, and more economical to process, than deposits with Federal Reserve banks. For example, taxpayers may use their touch tone telephone or personal computer to make deposits 24 hours a day through the Electronic Federal Tax Payment System (EFTPS). For those taxpayers who still prefer paper coupons over electronic deposits, there are now more than 10,000 financial institutions nationwide that are designated as TT&L depositaries where taxpayers may make FTD deposits using paper coupons.

In response to the declining number of deposits being made with paper coupons at Federal Reserve banks, the Federal Reserve Bank of St. Louis was selected, effective May 1, 2000, to serve as the only Federal Reserve bank accepting FTDs. Even after this consolidation, however, it is no longer cost-effective for the Federal Reserve bank in St. Louis to process the small number of paper coupons it receives annually. Accordingly, these proposed regulations remove all Federal Reserve banks as depositaries for Federal taxes. To mitigate any difficulties for those taxpayers who still do not wish to use the deposit alternatives discussed above, the Treasury Department has authorized a financial agent to receive and process FTD payments through the mail, thereby maintaining a mail-in alternative for taxpayers who do not have an account with an authorized financial institution and who do not wish to use EFTPS. The address for this mail-in alternative is Financial Agent, Federal Tax Deposit Processing, P.O. Box 970030, St. Louis, Missouri, 63197.

Proposed Effective Date

The regulations, as proposed, apply to any deposits of Federal taxes made after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 36

Employment taxes, Foreign relations, Reporting and recordkeeping requirements, Social security.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 601

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, and under the authority of 26 U.S.C. 7805 and 5 U.S.C. 301, 26 CFR parts 1, 31, 35, 36, 40, 301 and 601 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.6302–1 [Amended]

Par. 2. Section 1.6302–1 is amended by removing the fifth sentence in paragraph (b)(1).

§ 1.6302–2 [Amended]

Par. 3. Section 1.6302–2 is amended by removing the third sentence in paragraph (b)(1).

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 31.6302–1 [Amended]

Par. 5. Section 31.6302–1 is amended by removing the fourth sentence in paragraph (i)(3).

§ 31.6302 [Amended]

Par. 6. Section 31.6302(c)–3 is amended by removing the third sentence in paragraph (b)(2).

PARTS 1, 31, 35, 36, 40, 301, 601—[AMENDED]

Par. 7. In the list below, for each section indicated in the left column, remove the language in the middle column and add, if any, the language in the right column:

Section	Remove	Add
1.1461–1(a), effective January 1, 2001	a Federal reserve bank or	an
1.1502–5(a)(1)	commercial dispositary or Federal Reserve Bank.	financial institution
1.6151–1(d)(1)	Federal Reserve Banks or	
1.6302–1(b)(1) fourth sentence	214 or, at the election of the corporation, to a Federal Reserve bank.	203
1.6302–1(b)(1) (as amended by paragraph 2) fifth sentence.	the Federal Reserve bank or	
1.6302–2(a)(1)(i)	a Federal Reserve bank or	an
1.6302–2(a)(1)(ii)	a Federal Reserve bank or	an
1.6302–2(a)(1)(iv)	a Federal Reserve bank or	an
1.6302–2(b)(1) second sentence	214 or, at the election of the withholding agent, to a Federal Reserve bank.	203
1.6302–2(b)(1) (as amended by paragraph 3) third sentence.	the Federal Reserve bank or	203
1.6302–3(a)	or with a Federal Reserve Bank	
31.6071(a)–1(a)(1)	or by a Federal Reserve bank	

Section	Remove	Add
31.6071(a)–1(c)	a Federal Reserve bank or by	
31.6151–1(b)	Federal Reserve banks and	
31.6302–1(c)(1)	a Federal Reserve bank or	an
31.6302–1(c)(2)(i)	a Federal Reserve bank or	an
31.6302–1(c)(3)	a Federal Reserve bank or	an
31.6302–1(i)(3)	214 or, at the election of the employer, to a Federal Reserve bank.	203
31.6302–1(i)(5)	the Federal Reserve bank or	
31.6302(c)–2A(b)(1)(i)	with a Federal Reserve bank or	
31.6302(c)–2A(b)(3)	with a Federal Reserve bank or	
31.6302(c)–3(a)(1)(i)	with a Federal Reserve bank or	
31.6302(c)–3(a)(1)(ii)	with a Federal Reserve bank or	
31.6302(c)–3(a)(3)	with a Federal Reserve bank or	
31.6302(c)–3(b)(2) second sentence	214 or, at the election of the employer, to a Federal Reserve bank.	203
31.6302(c)–3(b)(2) (as amended by paragraph 6) third sentence.	the Federal Reserve bank or	
35.3405–1T(e–10)	a Federal Reserve Bank or	
36.3121(l)(10)–4	a Federal Reserve bank or	an
40.6302(c)–1(d)(1)	(214) or to a Federal Reserve bank	(203)
301.6302–1(a)	Federal Reserve banks and authorized commercial banks.	authorized financial institutions
301.6302–1(b)(1)	Federal Reserve banks or authorized commercial banks.	authorized financial institutions
301.6302–1(b)(2)	Federal Reserve banks or authorized commercial banks.	authorized financial institutions
301.9100–5T(c)(3)	Federal Reserve banks and	
601.401(a)(5) heading	Federal Reserve banks and	
601.401(a)(5)(iii) first sentence	a Federal Reserve bank or	an
601.401(a)(5)(iii) second sentence	a Federal Reserve bank or	an
601.401(a)(5)(iv)	a Federal Reserve bank or a financial institution authorized in accordance with Treasury Department Circular No. 1079, revised, to accept remittances of these taxes for transmission to a Federal Reserve bank.	an authorized financial institution

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–32568 Filed 12–22–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 909; Re: Notice No. 903]

RIN 1512–AA07

Extension of the Comment Period of the Proposed California Coast Viticultural Area (2000R–166P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 903, published in the **Federal Register** on September 26, 2000, regarding the establishment of the California Coast viticultural area. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the notice.

DATES: Written comments must be received by April 25, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 903).

FOR FURTHER INFORMATION CONTACT: Tom Busey, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington DC, 20226, (202) 927–8095.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 2000, ATF published a notice of proposed rulemaking in the **Federal Register** soliciting comments from the public and industry. The notice proposed to establish the California Coast viticultural area. The comment period for Notice No. 903 closes on December 26, 2000.

However, ATF received two requests to extend the comment period. One request was from the Wine Institute and one request was received from the office of Dickenson, Peatman and Fogarty, representing the Napa Valley Vintners Association (NVVA). The Wine Institute believes that the current comment period is insufficient to conduct a thorough analysis and review of the complex data in order to support or deny the establishment of this viticultural area and requests an additional 120 days. The NVVA is also requesting an additional 120 days to comment, in order to study and respond to the petitioner's submission.

In consideration of the above, ATF finds that an extension of the comment period is warranted and is extending the comment period until April 25, 2001.

Disclosure

Copies of Notice 903 and written comments will be available for public inspection during normal business hours at: ATF Reference Library, Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information

The author of this document is Nancy Kern, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance: This notice extending the comment period for the California Coast viticultural area is issued under the authority of 27 U.S.C. 205.

Signed: December 19, 2000.

Bradley A. Buckles,

Director.

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BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022, 4022B, 4044

RIN 1212–AA82

PBGC Benefit Payments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The PBGC proposes to amend its regulations to make various changes in how it pays benefits, including giving participants more choices of annuity benefit forms, clarifying what it means to be able to ''retire'' under plan provisions for certain purposes under Title IV of ERISA, and adding rules on who will get certain payments the PBGC owes to a participant at the time of death.

DATES: Comments must be received on or before February 26, 2001.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC proposes to amend its regulations to address several issues under its regulations on Benefits Payable in Terminated Single-Employer Plans (part 4022), Aggregate Limits on Guaranteed Benefits (part 4022B), and Allocation of Assets in Single-Employer Plans (part 4044).

Form of Payment by PBGC

The PBGC pays benefits to participants when an underfunded single-employer defined benefit plan terminates under Title IV of ERISA and the PBGC becomes trustee. If a participant's benefit is already in pay status, the PBGC continues to pay the benefit (subject to the limitations in Title IV of ERISA) in the form being paid. But for those participants whose benefits are not yet in pay status, the PBGC pays non-de minimis benefits (*i.e.,* benefits with a lump-sum value exceeding $5,000) in the form the plan would have paid in the absence of an election, typically a joint-and-50% spousal survivor annuity (for married participants) or a straight-life annuity (for unmarried participants and married participants who, with spousal consent, waive the joint-and-survivor annuity). If a married participant dies before starting to receive benefits from the PBGC, the PBGC pays a qualified pre-retirement survivor annuity to the participant's spouse. The PBGC does not pay benefits in lump-sum form except in limited circumstances (primarily where it cashes out a de minimis benefit).

Many participants would welcome the PBGC's offering them choices of other annuity benefit forms and allowing them to designate non-spouse beneficiaries. With today's technology, it is now feasible for the PBGC to offer a menu of optional forms.

New Benefit Options

The PBGC proposes to revise its benefit payment regulation (part 4022) to provide participants (and beneficiaries) whose benefits are not yet in pay status with more choices of annuity benefit forms. Under new § 4022.8, the PBGC would be able to offer the following optional annuity forms: straight-life annuity, 5-year certain-and-continuous annuity, 10-year certain-and-continuous annuity, 15-year certain-and-continuous annuity, joint-and-50%-survivor annuity, joint-and-75%-survivor annuity, joint-and-100%-survivor annuity, and joint-and-50%-survivor-''pop-up'' annuity (*i.e.,* an annuity form under which the participant's benefit ''pops up'' to the unreduced level if the beneficiary dies before the participant). The PBGC currently intends to offer all of the specified forms in all plans, regardless of whether a particular form is available under a particular plan. The PBGC would have discretion under the regulation to make available other annuity options. The PBGC anticipates that it would exercise this discretion only with respect to all plans or a category of plans, not just with respect to a particular plan.

A participant who is married on the annuity starting date would need spousal consent to elect any of the optional forms. Either a married participant (with spousal consent) or an unmarried participant could designate a non-spouse beneficiary to receive survivor benefits under any optional joint-life or other annuity form under which payments may continue after the participant's death (*e.g.,* a 5-year certain-and-continuous annuity). In the case of a joint-life annuity, a participant could designate only a natural person (*i.e.,* a living individual, not an organization or other entity) as a beneficiary.

If a participant designated a much younger non-spouse beneficiary to receive survivor benefits under a joint-and-survivor annuity, the value of the survivor benefit might be so large relative to the value of the entire benefit that the survivor benefit would not be an ''incidental death benefit'' under Treas. Reg. § 1.401.1(b)(1)(i). If so, the PBGC would not pay the form elected, but would generally instead offer a modified version of that form (*e.g.,* offer a 46% survivor annuity instead of the 50% survivor annuity elected) to ensure that the death benefit would be an ''incidental death benefit.''

Determination of Benefit Amounts

The PBGC would determine the amount of the benefit in an optional form elected by a participant by first determining the annuity benefit that it would pay the participant under Title IV of ERISA in the following form:

- If the participant (regardless of marital status) elected to receive a joint-and-survivor optional form from the PBGC, the PBGC would start with the joint-and-survivor form that the plan would have paid to a married participant in the absence of an election under the plan. (The PBGC would base this starting benefit on the ages of the participant and of the participant's designated beneficiary at the annuity starting date.)
- If the participant (regardless of marital status) elected to receive a single-life optional form from the PBGC, the PBGC would start with the single-life form that the plan would have paid to an unmarried participant in the absence of an election under the plan. (For this purpose, a certain-and-continuous annuity is a single-life form.)

The PBGC would convert this starting benefit to the optional annuity form the participant or beneficiary chose, using PBGC factors based on: (1) the GAM–83 unisex mortality table currently specified for minimum lump sums

under IRC section 417(e)(3) and ERISA section 205 (see Rev. Rul. 95–6) (regardless of whether the mortality assumption is later changed under IRC section 417(e)(3) and ERISA section 205); and (2) a six percent interest rate.

Because the starting benefit would depend on whether the participant chose a joint-and-survivor optional form or a single-life optional form—rather than on whether the participant is married or unmarried—an unmarried participant who elected to receive a joint-and-survivor optional form would receive the same subsidy as a married participant who received a joint-and-survivor form. (This differs from the situation under the current regulation, where an unmarried participant does not receive any subsidy included in the form the plan would have paid, in the absence of an election, to a married participant.)

Beneficiaries

For simplicity, this discussion refers to benefits the PBGC would pay to participants. It applies equally to benefits the PBGC would pay to beneficiaries of participants who die before entering pay status or to alternate payees with a separate interest under a qualified domestic relations order, except that such beneficiaries or alternate payees could elect only an optional single-life annuity form.

Applicability

The PBGC would make the optional benefit forms available for benefits that are not yet in pay status as of the effective date of the amendment.

''Earliest PBGC Retirement Date''

The earliest date a participant could ''retire'' under a plan can have several consequences under Title IV of ERISA:

- It can affect whether the participant's benefit is in priority category 3 in the asset allocation scheme under ERISA section 4044. (Priority category 3 gives priority to, among others, participants who could have ''retired'' three years before the plan's termination date but did not do so). See Application to Priority Category 3 Benefits.
- It governs when the participant is first eligible to be placed in pay status by the PBGC. See Application to Time of Payment.
- It is used as part of the methodology for determining the ''expected retirement age'' assumption the PBGC uses to value a participant's benefit. See Application to Expected Retirement Age Assumption.

The PBGC's determination of the earliest date a participant could ''retire'' under a plan can affect not only the participant for whom the determination is made, but other participants, the employer, and premium payers. Whether an earlier or later date favors a particular interest depends on the facts and circumstances of the plan termination.

The PBGC has been making determinations about the earliest date a participant could ''retire'' under a plan on a case-by-case basis. In many cases, the issue is straightforward because the plan provides for early or normal retirement starting at a point (*e.g.,* early retirement at age 55) that clearly would qualify as retirement. However, because plan designs have been evolving in recent years, the PBGC anticipates that case-by-case decision-making in this area will become increasingly difficult.

A growing number of plans have been offering consensual lump sums upon separation regardless of age (*e.g.,* at age 23) and are therefore required to offer a qualified joint-and-survivor annuity commencing immediately. See Treas. Reg. § 1.417(e)–1(b). Some plans do not use the word ''retirement,'' even to describe a separation that commonly would be viewed as a retirement, while other plans specify ''normal retirement age'' as the age reached after five years of service.

The PBGC does not believe it would be appropriate to determine the earliest retirement date for PBGC purposes simply by looking at the availability of a consensual lump sum or immediate annuity or at plan labels. Doing so would treat any separation that gives rise to the availability of a consensual lump sum or immediate annuity as if it were a retirement. Among other things, this would give priority category 3 status to many participants who are not close to retirement, thereby significantly diluting priority category 3 protection for those persons Congress intended to protect.

On the other hand, where a participant is old enough or has enough service, the PBGC believes that treating a separation as a retirement would be consistent with the statutory scheme. Thus, it generally would be appropriate in a plan, such as a cash balance plan, that pays benefits upon any separation but never treats a separation before normal retirement age as a retirement, to treat some separations before normal retirement age as retirements.

To provide guidance and to reduce the need for case-by-case decision-making, the PBGC proposes to add rules on what it means to retire under plan provisions for purposes of the termination insurance program.

Definition

The proposed regulation introduces the concept of the Earliest PBGC Retirement Date. The Earliest PBGC Retirement Date for a participant would be the earliest date on which the participant could ''retire'' for certain purposes under Title IV of ERISA. It would distinguish between a participant who could receive an immediate annuity simply because he or she separated from service and a participant whose benefit is payable on account of retirement.

To help explain the Earliest PBGC Retirement Date, this preamble uses ''earliest annuity date'' to refer to the earliest date under plan provisions on which the participant could separate from service with the right to receive an immediate annuity, including where, as discussed above, an immediate annuity option is required because the plan provides a consensual lump sum option.

If the ''earliest annuity date'' is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date would be the ''earliest annuity date.'' For example, if the ''earliest annuity date'' is age 57, the Earliest PBGC Retirement Date would be the date the participant reaches age 57. However, if the ''earliest annuity date'' is before the date the participant reaches age 55, the Earliest PBGC Retirement Date would be the date the participant reaches age 55, unless the PBGC determines, under a facts and circumstances test, that the participant could retire on an earlier date. (The PBGC chose age 55 both because it is a common early retirement age for plans and because separation at age 55 or later is frequently viewed as retirement.)

Under the facts and circumstances test, the PBGC would consider whether the participant could retire for purposes of ERISA section 4044(a)(3)(B) (which gives priority in the asset allocation upon plan termination to the benefits of persons who retired or could have retired three years before the plan's termination date). In making this determination, the PBGC would look at plan provisions, the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. A participant's ability to receive an immediate annuity upon separation at a particular age or a plan's reference to a separation from service at a particular age as a ''retirement'' would not be controlling. However, in no circumstances could the Earliest PBGC Retirement Date determined under the facts and circumstances be earlier than the earliest annuity date.

Examples

- A plan's normal retirement age is age 65. The plan does not offer a consensual lump sum or an immediate annuity upon

separation before normal retirement age. The Earliest PBGC Retirement Date for a participant would be the date the participant reaches age 65.

- A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a 35-year old participant would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could ''retire'' for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the earliest PBGC retirement age would be that earlier date.
- A plan's normal retirement age is age 60. The plan specifies an early retirement age of 50 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a 35-year-old participant would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the Earliest PBGC Retirement Date would be that earlier date. For example, if it were common for participants to retire at age 50, the PBGC could determine that the Earliest PBGC Retirement Date for the participant would be the date the participant reaches age 50.
- A plan's normal retirement age is age 65. The plan offers an immediate annuity upon separation regardless of age and a fully-subsidized annuity upon separation with 30 years of service. The Earliest PBGC Retirement Date for a 35-year-old participant would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the Earliest PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that a participant could retire for purposes of ERISA section 4044(a)(3)(B) on the date the participant becomes eligible for this ''30-and-out'' benefit, regardless of the participant's age (*e.g.,* the date a 48-year-old participant who started work at age 18 completes 30 years of service). If so, that date would be the participant's Earliest PBGC Retirement Date (if it is before the date the participant reaches age 55).

Application to Priority Category 3 Benefits

The PBGC would use the Earliest PBGC Retirement Date in determining what benefits are in priority category 3 of ERISA section 4044. Under that statutory provision, plan assets available to pay benefits under a terminated plan are allocated to various priority categories. ERISA provides that the third priority category, which comes ahead of most guaranteed benefits, consists of: (1) Annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and (2) annuity benefits that would have been in pay status as of the beginning of the three-year period if the participant had ''retired'' before the beginning of that 3-year period.

The existing asset allocation regulation (part 4044) describes the second eligibility test for priority category 3 protection under ERISA as ''annuity benefits that could have been in pay status for participants who were eligible to receive annuity benefits'' before the beginning of the 3-year period. The PBGC's longstanding interpretation of this language is that it applies only to those annuity benefits that could have been in pay status before the beginning of the 3-year period because the participant could have ''retired'' within the usual meaning of that word. The PBGC proposes to use the Earliest PBGC Retirement Date for purposes of determining whether a participant could have retired before the beginning of the 3-year period and thus meets the second eligibility test for priority category 3 protection.

Applicability: The new definition would apply to benefits in plans with termination dates on or after the effective date of the amendment. The PBGC will continue to apply its existing facts and circumstances test to benefits in plans with termination dates before the effective date of the amendment.

Application to Time of Payment

Another area where the PBGC proposes to use the Earliest PBGC Retirement Date would be to determine when participants would first be able to receive retirement benefits in annuity form from the PBGC. Under new § 4022.10, the PBGC would make these benefits available (subject to the PBGC's rules for starting payment of benefits) to a participant starting on his or her Earliest PBGC Retirement Date or, if later, on the plan's termination date.

Applicability: The new rules would apply to participants who are not yet in pay status as of the effective date of the amendment.

Application to Expected Retirement Age Assumption

Finally, the PBGC proposes to use the Earliest PBGC Retirement Date in determining a participant's ''expected retirement age'' assumption under the PBGC's valuation regulation (§§ 4044.55–.57). Under the current regulation, the expected retirement age assumption and, therefore, the value of a participant's benefits for purposes of ERISA section 4044 can depend on the ''earliest age at which the participant can retire under the terms of the plan'' (see definition of ''earliest retirement age at valuation date'' in 29 CFR 4044.2). The PBGC proposes to use the participant's age at his or her Earliest PBGC Retirement Date as the age at which the participant can retire for this purpose.

Applicability: The new rules would apply to benefits in plans with termination dates on or after the effective date of the amendment. The PBGC will continue to apply its existing facts and circumstances test to benefits in plans with termination dates before the effective date of the amendment.

Certain Payments Owed Upon Death

When a participant dies, the PBGC occasionally may have paid too much of the benefit or too little of the benefit that was due the participant during the participant's life. If the PBGC paid too much, there is an overpayment owed to the PBGC at the time of the participant's death. If the PBGC paid too little, there is an underpayment owed to the participant at the time of the participant's death. In either case, the PBGC needs to determine not only the amount of the overpayment or underpayment, but the person(s) it will seek to collect from or will pay.

For simplicity, this discussion refers to benefits the PBGC owes to a participant at the time of the participant's death. However, it applies equally to benefits the PBGC owes to any other person at the time of that person's death, such as a beneficiary of a deceased participant or an alternate payee.

Where There Is a Surviving Designated Beneficiary To Receive Future Annuity Payments

The proposed amendment clarifies that, under the PBGC's recoupment and reimbursement regulation (subpart E of part 4022), the PBGC will recoup any overpayment to the participant from the person who is receiving survivor benefits under any joint-and-survivor or other annuity form under which payments may continue after the participant's death. It similarly clarifies that the PBGC will pay any underpayment due the participant to that same person.

Where There Is No Surviving Designated Beneficiary To Receive Future Annuity Payments

Under the PBGC's current policy, if the PBGC owes benefits to a participant at the time of the participant's death and the benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death or, although the benefit is in such a form, the person

designated to receive survivor benefits predeceased the participant, the PBGC pays the person(s) designated with the PBGC or by or under the plan to receive benefits owed to a participant at the time of the participant's death. If there is no such designation, the PBGC generally pays those benefits to the participant's estate.

Issuing checks to estates has created difficulties for families of deceased participants and has complicated the PBGC's efforts to distribute benefits owed to a deceased participant. The PBGC has found that, in most cases, the participant has no open estate, usually because no estate was probated but occasionally because the estate was closed by the time the PBGC learns of the death and determines the amount of the underpayment.

To address these difficulties, the PBGC is proposing to add new rules to its benefit payment regulation (Part 4022) to govern who will receive benefits owed to a deceased participant where the benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death or, although the benefit is in such a form, the person the participant designated as a beneficiary to receive survivor benefits predeceased the participant. The new rules would apply to participant deaths on or after the date the PBGC becomes trustee of the participant's plan. They would also apply to benefits owed to participants who die before the trusteeship date if the plan administrator has not yet paid those benefits.

Under new Subpart F, the PBGC would pay those benefits to the person(s) the participant designates with the PBGC to receive those benefits or—if the participant dies within 180 days after the PBGC becomes trustee of the participant's plan and has not made a designation with the PBGC—the person(s) designated by or under the plan. In all other cases, the PBGC would pay those benefits to the person(s) surviving the participant in the following order: spouse, children, parents, estate, and next of kin.

The proposed order of payment generally follows the order of payment for death benefits used by the Thrift Savings Plan (TSP), the retirement savings plan for federal employees (see 5 USC 8433(e) and 8424(d) and 5 CFR part 1651). However, the PBGC would not be adopting the TSP rules; rather it would be establishing its own order-of-payment rules and therefore would be making its own interpretations of those rules. The PBGC notes that the proposed order of payment generally conforms to state intestate law and believes, based on its experience, that it is also generally consistent with typical participant designations under a plan or will. The PBGC also expects that the benefit amounts that would be subject to the proposed order of payment will in most cases be relatively small.

The PBGC intends to provide a form that a participant could use to designate the person(s) to receive benefits owed to the participant at the time of the participant's death. A participant would be able to designate with the PBGC at any time on or after the date of trusteeship. The PBGC intends to provide the form as soon as practicable after trusteeship and make information about it available in newsletters to participants.

Certain-and-Continuous and Similar Benefits

The proposed amendment also addresses situations involving annuity forms that promise that, regardless of a participant's death, there will be payments for a certain period of time (*e.g.,* a certain-and-continuous annuity) or until a certain amount is paid (*e.g.,* a cash-refund annuity or installment-refund annuity). If a person dies before receiving all required payments and there is no surviving beneficiary designated to receive those payments, the PBGC would follow the same order-of-payment rules as for a deceased participant to whom the PBGC owes benefits at the time of death.

Under its existing regulation, the PBGC may pay any annuity benefits payable to an estate in a single installment if the estate so elects; the PBGC discounts the annuity payments using the immediate interest rate it uses to calculate lump sums. The PBGC proposes instead to use the federal mid-term rate. This change is consistent with the PBGC's change from the immediate interest rate to the federal mid-term rate for crediting interest for future periods on net underpayments of benefits under its recoupment and reimbursement regulation (63 Fed. Reg. 29,353 (May 29, 1998)).

Applicability

The new rules would apply in the case of any death on or after the effective date of the amendment. For deaths before the effective date of the amendment, the PBGC would continue to follow its current rules.

Entitlement Conditions Met on Termination Date

Under the existing benefit payment regulation (part 4022), entitlement to benefits often depends on whether certain conditions have been met before the plan's termination date. The PBGC proposes to amend the regulation to provide for entitlement also where plan conditions relating to age, length of service, disability, or death are met *on* the plan's termination date. Under the existing regulation, the PBGC may find entitlement in such circumstances by exercising its discretion under § 4022.4(b) and has done so in a number of cases. Because there is virtually no risk of abuse resulting from manipulation of these events, the PBGC is amending the regulation to provide for entitlement in all such cases.

The PBGC also proposes to make several related changes so that other determinations affecting guaranteed benefits take into account conditions through and including a plan's termination date: (1) An annuity payable under the terms of the plan on account of the total and permanent disability of a participant will be considered to be a ''pension benefit'' (and thus eligible to be guaranteed) in the case of a disability that began on or before the plan's termination date; (2) in applying the ''accrued-at-normal'' limitation (*i.e.,* the limitation on guaranteed benefits to the dollar amount payable as a straight-life annuity commencing at normal retirement age), the PBGC will take into account a participant's credited service through and including the plan's termination date; and (3) the accrued-at-normal limitation will not apply to a survivor benefit payable as an annuity on account of the death of a participant that occurred before the participant retired and on or before the plan's termination date.

Applicability

The new rules would apply to benefits in any plan with a termination date on or after the effective date of the amendment. For benefits in plans with termination dates before the effective date of the amendment, the PBGC would continue to follow its current rules.

Aggregate Limits on Guaranteed Benefits

The PBGC proposes to amend its regulation on Aggregate Limits on Guaranteed Benefits (part 4022B). Under the current regulation, the PBGC aggregates benefits when applying the limitation on guaranteed benefits in § 4022.22(b) in three ways: (1) It aggregates a person's benefits under two or more plans, (2) it aggregates a person's benefits with respect to two or more participants, and (3) it aggregates benefits with respect to one participant

when more than one person is entitled to receive a benefit with respect to that participant.

Under this amendment the PBGC would not aggregate benefits with respect to two or more participants (the second type of aggregation in the previous paragraph) when applying this limitation. For example, suppose a participant is entitled to a $2,500 monthly benefit in her own right and another $1,000 survivor benefit with respect to her deceased husband who was covered under the same plan (or another PBGC-trusteed plan). Assume for simplicity the maximum guaranteeable monthly benefit is $3,000. Under the current rule, the participant's total benefit would be limited to a monthly benefit of $3,000. Under the amendment, the participant would be entitled to the full $3,500 benefit.

(Under § 4022.22 of this chapter, the PBGC will continue to aggregate benefits with respect to one participant when more than one person is entitled to receive a benefit with respect to that participant.)

Applicability

The new rules would apply to benefit determinations that become effective on or after the effective date of the final rule.

Miscellaneous

The amendment also makes conforming, clarifying, and editorial changes to the existing regulations. For example, the amendment clarifies that:

- For purposes of phasing in the guarantee of benefit increases, each complete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes a year. The amendment makes similar conforming changes to the rules governing what benefits are in priority category 3.
- In determining whether it may pay a benefit in a lump sum, the PBGC may apply the $5,000 threshold to an estimated benefit and, in certain circumstances, to a portion of a benefit that remains to be paid.

Paperwork Reduction Act

The PBGC is submitting the information requirements contained in this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act of 1995. Persons may obtain copies of the PBGC's request free of charge by contacting the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, 202–326–4020.

The proposed rule makes clear that the PBGC is not required to accept any application for benefits not made in accordance with its forms and instructions. The existing benefit application forms and instructions were approved through November 30, 2002, under control number 1212–0055 (Locating and Paying Participants). The PBGC has made changes (related to the proposed rule) in the existing forms and instructions.

The PBGC needs the information required to be submitted to enable it to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program.

The PBGC estimates that 71,250 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 46,250 hours (an average of slightly less than 40 minutes per individual) and $24,225. The PBGC further estimates that 5,500 individuals annually will provide the PBGC with identifying information as part of an initial contact under the PBGC's Pension Search program and that the associated burden is 1,500 hours (an average of about 15 minutes per individual) and $1,020. Thus, the total estimated annual burden associated with this collection of information is 47,750 hours and $25,245.

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing 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.

Compliance With Rulemaking Guidelines

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

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this proposed rule would not have a significant economic impact on a substantial number of small entities. Virtually all of the changes in the proposed rule would affect only the PBGC and persons who receive benefits from the PBGC. The only change that could affect small entities is the proposed application of the Earliest PBGC Retirement Date to the ''expected retirement age'' assumption under the PBGC's valuation regulation. Although this change potentially could affect employer liability, in most cases, the results of a valuation would match the results under the PBGC's current regulation. In those cases where the valuation results would not match, the differences generally would not be significant. Thus, the change would not have a significant economic impact on a substantial number of entities of any size. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Parts 4022, 4022B, and 4044

Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend parts 4022, 4022B, and 4044 of 29 CFR chapter LX as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

§ 4022.4 [Amended]

2. Amend paragraph (a)(3) of § 4022.4 by adding the words ''(or, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die, on or before the termination date)'' after the words ''Except for a benefit described in paragraph (a)(2) of this section, before the termination date'', and the words ''(or, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die, prior to or on such date)'' after the words ''the right to receive the benefit prior to such date''.

§ 4022.6 [Amended]

3. Amend paragraph (a) of § 4022.6 by adding the words ''on or'' before the words ''before the termination date''.

§ 4022.7 [Amended]

4. Amend § 4022.7 by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iv), and (d), and republishing the introductory text of paragraph (b)(1) to read as follows:

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit (or of an estimated benefit) payable by the PBGC is $5,000 or less and the benefit is not yet in pay status, the benefit (or estimated benefit) may be paid in a lump sum.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraphs (b)(1)(i) and the monthly benefit (or the estimated monthly benefit) is equal to or greater than $25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC will provide the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of a qualified preretirement survivor annuity (or of an estimated qualified preretirement survivor annuity) is $5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit (or estimated benefit) may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Payments to estates.* The PBGC may pay any annuity payments payable to an estate in a single installment without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The PBGC will discount the annuity payments using the federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) applicable for the month the participant died based on monthly compounding.

* * * * *

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1) of this section—

(1) *Benefits disregarded.* In determining whether the lump-sum value of a benefit is $5,000 or less, the PBGC may disregard the value of any benefits the plan or the PBGC previously paid in lump-sum form or the plan paid by purchasing an annuity contract, the value of any benefits returned under paragraph (b)(2) of this section, and the value of any benefits the PBGC has not yet determined under section 4022(c) of ERISA.

(2) *Actuarial assumptions.* The PBGC will calculate the lump sum value of a benefit by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used will be those described in § 4044.52, except that—

(i) *Loading for expenses.* There will be no adjustment to reflect the loading for expenses;

(ii) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part will apply; and

(iii) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

5. Add § 4022.8 to read as follows:

§ 4022.8 Form of payment.

(a) *In general.* This section applies where benefits are not already in pay status. Except as provided in § 4022.7 (relating to the payment of lump sums), the PBGC will pay benefits—

(1) In the automatic PBGC form described in paragraph (b) of this section; or

(2) If an optional PBGC form described in paragraph (c) of this section is elected, in that optional form.

(b) *Automatic PBGC form.*

(1) *Married participants.* The automatic PBGC form with respect to a participant who is married at the time the benefit enters pay status is the form a married participant would be entitled to receive from the plan in the absence of an election.

(2) *Unmarried participants.* The automatic PBGC form with respect to a participant who is unmarried at the time the benefit enters pay status is the form an unmarried person would be entitled to receive from the plan in the absence of an election.

(3) *QPSA beneficiaries.* The automatic PBGC form with respect to the spouse of a married participant in a plan with a termination date on or after August 23, 1984, who dies before beginning to receive benefits from the PBGC is the qualified preretirement survivor annuity such a spouse would be entitled to receive from the plan in the absence of an election. The PBGC will not charge the participant or beneficiary for this survivor benefit coverage for the time period beginning on the plan's termination date (regardless of whether the plan would have charged).

(4) *Alternate payees.* The automatic PBGC form with respect to an alternate payee with a separate interest under a qualified domestic relations order is the form an unmarried participant would be entitled to receive from the plan in the absence of an election.

(c) *PBGC optional forms.*

(1) *Participant and beneficiary elections.* A participant may elect any optional form described in paragraph (c)(4) or (c)(5) of this section. A beneficiary of a participant who dies before entering pay status or an alternate payee with a separate interest under a qualified domestic relations order may elect any optional form described in paragraph (c)(4) of this section. Once a benefit is in pay status, the benefit form cannot be changed.

(2) *Permitted designees.* A participant or beneficiary, whether married or unmarried, who elects an optional form with a survivor feature (*e.g.,* a 5-year certain-and-continuous annuity or a joint-and-50%-survivor annuity) may designate a non-spouse beneficiary to receive survivor benefits. A non-spouse beneficiary under an optional joint-life form must be a natural person.

(3) *Spousal consent.* In the case of a participant who is married at the time he or she enters pay status, the election of an optional form or designation of a non-spouse beneficiary is valid only if the participant's spouse consents in writing.

(4) *Permitted optional single-life forms.* The PBGC may offer benefits in the following single-life forms:

(i) A straight-life annuity;

(ii) A 5-year certain-and-continuous annuity;

(iii) A 10-year certain-and-continuous annuity; and

(iv) A 15-year certain-and-continuous annuity.

(5) *Permitted joint-life forms.* The PBGC may offer benefits in the following joint-life forms:

(i) A joint-and-50%-survivor annuity;

(ii) A joint-and-50%-survivor-''pop-up'' annuity (*i.e.,* where the participant's benefit ''pops up'' to the unreduced level if the beneficiary dies first);

(iii) A joint-and-75%-survivor annuity; and

(iv) A joint-and-100%-survivor annuity.

(6) *Determination of benefit amount; starting benefit.* To determine the amount of the benefit in a PBGC optional form—

(i) *Single-life forms.* In the case of a PBGC optional form under paragraph (c)(4) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to an unmarried participant in the absence of an election; and

(ii) *Joint-life forms.* In the case of a PBGC optional form under paragraph (c)(5) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to a married participant in the absence of an election. For this purpose, the PBGC will treat a participant who designates

a non-spouse beneficiary as being married to a person who is the same age as that non-spouse beneficiary.

(7) *Determination of benefit amount; conversion factors.* The PBGC will convert the benefit amount determined under paragraph (c)(6) of this section to the optional form elected, using PBGC factors based on—

(i) *Mortality.* Unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Internal Revenue Service Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington DC 20402); and

(ii) *Interest.* An interest rate of six percent.

(8) *Incidental benefits.* The PBGC will not pay a PBGC optional form with a death benefit (*e.g.,* a joint-and-50%-survivor annuity) unless the death benefit would be an ''incidental death benefit'' under 26 CFR 1.401–1(b)(1)(i). If the death benefit would not be an ''incidental death benefit,'' the PBGC may instead offer a modified version of the optional form under which the death benefit would be an ''incidental death benefit.''

(d) *PBGC discretion.* The PBGC may make other optional annuity forms available subject to the rules in paragraph (c) of this section.

6. Add § 4022.9 to read as follows:

§ 4022.9 Time of payment; benefit applications.

(a) *Time of payment.* A participant may start receiving an annuity benefit from the PBGC (subject to the PBGC's rules for starting benefit payments) on his or her Earliest PBGC Retirement Date as determined under § 4044.13(b) or, if later, the plan's termination date.

(b) *Benefit applications.* The PBGC is not required to accept any application for benefits not made in accordance with its forms and instructions.

§ 4022.21 [Amended]

7. Amend § 4022.21 as follows:

a. In paragraph (a)(2)(i), remove the words ''before the plan terminates and before the participant retired'' and add in their place the words ''on or before the plan's termination date and before the participant retired'';

b. Amend paragraph (d) by removing the words ''benefit payable to other than natural persons, or a trust or estate'' and adding in their place the words ''joint life annuity benefit except if it is payable to or''

§ 4022.25 Five-year phase–in of benefit guarantee for participants other than substantial owners.

8. Amend § 4022.25 by revising paragraphs (c) and (d) as follows:

* * * * *

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each complete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period ending on or before the termination date and calculated from that date are aggregated and treated as one benefit increase.

* * * * *

9. Add paragraph (d) to § 4022.81 to read as follows:

§ 4022.81 General rules.

* * * * *

(d) Death of participant.

(1) *Benefit overpayments.* If the PBGC determines that, at the time of a participant's death, there was a net overpayment to the participant, and the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, the PBGC, in accordance with paragraph (a) of this section, will recoup the overpayment from the person who is receiving survivor benefits.

(2) *Benefit underpayments.* If the PBGC determines that, at the time of a participant's death, there was a net underpayment to the participant—

(i) *Surviving designated beneficiary to receive future annuity payments.* If the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, the PBGC will pay the underpayment to the person who is receiving survivor benefits.

(ii) *No surviving designated beneficiary to receive future annuity payments.* If the benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death or, although the benefit is in such a form, there is no person designated to receive survivor benefits or the person designated to receive survivor benefits predeceased the participant, the PBGC will pay the underpayment to the person determined under the rules in subpart F of this part.

10. Add subpart F to part 4022 to read as follows:

Subpart F—Certain Payments Due Upon Death

Sec.
4022.91 When do these rules apply?
4022.92 What definitions do I need to know for these rules?
4022.93 Who will get benefits the PBGC may owe me at the time of my death?
4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?
4022.95 Whom does the PBGC pay when payments under certain-and-continuous and similar annuities are owed upon a person's death?

§ 4022.91 When do these rules apply?

(a) *Benefits we may owe you at the time of your death.*

(1) *Timing.* These rules apply if you die—

(i) On or after the date we take over your plan (as trustee); or

(ii) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid all benefits owed to you at the time of your death.

(2) *Types of benefits.* These rules apply to any benefits we may owe you at the time of your death, such as a payment of a lump-sum benefit that we calculated as of your plan's termination date but had not yet paid you or a correction for monthly underpayments.

(3) *Benefit form.* These rules apply if your benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after your death or, although your benefit is in that form, the person you designated to receive those payments died before you. (If any part of your benefit is in that form, and the person you designated to receive those payments survives you, we will make up any underpayment to you at the time of your death by paying it to that person, under the rule in § 4022.81(d)(2)(i) of this part.)

(4) *Effect of plan or will.* These rules apply regardless of any contrary provision in a plan or will.

(b) *Certain-and-continuous and similar payments.* These rules also apply in certain circumstances to payments we owe when a person dies without having received all required payments under a ''certain-and-continuous'' or similar form of annuity. See § 4022.95.

§ 4022.92 What definitions do I need to know for these rules?

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

''We'' means the PBGC.

''You'' means the person to whom we may owe benefits at the time of death.

§ 4022.93 Who will get benefits the PBGC may owe me at the time of my death?

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section (which explain what happens if you die before the date we take over your plan or within 180 days after the date we take over your plan), we will pay any benefits we owe you at the time of your death to the person(s) surviving you in the following order—

(1) *Designee with the PBGC.* The person(s) you designated with us to get any benefits we may owe you at the time of your death. See § 4022.94 for information on designating with us.

(2) *Spouse.* Your spouse. We will consider a person to whom you are married to be your spouse even if you and that person are separated, unless a decree of divorce or annulment has been entered in a court.

(3) *Children.* Your children and descendants of your deceased children. A child includes an adopted child. If one of your children dies before you, any descendants of that deceased child at the same level will equally divide that deceased child's share.

(4) *Parents.* Your parents. A parent includes an adoptive parent.

(5) *Estate.* Your estate, provided your estate is open and there is an executor or administrator of your estate at the time we pay those benefits.

(6) *Next of kin.* Your next of kin.

(b) *Pre-trusteeship deaths.* If you die before the date we take over your plan and, by that date, the plan administrator has not paid all benefits owed to you at the time of your death, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits). If there is no such designation, we will pay those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a)(2) through (a)(6) of this section.

(c) *Deaths shortly after trusteeship.* If you die within 180 days after the date we take over your plan and you have not designated anyone with the PBGC under paragraph (a)(1) of this section, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits) before paying those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a)(2) through (a)(6) of this section.

§ 4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?

(a) *When you may designate.* At any time on or after the date we take over your plan, you may designate with us who will get any benefits we owe you at the time of your death.

(b) *Information on how you may designate.* Shortly after the date we take over your plan, we will provide you with information on how you can designate with us. If you want this information earlier, you should contact us at the PBGC customer service center. You may also want to contact us for this information if—

(1) We took over your plan before [INSERT FIRST DAY OF MONTH PRECEDING MONTH OF PUBLICATION OF FINAL RULE IN **Federal Register**]; or

(2) You believe we might owe you benefits as a designee or payee under these rules.

(c) *Change of designee.* If you want to change the person(s) you designate with us, you must submit another designation to us.

(d) *If your designee dies before you.*

(1) *In general.* If the person(s) you designate with us dies before you or at the same time as you, we will treat you as not having designated anyone with us (unless you named an alternate designee who survives you). Therefore, you should keep your designation with us current.

(2) *Simultaneous deaths.* If you and a person you designated die as a result of the same event, we will treat you and that person as having died at the same time, provided you and that person die within 30 days of each other.

§ 4022.95 Whom does the PBGC pay when payments under certain-and-continuous and similar annuities are owed upon a person's death?

If a person dies without having received all required payments under a form of annuity that promises that, regardless of a participant's death, there will be annuity payments for a certain period of time (*e.g.,* a certain-and-continuous annuity) or until a certain amount is paid (*e.g.*, a cash-refund annuity or installment-refund annuity), and there is no surviving beneficiary designated to receive such payments, we will pay the remaining benefits to the person determined under the rules in §§ 4022.91 through 4022.94.

PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS

11. The authority citation for part 4022B is added to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1322B.

12. Revise § 4022B.1 to read as follows:

§ 4022B.1 Aggregate payments limitation.

(a) *Benefits with respect to two or more plans.* If a person (or persons) is entitled to benefits payable with respect to one participant in two or more plans, the aggregate benefits payable by PBGC from its funds is limited by § 4022.22 of this chapter (without regard to § 4022.22(a)). The PBGC will determine the limitation as of the date of the last plan termination.

(b) *Benefits with respect to two or more participants.* The PBGC will not aggregate the benefits payable with respect to one participant with the benefits payable with respect to any other participant (*e.g.,* if an individual is entitled to benefits both as a participant and as the spouse of a deceased participant).

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

15. The authority citation for Part 4044 continues to read as follows:

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

§ 4044.2 [Amended]

14. In § 4044.2(b), amend the definition of *Earliest retirement age at valuation date* by removing the words ''earliest age at which the participant can retire under the terms of the plan'' and adding in their place the words ''participant's attained age as of his or her Earliest PBGC Retirement Date (as determined under § 4044.13(b) of this chapter)''.

15. Revise § 4044.13 to read as follows:

§ 4044.13 Priority category 3 benefits.

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and those annuity benefits that could have been in pay status for participants who, before the beginning of the 3-year period ending on the termination date, were eligible to receive annuity benefits and had reached their Earliest PBGC Retirement Date (as determined in paragraph (b) of this section based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date). Benefit increases that were effective throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (c)(5)

of this section, shall be included in determining the priority category 3 benefit. Benefits are primarily basic-type benefits, although nonbasic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of subpart A of part 4022 of this chapter.

(b) *Earliest PBGC Retirement Date.* The Earliest PBGC Retirement Date for a participant is the earliest date on which the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA. The Earliest PBGC Retirement Date is determined in accordance with this paragraph (b). For purposes of this paragraph (b), ''age'' means the participant's age as of his or her last birthday (unless otherwise required by the context).

(1) *Immediate annuity at or after age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the earliest date on which the participant could separate from service with the right to receive an immediate annuity.

(2) *Immediate annuity before age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is before the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the date the participant reaches age 55 (except as provided in paragraph (b) (3) of this section).

(3) *Facts and circumstances.* If a participant could separate from service with the right to receive an immediate annuity before the date the participant reaches age 55, the PBGC may determine, under the facts and circumstances, that the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA on an earlier date, in which case that earlier date is the Earliest PBGC Retirement Date for the participant. In making this determination, the PBGC will take into account plan provisions (*e.g.,* the general structure of the provisions, the extent to which the benefit is subsidized, and whether eligibility for the benefit is based on a substantial service or age-and-service requirement), the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. Neither a plan's reference to a separation from service at a particular age as a ''retirement'' nor the ability of a participant to receive an immediate annuity at a particular age necessarily makes the date the participant reaches that age the Earliest PBGC Retirement Date for the participant. The Earliest PBGC Retirement Date determined by the PBGC under this paragraph (b)(3) will never be earlier than the earliest date the participant could separate from service and with the right to receive an immediate annuity.

(4) *Special rule for ''window'' provisions.* For purposes of this paragraph (b), the PBGC will treat a participant as having been able, under plan provisions, to separate from service with the right to receive an immediate annuity on a date before the plan's termination date only if eligibility for that immediate annuity continues through the plan's termination date.

(c) *Assigning benefits.* The annuity benefit that is assigned to priority category 3 with respect to each participant is the lowest annuity that was paid or payable under the rules in paragraphs (c)(2) through (c)(6) of this section.

(1) *Eligibility of participants and beneficiaries.* A participant or beneficiary is eligible for a priority category 3 benefit if either of the following applies:

(i) The participant's (or beneficiary's) benefit was in pay status before the beginning of the 3-year period ending on the termination date.

(ii) Before the beginning of the 3-year period ending on the termination date, the participant was eligible for an annuity benefit that could have been in pay status and had reached his or her Earliest PBGC Retirement Date (as determined in paragraph (b) of this section, based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date). Whether a participant was eligible to receive an annuity before the beginning of the 3-year period shall be determined using the plan provisions in effect on the day before the beginning of the 3-year period.

(iii) If a participant described in either of the preceding two paragraphs died during the 3-year period ending on the date of the plan termination and his or her beneficiary is entitled to an annuity, the beneficiary is eligible for a priority category 3 benefit.

(2) *Plan provisions governing determination of benefit.* In determining the amount of the priority category 3 annuity with respect to a participant, the plan administrator shall use the participant's age, service, actual or expected retirement age, and other relevant facts as of the following dates:

(i) Except as provided in the next sentence, for a participant or beneficiary whose benefit was in pay status before the beginning of the 3-year period ending on the termination date, the priority category 3 benefit shall be determined according to plan provisions in effect on the date the benefit commenced. Benefit increases that were effective throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (c)(5) of this section, shall be included in determining the priority category 3 benefit. The form of annuity elected by a retiree is considered the normal form of annuity for that participant.

(ii) For a participant who was eligible to receive an annuity before the beginning of the 3-year period ending on the termination date but whose benefit was not in pay status, the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time.

(3) *General benefit limitations.* The general benefit limitation is determined as follows:

(i) If a participant's benefit was in pay status before the beginning of the 3-year period, the benefit assigned to priority category 3 with respect to that participant is limited to the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the termination date and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the termination date, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under paragraph (c)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors. In the absence of plan factors, the factors in subpart B of part 4022 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the termination

date, computed in accordance with paragraph (c)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the termination date is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of ERISA, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the termination date, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective on or before the first day of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (c)(3) of this section includes the automatic increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is ''in effect'' on the later of the date on which it is adopted or the date it becomes effective.

Issued in Washington, DC, this day of December, 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–32706 Filed 12–22–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Review of regulations; request for comment.

SUMMARY: MMS has been performing annual reviews of its significant regulations and asking the public to participate in these reviews since 1994. The purpose of the reviews is to identify and eliminate regulations that are obsolete, ineffective, or burdensome. In addition, the reviews are meant to identify essential regulations that should be revised because they are either unclear, inefficient, or interfere with normal market conditions. As MMS moves towards performance based regulations, we are looking at ways to offer regulatory relief to industry for exceptional performance. We request your comments and suggestions with respect to which regulations could be more performance based and less prescriptive.

The purpose of this document is twofold. First, we want to provide the public an opportunity to comment on MMS regulations that should be eliminated or revised, or could be more performance based. Second, we are providing a status update of the actions MMS has taken on comments previously received from the public in response to documents published March 1, 1994; March 28, 1995; May 20, 1996; April 24, 1997; June 12, 1998; and June 7, 1999. We will only include in this document status updates on comments which have not been closed or implemented in the six previous status update documents listed above.

DATES: Written comments must be received by February, 26, 2001.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4230; 1849 C Street NW.; Washington, DC 20240; Attention: Elizabeth Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Elizabeth Montgomery, Policy and Management Improvement, telephone: (202) 208–3976; Fax: (202) 208–4891; and E-Mail: Elizabeth.Montgomery@mms.gov.

SUPPLEMENTARY INFORMATION: MMS began a review of its regulations in early 1994 under the directives contained in the President's Executive Order 12866. The Executive Order calls for periodic regulatory reviews to ensure that all significant regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the agency's objectives and Presidential priorities.

We invited the public to participate in the regulatory review. The invitation was sent out via different media, namely a **Federal Register** document dated March 1, 1994 (59 FR 9718); MMS and independent publications; and public speeches by MMS officials during that time.

MMS received approximately 40 public comments which were almost equally divided between its Minerals Revenue Management (formerly Royalty Management Program) and Offshore Minerals Management Programs. We acknowledged the comments in a July 15, 1994 (59 FR 36108), document and set forth our planned actions to address the comments, along with an estimated timetable for these actions.

In the **Federal Register** notices published March 28, 1995 (60 FR 15888); May 20, 1996 (61 FR 25160); April 24, 1997 (62 FR 19961); June 12, 1998 (63 FR 32166); and June 7, 1999 (65 FR 30267), MMS: (a) Asked for further public comments on its regulations, and (b) provided a status update of actions it had taken on the major public comments received to date. We received 10 responses from the 1995 document, 5 responses from the 1996 document, 2 responses from the 1997 document, 3 responses from the 1998 document, and 3 responses from the 1999 document. A number of the commentators expressed appreciation for our streamlining efforts and responsiveness to suggestions from our regulated customers.

This document updates our planned actions and related timetables on the major comments received to date. It also solicits additional comments from the public concerning regulations that should be either eliminated or revised, or could be more performance based. Since some of the public responses received in response to prior documents contained comments on very specific and detailed parts of the regulations, this document does not address every one received. For information on any comment submitted which is not addressed in this document, please contact Mrs. Montgomery at the number and location stated in the forward sections of this document.

MMS regulations are found at Title 30 in the Code of Federal Regulations. Parts 201 through 243 contain regulations applicable to MMS's Minerals Revenue Management, Parts 250 through 282 are applicable to MMS's Offshore Minerals Management; and Part 290 is applicable to Administrative Appeals.

Status Report

The following is a status report by program area on the comments MMS has received, to date, on its regulations.

A. Offshore Minerals Management (OMM) Program

OMM is currently reviewing the following areas of OMM regulations:

1. Regulations Governing Conservation of Resources and Diligence (30 CFR Part 250, Subpart A)

Comments Received—(a) ''Revise Determination of Well Producibility to make wireline testing and/or mud logging analysis optional * * *.'' (b) ''* * * consider comments from the 11/30/95 MMS sponsored workshop to formulate policy for granting SOP [suspension of production] approvals based on host capacity delays, non-contiguous unitization, and market conditions/economic viability.'' (c) ''Grant SOP approval based on host capacity delays, non-contiguous unitization and market conditions/ economic viability.''

Action Taken or Planned—For (a) above, a final rule, ''Postlease Operations Safety,'' revising 30 CFR Part 250, Subpart A, was published on December 28, 1999 (64 FR 72756), effective January 28, 2000. This revision addressed the determination of well producibility. For (b) and (c) above, the final rule also addressed suspensions of production. While preparing the rule, we did consider the comments on granting suspensions of production from the November 30, 1995, workshop.

Timetable—Completed.

2. Regulations Applicable to Oil and Gas Drilling Operations (30 CFR Part 250, Subpart D)

Comments Received—(a) ''Revise directional survey requirements to allow a composite measurement-while-drilling directional survey to be acceptable * * *.'' (b) ''Revise the regulation to eliminate the requirement for multishop surveys when MWD [measurement-while-drilling] surveys are taken.'' (c) ''Revise the regulations to clarify that casings shall be tested to the lesser of the Maximum Design Pressure or to 70 percent of their MIY [minimum internal yield].'' (d) ''* * * allow the initial subsea BOP [Blowout Preventer] stump pressure test to serve as the initial test with 14 days of operations after installation as long as the BOP was fully stump tested within 48 hours of installation.'' (e) ''* * * require that blind and blind shear rams on subsea BOPs be tested to a pressure not greater than the casing test pressure.''

Action Taken or Planned—We rewrote the regulations governing Oil and Gas Drilling Operations, found in 30 CFR Part 250, Subpart D, in plain English. During this rewrite, we made appropriate revisions to the regulations and specifically allowed measurement-while-drilling technology to be used when it meets certain minimum requirements. We also updated the BOP requirements in this rewrite. The Notice of Proposed Rulemaking was published for comment on June 21, 2000. The comment period closed on October 19, 2000.

Timetable—We plan to publish a Final Rule late in 2001.

3. Regulations Applicable to Oil and Gas Well Completion Operations and Well Workover Operations (30 CFR Part 250, Subparts E and F)

Comments Received—(a) ''For subsea wells, require monitoring only on the tubing/production casing annulus.'' (b) ''* * * allow concentric workover rigs and related equipment to be moved onto a platform without shutting in wells.'' (c) ''Revise the regulations to allow a 14-day testing frequency for workovers.''

Action Taken or Planned—We plan to rewrite the regulations on well completion and well workover operations, and will address these comments at that time.

Timetable—We plan to publish for comment a Notice of Proposed Rulemaking in 2002.

4. Safety System Design and Installation (30 CFR Part 250, Subpart H)

Comments Received—''We believe that the [Safety and Environmental Management Program] SEMP/RP 75 Performance Measure process of alternative compliance for operators who voluntarily implement RP 75 and have 'good' performance should allow those operators to periodically update drawings and other documents of production safety system installations and routine modifications instead of receiving required MMS approval of these documents before any modifications are performed (Comment #14 of our July 17, 1996 letter). This is one example of the alternative compliance process that we suggest.''

Action Taken or Planned—This comment expresses an interest for regulatory relief in exchange for ''compliance'' with API RP75. This industry standard captures the essence of SEMP. On August 13, 1997, MMS published a **Federal Register** notice on SEMP (62 FR 43345). This notice publicly relayed our intent to continue collaborative efforts with the U.S. offshore oil and gas industry to promote the non-regulatory (i.e., voluntary) adoption of SEMP; it simultaneously relayed our intent to increasingly focus on operator performance in the field. We made this decision after extensive review of the industry's actions to adopt RP75. We have seen important strides made in the development of SEMP programs by the majority of OCS operators. We have, however, still not seen widespread implementation of these programs on offshore installations. In the most recent SEMP notice, we asked senior company officers to notify MMS when they had ''fully'' implemented SEMP at the field level. In our view, ''fully'' means that an operator has developed their SEMP plan and has implemented it at enough of their offshore installations to commence continuous improvement efforts (e.g., SEMP audits). At the end of December 1999, we had received such notifications from only nine OCS operators. This fact leads us to conclude that SEMP is not yet broadly implemented at the field level. Therefore, any requests for regulatory relief in exchange for SEMP implementation will need to be made to MMS on an ad hoc basis by operators who are prepared to demonstrate, and have us verify, both the extent of their SEMP implementation and their field-level performance.

We have begun the process of revising 30 CFR Part 250, Subpart H. The process changes suggested will be considered internally during preparation of the Notice of Proposed Rulemaking.

Timetable—We expect to publish for comment the Notice of Proposed Rulemaking for a revised 30 CFR Part 250, Subpart H, in early 2001.

5. Regulations Applicable to Production Safety Systems on the Outer Continental Shelf (30 CFR Part 250, Subpart H)

Comments Received—Production Safety System Testing and Records (30 CFR 250.124) (a) ''OOC [Offshore Operators Committee] is very much interested in working with MMS on a research project beginning in 1997 to consider appropriate leak rate tolerances for critical safety devices (Comment #11 of our July 17, 1996 letter) as well as testing frequencies of accurate and reliable new generation safety devices (Comment #13 of our July 17, 1996 letter).'' (b) ''Revise regulations governing Safety Valves to increase time between test and allowable leakage rates.''

Action Taken or Planned—MMS initiated a research project in September 1997 with Southwest Research Institute which investigated the question of leak rate tolerances for critical safety devices. The project also studied leakage rates for surface and subsurface safety valves. Final results from the project became available to the public in July 1999. We have now initiated the rulemaking process to revise all of 30 CFR Part 250, Subpart H. As part of this process, we will discuss internally testing frequencies for safety devices. Any proposed changes to our regulations as

a result of this project will be incorporated into the Notice of Proposed Rulemaking for 30 CFR Part 250, Subpart H.

Timetable—As mentioned in the Timetable for Item No. 4, we expect the Notice of Proposed Rulemaking for a revised Subpart H to appear in the **Federal Register** for comment in early 2001.

6. Production System Requirements and Production Safety-System Testing and Records (30 CFR Part 250, Subpart H)

Comments Received—(a) ''* * * allow the use of electronic pressure transducers to establish pressure ranges.'' (b) ''* * * allow the high pressure shut-in sensor to be set no higher than 5 percent or 5 psi, whichever is greater, below the relief valve set pressure.'' (c) ''Revise the testing frequency of certain surface safety devices.'' (d) ''* * * eliminate the monthly safety system qualifier that says 'but at no time shall more than 6 weeks elapse between tests'.'' (e) ''* * * allow for the annual testing of the pilot and once every 4 years for the valve body of pilot operated PSVs [pressure safety valves].'' (f) ''Delete the requirement to be in attendance on a satellite platform where the subsurface safety device is inoperative or temporarily removed from a well for routine operations * * *.''

Action Taken or Planned—These comments will be taken into consideration as we rewrite 30 CFR Part 250, Subpart H.

Timetable—As noted previously, we plan to publish a Notice of Proposed Rulemaking for Subpart H in early 2001.

7. Regulations Regarding Platforms and Structures (30 CFR Part 250, Subpart I)

Comments Received—(a) ''Revise site clearance requirements * * *.'' (b) ''Revise requirements for placing protective domes over well stubs * * *,'' etc. (c) ''Rescind NTL [Notice to Lessees] 98–26 and follow the regulations in 250.193'' (d) ''* * * allow the Regional Supervisor to approve partial platform removal on a case by case basis at deep and intermediate water depth locations.'' (d) ''Rescind NTL 98–19 and follow the regulations at 250.703(b) and 250.703(c).'' (e) ''Modify platform design wave return period calculation by placing a cap of 100 years on the field life calculation * * *.'' (f) ''* * * acknowledge the USCG [U.S. Coast Guard] role per the current MOU [Memorandum of Understanding].'' (g) ''Adopt the draft API RP for floating systems when issued.'' (h) ''For fixed platforms, adopt API RP 2A (19 or 20th edition), Section 14, Surveys, in its entirety, which allows underwater inspections for unmanned facilities at intervals from 5 to 10 yrs.'' (i) For floating systems * * * acknowledge the USCG responsibility for these inspections * * *.''

Action Taken or Planned—For (a), (b), (c), and (d) above, the proceedings for the International Workshop on Offshore Lease Abandonment and Platform Disposal held in April 1996 were published in 1997. We considered the comments we received from the proceedings in the Notice of Proposed Rulemaking, ''Decommissioning Activities,'' published on July 7, 2000, with comments due by October 5 (65 FR 41892). For (e) through (i) above, we are planning to rewrite 30 CFR Part 250, Subpart I, at which time we will address these comments.

Timetable—We plan to publish a Final Rule on decommissioning in late 2001, and a Notice of Proposed Rulemaking for comment on 30 CFR Part 250, Subpart I, in 2001.

8. Regulations Applicable to Pipelines and Pipeline Rights-of-Way (30 CFR Part 250, Subpart J)

Comments Received—(a) Revise regulations to avoid duplication of requirements between the Department of the Interior (DOI) and the Department of Transportation (DOT) in accordance with the 1996 Memorandum of Understanding on Outer Continental Shelf Pipelines. (b) Commenters submitted comments on the proposed rule that was published on October 1, 1999 (64 FR 53298), concerning producer-operated pipelines that cross directly into State waters without first connecting to a transporter-operated pipeline on the OCS. Commenters were primarily concerned with refinements in regulatory language to better define certain regulatory situations and the responsibilities of DOI and DOT in those situations. (c) ''* * * allow the setting level of actuation for pressure safety devices and redundant safety devices to be MAOP [Maximum Allowable Operating Pressure] plus 10 percent.'' (d) ''* * * require testing after a repair only for the pipeline sections/appurtenances that were replaced or repaired.'' (e) ''* * * allow the PSH [Pressure Safety High] to be set at MAOP plus 10 percent on departing pipelines.'' (f) ''* * * allow for a 15 second time delay bypass of the PSL [Pressure Safety Low] during pump and compressor start-up.''

Action Taken or Planned—For (a) and (b) above, as stated in our previous Notice, ''Reviewing Existing Regulations'' (June 7, 1999), the 1996 Memorandum of Understanding on Outer Continental Shelf pipelines became effective December 10, 1996, and was published in the **Federal Register** on February 14, 1997 (62 FR 7037). Since then we have published a final rule on August 17, 1998 (63 FR 43876), clarifying our regulatory responsibility for producer-operated pipelines that connect to transportation pipelines on the Outer Continental Shelf. Our proposed rule asserting our regulatory responsibility for producer-operated pipelines that do not connect to transportation pipelines on the Outer Continental Shelf was published on October 1, 1999. We published the final version of that rule on July 27, 2000 (65 FR 46092). DOT is now in the process of publishing their complementary rule in which they would relinquish their regulatory responsibility for nearly all producer-operated lines. The DOI and DOT rules, taken together, fully regulate the design, construction, operation, and maintenance requirements of all Outer Continental Shelf pipelines.

We are now preparing a proposed work practices rule for pipeline repairs or modifications that involve either cutting into a pipeline or opening a pipeline at a flange. The rule would require lessees and right-of-way holders to submit in writing the measures they plan to take and the procedures they plan to follow to protect company or contract workers from hazards resulting from pressure or combustibles during such repairs. Accidents during pipeline modifications and repairs have the potential for fire or explosion resulting in multiple fatalities, heavy equipment damage, and spills to the environment.

For (c), (d), and (f) above, we will consider these comments as we work with the Department of Transportation to make our regulations more compatible with theirs. We do not agree with comment (e) above. We earlier responded to this comment in the preamble of our final pipeline marking rule, ''Pipelines and Pipeline Rights-of-Way,'' published on August 17, 1998 (63 FR 43876).

Timetable—We plan to publish for comment the Notice of Proposed Rulemaking on work practices for pipeline repairs or modifications in early 2001. We will be working with the Department of Transportation on the remaining issues and will initiate a rewrite of 30 CFR, Part 250, Subpart J, in late 2001.

9. Regulations Applicable to Oil and Gas Production rates (30 CFR, Part 250, Subpart K)

Comments Received—(a) ''Clarify the regulations to allow various methods for testing subsea wells, including testing

by subtraction.'' (b) ''Allow the use of subsea tree pressure sensors to measure shut-in wellhead pressures corrected with produced fluid data from well tests.'' (c) ''Clarify criteria for flaring or venting small amounts of gas.''

Action Taken or Planned—We will address these comments when we rewrite 30 CFR, Part 250, Subpart K.

Timetable—We plan to publish for comment a Notice of Proposed Rulemaking in 2002.

10. Regulations Applicable to Oil and Gas Production Measurement, Surface Commingling, and Security (30 CFR Part 250, Subpart L)

Comments Received—(a) ''Drop requirement of separate continuous measurement and allocation trains for different royalty rate production volumes.'' (b) Give operators authority to switch (gas and liquid) between connecting pipeline systems, downstream royalty points, prior to arrival onshore, without modifying commingling authority.''

Action Taken or Planned—We will consider these comments when we update our rewrite of 30 CFR Part 250, Subpart L.

11. Regulations Applicable to Production Safety System Training (30 CFR Part 250, Subpart O)

Comments Received—In response to a June 10, 1997, workshop on the development of a performance based training rule, MMS received a variety of comments from the oil and gas industry and MMS accredited training schools. These comments include: (a) ''Continue to implement the current Subpart O training system.'' (b) ''Develop a dual training system incorporating elements from both a performance based program and MMS's current system.'' (c) ''Companies may neglect training under a performance based system.'' (d) ''MMS should use caution when changing from the current prescriptive training system * * *.'' (e) ''* * *use of a written MMS test may cause employees stress that would lead to poor performance on the exams.'' (f) ''* * *hands-on simulator testing is an excellent and realistic means of gauging performance. * * *MMS may not have the expertise or equipment to properly conduct simulator tests.'' (g) ''Hands-on testing should only be conducted onshore, not offshore.'' (h) ''How will MMS react to a company that does not train its employees but has a good safety record * * *.'' (i) ''This may not be the right time to move towards a performance system because of the increase in OCS activity and the shortage of trained and experienced workers.''

Activity Taken or Planned—We addressed comments (a) through (i) in the final rule revising 30 CFR Part 250, Subpart O, ''Well Control and Production Safety Training.'' The rule was published on August 14, 2000 (65 FR 49485), and was effective on October 15, 2000. We have distributed the published final rule to lessees and operators and the training schools.

Timetable—Completed.

12. Shallow Hazards Requirements (NTL No. 83–3)

Comments Received—''* * * revise (Notice to Lessees) NTL No. 83–3 which relates to shallow hazards requirements. Industry has requested that MMS allow use of navigational positioning equipment in lieu of buoying pipelines.''

Action Taken or Planned—NTL No. 83–3 has been superseded by NTL No. 98–20. In NTL No. 98–20, however, we did not address this comment on navigational positioning equipment. We are planning to revise NTL No. 98–20, and are in the process of developing guidance for navigational positioning equipment technology. In the planned revision of NTL No. 98–20, industry may still use buoying, but if they choose not to use buoying, the NTL will require the use of state-of-the-art navigational systems. This will assure the accuracy and safety of anchoring operations in the vicinity of pipelines.

Timetable—We plan to publish the revision of NTL 98–20 in early 2001.

13. Regulations Applicable to Oil Spill Financial Responsibility for Offshore Facilities (30 CFR Part 253)

Comments Received—''The current rule requires the party responsible for demonstrating OSFR [oil spill financial responsibility], the Designated Applicant, to file a new application and secure completion of form MMS–1017 by each co-lessee of record (Responsible Party) appointed the Designated Applicant. We request that the filing of Form MMS–1017 be on an exception basis only. In most cases, the Designated Applicant of the Lease/Permit is the Lease Operator or the holder of the 'Right of Use and Easement.' The rare cases when different parties operate them should be handled as exceptions with the filing of Form MMS–1017.''

Activity Taken or Planned—Form MMS–1017 was developed as a mechanism to reduce the financial and reporting burden for ''Responsible Parties,'' as defined in Section 1001 of the Oil Pollution Act of 1990 (Public Law 101–380, as amended). Section 1016(c) of the Oil Pollution Act of 1990 requires that each ''Responsible Party'' with respect to an offshore facility must establish and maintain the required amount of evidence of financial responsibility. The result, without utilization of form MMS–1017, for any offshore facility with more than one ''Responsible Party'' would be multiple financial coverage for those offshore facilities. The amount of financial coverage would be excessive for any potential oil spills, but would be required by law without the legal mechanism provided by form MMS–1017 to designate an agent to act for all of the lessees/permittees. The resultant cost would be excessive for many small to medium size companies and would make the current standard procedure of spreading risk, by only owning a portion of a lease or permit, untenable. Further, a review of the financial bond market capacities would be exceeded by requiring each lessee or permittee to evidence the specified amount of financial responsibility, resulting in many companies being forced out of the offshore oil and gas drilling and production marketplace.

Timetable—For the reasons stated above, we cannot incorporate the suggestion for 30 CFR Part 253.

14. Documents Incorporated by Reference

Comments Received—(a) ''30 CFR 250.101(e)) Incorporate by Reference ASME/ANSI B31G 'Manual for determining the remaining strength of corroded pipelines'.'' (b) ''(30 CFR 250.803(b)(1)) and (30 CFR 250.1629(b)(1)) Incorporate by Reference API 510 ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration'.''

Action Taken or Planned—For (a) above, we are currently studying ASME/ANSI B31G to decide whether we will adopt it. For (b) above, we are planning to incorporate API 510 by reference as part of the Notice of Proposed Rulemaking we are preparing in our revision of 30 CFR Part 250, Subpart H.

Timing—We plan to publish for comment the Notice of Proposed Rulemaking revising Subpart H in early 2001.

B. Minerals Revenue Management (MRM)

MRM was formerly known as the Royalty Management Program. The program was renamed on October 8, 2000, but the functions remain the same. MRM is reviewing regulations in the following areas:

1. Statute of Limitations and Record Retention

Comments Received—(a) ''Statute of limitations is unclear.'' (b) ''Establish a

reciprocal 5-year statute of limitations from the date an obligation becomes due.'' (c) ''Absence of a record retention program creates some confusion. Regulations should require record retention to coincide with the 5-year statute of limitations.'' (d) '' 'the MMS is changing processes, developing implementation plans, and preparing regulatory changes,' in doing so, the congressional intent of FOGRSFA should be followed to provide certainty and simplicity to lessees.''

Action Taken or Planned—The Federal Oil and Gas Royalty Simplification and Fairness Act (FOGRSFA) was signed into law on August 13, 1996. FOGRSFA contains language to implement a 7-year statute of limitations for MMS processes. We are changing processes, developing implementation plans, and preparing regulatory changes to comply with the requirements of FOGRSFA.

2. Interest—Overpayments & Assessments

Comment received—(a) ''Interest accrual should be equitable between the agency and industry.'' (b) ''the MMS should be mindful of the congressional intent of simplicity and certainty in promulgating any regulations to implement these provisions of FOGRSFA.'' (c) ''A de minimis provision should be established for the assessment of interest.'' (d) ''* * * MMS should enhance their existing interest assessment system to allow for the offsetting of prior period adjustments made on the MMS Form 2014 before calculating applicable interest.'' (e) ''MMS should enhance their existing interest assessment system to calculate interest properly when payment and reporting are received on different dates. Interest is supposed to be calculated on payment date, not reporting date as is done currently in the MMS system. This can cause increased staff time and could easily cause incorrect overpayment of interest. The MMS system could remain as is, justified by the fact that the majority of the time payment and reporting are made on the same dates. In this case we would encourage the MMS to develop an override in the system so that payment date can be used when necessary to calculate interest. Payments are sometimes made to stop the running of interest before reports are submitted.''

Action Taken or Planned—For (a) above, FOGRSFA provides for the payment of interest on overpayments for oil and gas leases on Federal lands.

For (b) above, on March 31, 1997, we issued a Dear Payor letter about FOGRSFA's provisions involving interest issues. We issued another Dear Payor letter on October 1, 1997, explaining interest calculations and interest reporting requirements. We have implemented system enhancements to fulfill the requirements of FOGRSFA, and we are preparing regulations which will address these interest issues.

For (c) above, we have included billing thresholds in our interest system to prevent bills for *de minimis* amounts.

For (d) above, FOGRSFA not only provides for the payment of interest on overpayments for oil and gas leases on Federal lands, but allows industry to calculate the interest assessment. Also, FOGRSFA allows interest that has accrued on overpayments to be applied to reduce underpayments. In May 1997, we started sending interest statements instead of interest bills, and the statements contain totals for interest that MMS owes and for interest owed to MMS. MMS is implementing system changes to conform with the requirements of FOGRSFA and preparing corresponding regulations.

For (e) above, we calculate interest on underpayments based upon the date we receive payment. Interest on overpayments is calculated from the original royalty due date for a given sales month to the date we receive the Form MMS–2014, Report of Sales and Royalty Remittance, recouping overpaid royalties.

Timetable—We will publish for comment a Notice of Proposed Rulemaking in 2001 addressing interest on overpayments and underpayments.

3. Gas Valuation

Comments received (a) ''If the Takes vs. Entitlements policy stays in effect, MMS should strictly enforce reporting on actual quantities taken for all industry participants.'' (b) ''Eliminate Transportation and Processing Allowance Forms for Indians.''

Action Taken or Planned (a) FOGRSFA contains language requiring ''takes'' reporting for stand alone leases and agreements containing 100 percent Federal leases. FOGRSFA also requires ''entitlements'' reporting for so-called mixed agreements (agreements containing Federal, State, Indian, and/or fee leases) with an exception to use ''takes'' reporting for marginal properties. We are changing processes, developing implementation plans, and preparing regulatory changes to comply with the requirements of FOGRSFA.

(b) A final rule developed by the Indian Gas Valuation Negotiated Rulemaking Committee was published on August 10, 1999 (64 FR 43506), and became effective on January 1, 2000. This rule addresses the valuation for royalty purposes of natural gas produced from Indian leases. The rule substantially reduces the transportation and allowance reporting forms for gas from Indian leases. The rule also adds a methodology to calculate the major portion value and an alternative methodology for dual accounting as required by Indian lease terms. The rule simplifies and adds certainty to the valuation of production from Indian leases.

Timetable—We plan to publish for comment a Notice of Proposed Rulemaking in 2001 on takes vs. entitlements.

4. Reporting Procedures and Threshold

Comments Received—(a) ''* * * the prompt implementation of the recommendations of the Royalty Policy Committee Audit and Royalty Reporting and Production Accounting Subcommittees will achieve those simplification and streamlining goals * * *.''

(b) ''The RMP Reengineering Team has recommended 32 reporting changes to reduce and simplify reporting and reduce administrative costs for both MMS and lessees. MMS should proceed diligently to implement these changes.''

(c) ''The review references the proposed changes to reporting requirements to the OGOR's and the 2014's. The statement, 'If these changes are implemented, they will significantly reduce the volumes of lines reported and processed,' is not totally correct in our assessment. It may be true for the OGOR's because some duplicate reporting is being eliminated, but not for the 2014's. If the current proposed 2014 becomes the final 2014, the lines of reporting will be greatly increased mainly because of the new proposed valuation code. If industry is required to report their sales at the six different valuation levels proposed by the MMS, the number of lines will greatly increase.''

Action Taken or Planned—On July 14, 2000, the Office of Management and Budget (OMB) approved the information collection changes in production reporting, and on August 1, 2000, OMB approved the information collection changes in royalty reporting, Form MMS–2014.

On July 15, 1999 (64 FR 38116), we published a final rule requesting that certain reports be submitted electronically beginning in November 1999. Electronic submission significantly reduces the amount of time necessary for a company to complete the monthly reports and MMS processing time, since no manual entry is required.

Timetable—Completed.

5. Refunds Due to Industry Which Are Controlled by Section 10 of the Outer Continental Shelf Lands Act

Comments Received—(a) ''Section 10 refund requirements should be eliminated. The refund process used for onshore properties should be established for offshore properties.'' (b) ''* * * we would urge the MMS to facilitate elimination of the Section 10 recoupment procedures in its entirety. The current practice is administratively burdensome and not cost effective for the industry or MMS.'' (c) ''Eliminate documentation requirements for refund requests over $250M (million); and/or increase this threshold to $500M; raise the refund request limit to $5M. Exempt pure accounting adjustments for items such as production date adjustments and incorrect AID (Accounting Identification) numbers; exempt unit revisions because these revisions are often made more than 2 years after the date of production; establish a time limit on MMS for review of a refund request to expedite the process; and overpayments on OCS properties should be allowed to be offset against any OCS underpayment.''

Action Taken or Planned—FOGRSFA repeals the Section 10 refund procedures of the OCS Lands Act. On November 25, 1996, we mailed a Dear Payor letter with guidelines on refund procedures. We are presently developing a proposed rule implementing the new refund procedures.

6. Electronic Data Exchange

Comments Received—(a) ''* * *MMS (should) continue their ongoing effort to exchange data by electronic means rather than hard copy thereby enabling the industry to adjust the data elements to integrate with each company's systems.'' (b) ''* * * is looking forward to working with MMS to develop an electronic reporting and funds transfer system that is both cost effective and efficient for all parties.''

Action Taken or Planned—We continue to encourage the exchange of data electronically. Our Reporter and Payor Training sessions stress the benefits of electronic reporting and provide reporters and payors with options for reporting by electronic data interchange, diskette, or magnetic tape. Another way we publicize electronic reporting is on the MMS/Minerals Revenue Management Internet website, *www.rmp.mms.gov.* (In January 2001, this website will be changed to www.mrm.mms.gov.)

On April 22, 1997 (62 FR 19497), we published a final rule specifying how payments are made for mineral royalties, rentals, and bonuses that requires all payments to be made electronically to the extent it is cost effective and practical.

On July 15, 1999 (64 FR 38116), we published a final rule requesting that certain reports be submitted electronically beginning in November 1999. Electronic submission significantly reduces the amount of time necessary for a company to complete the monthly reports and MMS processing time, since no manual entry is required.

Timetable—Completed.

7. Publish Final Rules Expeditiously

Comments Received —* * * primary recommendation is the expeditious completion and publication of pending final rules, for example, the proposed rules on administrative offset and limitations on credit adjustments, and the proposed rule on payor liability. * * * Certainly, publication of the final federal (and Indian) gas valuation rule should be facilitated to the maximum extent possible.''

Action Taken or Planned—We published the final Indian gas valuation rule on August 10, 1999 (64 FR 43506). On April 22, 1997, we published a Notice in the **Federal Register** (62 FR 19536) withdrawing the proposed final Federal gas valuation rule because of changes occurring in the gas market.

New language in FOGRSFA will cause a number of changes in the Payor Liability rule and the Administrative Offset and Limitations on Credit Adjustments rule. We are working to incorporate the effects of FOGRSFA in these rules.

8. Valuation of Coal from Federal leases

Comments Received—(a) ''* * * amending this section to allow the use of the lessee's arm's length contracts to support the value for a non-arm's-length contract would make this section more effective and also eliminate the need to use third-party proprietary information in many instances.'' (b) ''* * * the use of the lessee's arm's-length contracts is the best evidence of the comparable value of any non-arm's-length sales by the lessee.''

Action Taken or Planned—The Royalty Policy Committee's Coal Subcommittee is reviewing issues related to coal valuation, and we will use the RPC's recommendations to make improvements to the coal royalty valuation and reporting procedures and associated regulations. The subcommittee anticipates presenting their report on coal valuation at a meeting of the full Royalty Policy Committee in the spring of 2001.

9. Royalty-in-Kind (RIK) Alternative

Comments Received—''urges the MMS to pursue implementation of a RIK program as a cost effective alternative.''

Action Taken or Planned—In 1997, we conducted a Feasibility Study that examined a series of RIK options, both offshore and onshore. Under RIK, the government accepts its royalty share in the form of production rather than the agency's usual practice of collecting oil royalties as a share of the cash value received by the lessee for sale of the production. Based on the study's recommendations, we are conducting pilot projects to study various approaches to implementing the RIK concept.

In cooperation with the State of Wyoming, royalty crude oil from Federal leases in the State of Wyoming and from State of Wyoming properties has been sold competitively on the open market about twice yearly. The State of Wyoming and MMS are satisfied enough with the initial results of these joint competitive open market RIK sales to continue and expand them. Both agencies are continuing to monitor the cost-effectiveness of the RIK approach to crude oil sales in Wyoming.

Under the second pilot, royalty natural gas is being taken in kind from Federal leases in the Texas 8(g) zone of the Gulf of Mexico (Federal offshore leases adjacent to State waters). The gas is being marketed competitively in partnership with the Texas General Land Office through a Cooperative Agreement with the State of Texas.

In 1999, we initiated the third pilot, taking royalty gas from offshore Federal leases, Gulf of Mexico-wide. We are offering royalty gas under competitive sales held monthly for a contract term of 30 days as well as under less frequent sales resulting in contracts of longer terms. Part of it is sold to the General Services Administration (GSA) under an interagency agreement for use by Federal agencies.

In 2000, we initiated a pilot to address the feasibility of taking royalty crude oil from Federal properties in the Gulf of Mexico. This offshore oil pilot makes the Federal royalty crude available, under public competitive sales, to a broad range of qualified bidders, without limitation to those eligible under the Small Refiner RIK Program.

We will analyze these pilots to determine if, and under what circumstances, the RIK option can reduce administrative costs for government and industry while producing at least as much revenue as

our current method of collecting royalties in value.

10. Lessee/Designee

Comments Received—MMS published an interim final rule on August 5, 1997 (62 FR 42062), to implement the designation of royalty payment responsibility provision of FOGRSFA. Generally, we support the need for lessees to submit designations pursuant to FOGRSFA, however, the lessees take issue with MMS's overall approach to implementing these very important provisions of FOGRSFA. Specifically, they object to the need for MMS to collect some of the information sought, the level of detailed information required by this rule, the burdensomeness of information required, and the ability of MMS and the Bureau of Land Management (BLM) to utilize information that these bureaus already have and maintain. Also, they take issue with MMS's authority to collect the information required under the rule from designees (payors).

Action Taken or Planned—When the payor remits royalties on behalf of the lessee, FOGRSFA requires that the lessee designate the paying party as their designee for each lease. The interim final rule published on August 5, 1997, implements the requirements of FOGRSFA. We have a process in place with BLM to identify operating rights owners and changes to operating rights ownership.

Timetable—Completed.

11. Other MMS/Minerals Revenue Management Regulatory Actions

Comments Received—(a) ''In order to craft a reasonable, fair, and proper [oil valuation] rule, it is imperative that MMS publicly address all critical issues prior to the issuance of any final rule so that affected persons can participate meaningfully in the rulemaking process.''

(b) ''Congress pushed for delegation of royalty management functions to states as a means of streamlining and simplifying the process of collection and payment of federal royalties. Despite Congress' clear intent, however, the final regulations published on August 12, 1997, and the standards for delegation published on September 8, 1997, in no way attempt to achieve that purpose.''

Action Taken or Planned—For (a) above, on January 24, 1997, we published a proposed rule on Valuation of Oil From Federal Leases (62 FR 3742), and on February 12, 1998, we published a proposed rule on Valuation of Oil From Indian Leases (63 FR 7089). We've held numerous public meetings regarding the proposed oil valuation rules, and in response to the many comments received in the meetings and through the mail, we published the following in the **Federal Register** on the proposed rule, Valuation of Oil on Federal Leases:

- Supplementary Proposed Rule (July 3, 1997—62 FR 36030);
- Reopened Public Comment Period and Offered Alternatives (September 22, 1997—62 FR 49460);
- Supplementary Proposed Rule (February 6, 1998—63 FR 6113);
- Supplementary Proposed Rule (July 16, 1998—63 FR 38355); and
- Reopened Comment Period and Offered Three Workshops in Houston, TX; Albuquerque, NM; and Washington, DC (March 12, 1999—64 FR 12267).
- Final Rule (March 15, 2000—65 FR 14022).

We also prepared a Supplementary Proposed Rule for Establishing Oil Value for Royalty Due on Indian Leases and published it on January 5, 1999 (65 FR 403).

For (b) above, the regulations for the Delegation of Royalty Management Functions to States were developed in consultation with State government representatives and industry. The final rule was published on August 12, 1997 (62 FR 43076), and included responses to comments we received on the proposed rule. On July 18, 1999 (64 FR 36782), we published a final rule that allows States which choose to assume duties to do so for less than all of the Federal mineral leases within the State or leases

Timetable—For (a) above, we plan to publish a Final Rule, ''Establishing Oil Value for Royalty Due on Indian Leases,'' in 2001. For (b) above, completed.

Conclusion

We invite you to comment on our existing regulations and also the actions we have taken in response to comments and enacted legislation. And, we invite you to stay further informed on many of the topics discussed in this status report by visiting the MMS Internet Website at www.mms.gov.

Dated: December 19, 2000.

Acting for Walter D. Cruickshank,

Director, Minerals Management Service.

[FR Doc. 00–32832 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–242]

RIN 2115–AA97

Safety Zone: Macy's July 4th Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the annual Macy's July 4th fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River.

DATES: Comments and related material must reach the Coast Guard on or before February 9, 2001.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–00–242), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–242), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The Coast Guard proposes to establish a permanent safety zone for the annual Macy's July 4th fireworks display in the East River. The safety zone encompasses all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.4″N 074°01′06.8″W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.4″N 074°01′10.9″W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″N 074°00′42.5″W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area inside the safety zone, at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and North 9th Street, Brooklyn. This area is bound by the following points: 40°42′45.5″N 073°58′07.4″W; thence to 40°42′50.4″N 073°58′23.2″W; thence to 40°43′23.1″N 073°58′12.7″W; thence to 40°43′21.5″N 073°57′45.7″W; (NAD 1983) thence back to the point of beginning. All vessels must be in this location by 6:30 p.m. (e.s.t.) the day of the event.

Once in position within the zone, all vessels must remain in position until released by the Captain of the Port, New York. On-scene-patrol personnel will monitor the number of designated vessels taking position in the viewing area of the zone. If it becomes apparent that any additional spectator vessels in the viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering it. After the event has concluded and the fireworks barges have safely relocated outside of the main channel, vessels will be allowed to depart the viewing area as directed by the patrol commander.

We created the viewing area within this safety zone in order to reduce significant safety hazards in this area of the East River, due in great part, to the extremely strong currents. Based on experience from similar events in this area of the East River, we are concerned that smaller spectator craft located in between the two fireworks barge sites could drift into the fallout zone of either barge site. Additionally, experience from previous events has also shown that having large and small craft located in a confined area presents safety hazards for both sized vessels due to vessel wake, anchor swing radii, and restricted visibility of larger vessels in a confined area.

One safety zone is required for this large section of the East River because the Coast Guard has a limited amount of assets available to patrol this event. If we made this zone into two zones, we could not adequately enforce the boundaries of both zones, and the safety of the port and the mariners would be unacceptably compromised because of the two nearby fireworks barge locations in a confined waterway with significant currents. Fireworks barge locations are normally south of Roosevelt Island and the Brooklyn Bridge.

The Staten Island Ferries may continue services to their ferry slip at Whitehall Street, Manhattan. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Services New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Staten Island, NY, and those persons traveling to and from Manhattan at the end of a national holiday.

The proposed safety zone is effective from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4th. If the event is cancelled due to inclement weather, then this proposed safety zone is effective from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 5th. The proposed safety zone prevents vessels from transiting this portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from 6 barges in the area. No vessel may enter the safety zone without permission from the Captain of the Port, New York.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via the Local Notice to Mariners, marine information broadcasts, facsimile, and Macy's waterways telephone hotline. In previous years this telephone hotline has been established in early June.

Discussion of Proposed Rule

The proposed safety zone is for the Macy's July 4th fireworks display held in the East River, NY. This event is held annually on July 4th. If the event is cancelled due to inclement weather, then this event will be held on July 5th. This rule is being proposed to provide for the safety of life on navigable waters during the event, to give the marine community the opportunity to comment on this event, and to decrease the amount of annual paperwork required for this event.

The proposed size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 8 to 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in this area.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This safety zone temporarily closes a major portion of the East River to vessel traffic. There is a regular flow of traffic through this area; however, the impact of this regulation is expected to be minimal for the following reasons: the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually, small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local

maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the East River during the times these zones are activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually, small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes a safety zone. 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 proposes to amend 33 CFR Part 165 as follows:

Part 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.166 to read as follows:

§ 165.166 Safety Zone: Macy's July 4th Fireworks, East River, NY.

(a) *Regulated Area.* The following area is a safety zone: All waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.4″N 074°01′06.8″W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.4″N 074°01′10.9″W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″N 074°00′42.5″W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

(b) *Activation Period.* This section is activated annually from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4th. If the event is cancelled due to inclement weather then this section is in effect from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 5th.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels, except the Staten Island Ferries, will be allowed to transit the safety zone without the permission of the Captain of the Port, New York.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessels equal to or greater than 20 meters (65.6 feet) in length carrying persons for the purpose of viewing the firework may take position in an area inside the safety zone, at least 200 yards off the bulkhead on the west bank just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and North 9th Street, Brooklyn. This area is bound by the following points: 40°42′45.5″N 073°58′07.4″W; thence to 40°42′50.4″N 073°58′23.2″W; thence to 40°43′23.1″N 073°58′12.7″W; thence to 40°43′21.5″N 073°57′45.7″W; (NAD 1983) thence back to the point of beginning. All vessels must be in this location by 6:30 p.m. (e.s.t.) the day of the event.

Dated: November 3, 2000.

P.A. Harris,

Captain, U. S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 00–32826 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 00–219; FCC 00–392]

Exempt Presentations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its regulations specifying presentations that are treated as exempt under the ex parte rules. Under the current rule, presentations to or from the Department of Justice and the Federal Trade Commission regarding telecommunications competition matters are treated as exempt. The item would expand the scope of the exemption to include the Competition Directorate of the European Commission and other international and foreign bodies with analogous functions. The item would clarify that the term ''telecommunications competition matters'' in the existing rule was intended to be construed broadly and was not limited to common carriers. The intended effect of this proposal is to enhance the Commission's ability to consult with relevant agencies concerning mergers and other significant competition matters.

DATES: Comments must be filed on or before January 25, 2001; reply comments must be filed on or before February 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room 8–C723, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), GC Docket No. 00–219, adopted on October 30, 2000, and released December 15, 2000. The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. Copies of filings may be purchased from the Commission's copy contractor, International Transcription Service (ITS), 1231 20th Street, NW, Washington, D.C. 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Filings may also be viewed on the Commission's Internet web site using the Electronic Document Filing System (ECFS) at *http://haifoss.fcc.gov/cgi-bin/ws.exe/prod/ecfs/comsrch_v2.hts*.

Summary of Notice of Proposed Rule Making

1. By this notice of proposed rulemaking, the Commission proposes to modify 47 CFR 1.1204(a)(6), one of the rules governing the permissibility of ex parte presentations in Commission proceedings. The current rule provides that the following type of presentation is exempt:

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding) *Provided* , That, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision; The Commission proposes to broaden the scope of this exemption to include international and foreign governmental bodies that exercise similar jurisdiction over relevant matters.

2. The rule was intended to ''promote the public interest through the exchange of information between the Commission and the other principal agencies responsible for promoting or ensuring competition in the telecommunications industry.'' *Amendment of the Commission's Ex Parte Rules,* 9 FCC Rcd 6108 ¶ 2 (1994). *See also Amendment of 47 CFR 1.1200 et seq.*, 12 FCC Rcd 7348, 7368 ¶ 61 (1997), *recon. denied,* 14 FCC Rcd 18831 (1999), *modified,* DA 99–2788 (Dec. 17, 1999). The Commission continues to believe that the public interest will be served by permitting free consultation between the agencies with principal jurisdiction over telecommunications competition matters. Indeed, the need for effective, expedited, and consistent governmental response to issues of competition is especially acute in the present environment of major structural reorganizations within the telecommunications industry, accelerated technological change, and increased globalization.

3. The current § 1.1204(a)(6), however, fails to take into account an important dimension in the oversight of telecommunications competition, namely the increased globalization of telecommunications competition issues. The entities and services involved in, for example, mergers may well be international, rather than national in character, and the oversight of such cases potentially involves not only the Commission, the DOJ, and the FTC, but also their foreign and international counterparts. This situation has prompted antitrust and competition policy officials of the United States to develop close relationships with their foreign and international counterparts with respect to notifications, consultations, and coordination. In this regard, formal bilateral agreements have been reached between the United States and several countries, and informal relationships exist with other countries. Because the public interest requires the effective, expedited, and consistent exercise of authority on the international as well as national scale, presentations by the appropriate foreign and international agencies should also be exempt under the Commission's ex parte rules.

4. As an additional matter, the Commission takes this opportunity to clarify that the term ''telecommunications competition matter'' in the current rule was intended to be broadly construed to include the full extent of the respective agencies' jurisdiction over communications competition matters. It was not intended to be limited to specific types of competition matters involving ''telecommunications'' as that term may be technically defined by the Act.

Initial Regulatory Flexibility Certification

5. Section 603 of the Regulatory Flexibility Act, as amended, requires a preliminary regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). We believe that the rule we propose today will not have a significant economic impact on a substantial number of small entities.

6. As noted above, in proposing to revise the ex parte rules we are expanding the scope of presentations treated as exempt. The proposed rule does not impose any additional compliance burden on persons dealing with the Commission, including small entities. The new rule would not significantly affect the rights of persons participating in Commission proceedings. There is no reason to believe that operation of the new rule would impose significant costs on parties to Commission proceedings.

7. Accordingly, we certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996), that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The Commission shall send a copy of this Notice of Proposed rulemaking, including this certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register.**

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1204 is amended by revising paragraph (a)(6) to read as follows:

§ 1.1204 Exempt ex parte presentations and proceedings

(a)* * *

(6) The presentation is to or from The United States Department of Justice, The United States Federal Trade Commission, or a foreign or international agency, including but not limited to the Competition Directorate of the European Commission, with responsibility for the oversight of competition matters similar to the foregoing United States agencies, and the presentation involves a telecommunications competition matter. This exemption applies to proceedings which have not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding). Any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process shall be disclosed by the Commission no later than at the time of the release of the Commission's decision;

* * * * *

[FR Doc. 00–32788 Filed 12–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13, 20, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101

[WT Docket No. 00–230; FCC 00–402]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we open a proceeding to examine ways in which we could remove, relax, or modify Commission rules to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights. We inquire generally about how best to clarify our rules, and revise them where necessary, to promote the wider use of spectrum leasing, particularly in our Wireless Radio Services in which licensees hold ''exclusive'' authority to use spectrum in their service areas. We also ask whether the Commission should take additional actions to improve the effectiveness of secondary markets in the context of other terrestrial licenses, as well as satellite licenses. We inquire whether the Commission should revise its rules to increase flexibility in its technical and service rules. Finally, we seek comment on actions the Commission might take to impose the availability of information on the use of wireless radio spectrum.

DATES: The agency must receive comments on or before February 9, 2001, and reply comments on or before March 9, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Murray or Donald Johnson, Wireless Telecommunications Bureau, at (202) 418–7240, or via the Internet at pmurray@fcc.gov or djohnson@fcc.gov, respectively; for additional information concerning the information collections contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM), FCC 00–402, in WT Docket No. 00–230, adopted on November 9, 2000 and released on November 27, 2000. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of Notice of Proposed Rulemaking

I. Introduction and Executive Summary

1. In this document, we open a proceeding to examine a number of

actions we might take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights. We believe that enabling the development of more robust secondary markets will help promote spectrum efficiency and full utilization of Commission-licensed spectrum and thereby make more spectrum available for the purposes for which it is needed.

2. First, we seek to remove, relax, or modify our rules and procedures to eliminate unnecessary impediments to the operation of secondary market processes. In this document, we set forth a number of proposals for reducing regulations that unnecessarily inhibit the development of secondary markets. We initially ask generally how best to clarify our rules, and revise them where necessary, to promote the wider use of the leasing of spectrum usage rights (''spectrum leasing''), particularly in our Wireless Radio Services. We next focus on a specific proposal for furthering leasing in the context of a broad set of licenses in which spectrum leasing could most easily be implemented, namely those Wireless Radio Services in which licensees hold ''exclusive'' authority to use the spectrum in their service areas. We also inquire whether there are additional actions the Commission might take to improve the effectiveness of secondary markets in the context of other terrestrial wireless services, as well as satellite services. Finally, working within the statutory framework of the Communications Act, we undertake to remove impediments posed by our policies, such as our interpretation of requirements pertaining to transfer of control issues under Section 310(d), 47 U.S.C. 310(d), and the standard set forth in Intermountain Microwave, 12 FCC 2d 559 (1963), that appear to inhibit unnecessarily the development of secondary markets through spectrum leasing and other market arrangements. In addition to our spectrum leasing proposals, we seek to find ways to increase flexibility in technical and service rules to further promote secondary markets.

3. Our second goal is to encourage advances in equipment that will facilitate use of available spectrum for a broad range of services. Although we address many of our efforts in this regard in other proceedings, such as those on Software Defined Radio (SDR) and Ultra-Wideband technology, we inquire here about ways in which the Commission might revise its rules to promote technical flexibility in a manner that might further enable the use of spectrum efficient technologies. Finally, our third goal is to encourage the development of mechanisms, such as information sources, that help enable markets to work better. We also inquire about whether and how the Commission and the private sector could facilitate the availability of information on spectrum use that would further promote the development of secondary markets in radio spectrum usage rights.

II. Proposals for Advancing Secondary Markets

A. Removing Barriers to Leasing of Spectrum Usage Rights

1. General Concept and Approach

4. We tentatively conclude that permitting wider use of spectrum leasing would promote the public interest by increasing the efficiency of spectrum use. By bringing market forces more heavily to bear and facilitating more robust secondary markets in spectrum usage rights, leasing should promote more efficient use of spectrum and allow more entities to gain access to spectrum so that it may be put to innovative uses. We here are requesting comment on how to provide enhanced opportunities for spectrum leasing in a manner that best serves our public interest goals.

5. Under the general concept of spectrum leasing advanced in this document, we propose to allow licensees greater flexibility, consistent with the public interest and statutory requirements, to subdivide and apportion the spectrum and to lease their rights to use it to various third party users—in any geographic or service area, in any quantity of frequency, and for any period of time during the term of their licenses '' without having to secure prior Commission approval.

6. We recognize that spectrum leasing may encompass a continuum of arrangements, from the leasing of excess capacity on a licensee's system to the leasing of the rights to use all of the licensed spectrum itself. In certain ways, spectrum leasing conceptually resembles a kind of temporary partitioning, disaggregation, or partial assignment of a licensee's spectrum usage rights, without the complete and permanent transfer of control or assignment of the discrete leased portion of that spectrum license, and the full panoply of licensee responsibilities, to that particular lessee of spectrum usage rights (''spectrum lessee'') for the remainder of the license term.

7. We also seek comment on the potential role of band manager licensing as a vehicle for facilitating the leasing of the rights to use spectrum. In those instances to date in which we have adopted or proposed band manager licensing, we have envisioned band managers as a specifically designated class of licensees that engage in spectrum leasing as their core function.

8. We invite comment on whether the general concept of spectrum leasing described in this section is appropriately defined, or whether it should be defined differently, more narrowly, or more broadly. We seek comment on the potential benefits of spectrum leasing. We also invite comment on what problems such an approach might raise. Are there parties, such as other licensees, spectrum users, and the public, that may not benefit from the wider use of spectrum leasing? We invite comment on the practical limits to various forms of such leasing. For instance, would potential spectrum lessees be willing to build out facilities if they would be leasing the rights to use spectrum for only a short period of time? Also, we request comment on whether, for the purposes of our general analysis, it matters whether the spectrum leasing involves leasing of excess capacity on a licensee's system or the leasing of the rights to the use of the licensee's raw spectrum. We also seek comment on how spectrum leasing fits within the Commission's overall spectrum management and licensing responsibilities under the Communications Act. Finally, we invite comment on whether we should consider other types of arrangements that would meet similar goals.

2. Spectrum Leasing Proposal

9. We propose to clarify and/or revise our policies and rules to permit most Wireless Radio Services licensees with exclusive rights to use licensed spectrum in their service areas to lease all or portions of their licensed spectrum for use by non-licensees. We propose that these licensees be permitted to lease spectrum usage rights in any amount of spectrum and for any period during the term of the license, so long as the non-licensee spectrum users—the ''spectrum lessees''—comply with the technical and non-technical service rule requirements as discussed below. We apply our proposal to these particular licenses chiefly because, compared with the other Wireless Radio Services (i.e., those in which licensees ''share'' spectrum), exclusive licenses raise the fewest and least complicated concerns relating to interference, frequency coordination, and restricted use. We invite comment on this approach. We propose to permit not only leasing by these licensees to non-licensees, but also further subleasing by

spectrum lessees to other non-licensees. We invite comment on this approach as well.

(i) *Responsibility for compliance with Commission rules.*

10. As a core feature of our proposal on leasing of spectrum usage rights, we propose that the licensee retain ultimate responsibility for ensuring that the spectrum lessee complies with the Act and the Commission's applicable technical and service rules.

11. We invite comment on policies and rules we might adopt, or actions we might take, to ensure that the licensee meets this core responsibility with regard to the use of licensed spectrum being leased. We note at the outset that any requirements we would impose would be designed to ensure that the licensee had the full authority and duty to take whatever actions necessary to ensure the spectrum lessee's compliance with the Act and the rules. We do not intend to propose any requirements that would unnecessarily interfere with the ability of licensees and spectrum lessees to structure appropriately flexible arrangements.

12. *Licensee's ultimate responsibility for ensuring compliance.* As indicated, under our proposal the licensee would remain ultimately responsible to the Commission for compliance with all of the obligations of the Communications Act and our rules. We propose that, in the event of licensee or lessee non-compliance, the Commission would hold the licensee directly responsible and may take any action against the licensee provided for under our rules. We seek comment on this proposal. We also ask for comment on whether there are circumstances in which the Commission should hold a spectrum lessee responsible for its non-compliance with the rules in addition to, or instead of, the licensee. We seek comment, too, on how the licensee would remain ultimately responsible in the context of subleasing.

13. We also invite comment on whether we should impose any additional requirements on the licensee to ensure that each of its spectrum lessees complies with all of the applicable interference, technical, and service rules (as those rules may be revised, in this proceeding, with respect to spectrum leasing). Should there, for instance, be any ''due diligence'' required on the part of the licensee to ensure its lessees'' compliance? Should the spectrum lessee have to certify to the licensee that it complies with all rules? Should the licensee be required in some way to verify its lessees' compliance with the applicable rules? If the lessee is not also being held responsible, are there any requirements we need to place on the lessor? Another approach to ensuring that the licensee and spectrum lessee(s) meet their respective responsibilities could be to require all spectrum leasing arrangements to include certain contractual provisions defining, at a minimum, basic rights, obligations, and responsibilities of the licensee and the spectrum lessee(s) with respect to the Commission.

14. *Enforcement issues.* In authorizing wider use of spectrum leasing, the Commission must maintain its ability to exercise its duty to ensure compliance with the Act, our policies, and our rules, and to take action regarding violations when they occur. Because our leasing proposal relies on a licensee retaining ultimate responsibility for ensuring compliance by its spectrum lessees, we concluded that licensees should be held responsible for the operations of their spectrum lessees. Nonetheless, under the spectrum leasing provisions proposed in this document, we tentatively conclude that this action would not relieve spectrum lessees of their individual responsibilities to comply with the Act, our policies, and our rules.

15. Under our leasing proposal, a lessee or sublessee would operate its mobile or fixed stations under the authority included in the Commission license issued to the licensee. Thus, if a lessee operates outside the parameters of the licensee's authorization, the licensee would be subject to license revocation or other enforcement action. We seek comment on also holding the lessee directly responsible for violations of the Act or our rules. In addition, it may be necessary for the Commission to be able to obtain relevant information not only about the licensee, but also about spectrum lessees and sublessees.

16. *Contractual disputes.* The spectrum leasing proposals in this document, if adopted, may at times result in disputes between licensees and lessees regarding compliance with contractual terms. We tentatively conclude that such disputes should be resolved in the same manner that parties would resolve commercial disputes arising under contract, such as through the courts or some other means of dispute resolution (e.g., arbitration panels or mediators). We seek comment on this tentative conclusion, and what role, if any, the Commission should have in resolving such disputes.

(ii) *Interference, frequency coordination, and other technical rules.*

17. *Background.* At the heart of the Commission's concerns and obligations relating to Wireless Radio Services licenses is the need to protect the public and licensees providing service to the public from interference caused by other authorized or unauthorized users of spectrum. Under our proposal, the licensee retains ultimate responsibility to ensure that the spectrum lessee complies with all of the interference, frequency coordination, and other technical rules applicable to the licensed spectrum being leased.

18. *Interference and frequency coordination.* We tentatively conclude that the licensee would be responsible for ensuring that all spectrum lessees comply with the interference rules applicable to the license. We seek comment on how this requirement would work in practice.

19. *Other technical rules.* Similarly, we also tentatively conclude that the spectrum lessee would be required to comply with all other technical rules applicable to the licensed spectrum. Examples of these rules include equipment requirements (*e.g.,* tower height and power output), equipment authorizations, emission mask requirements, radio frequency (RF) safety standards, and spectral efficiency standards.

(i) *Service rules.*

20. In this document, we seek comment on the extent to which the existing service rules applicable to licensees should apply to spectrum lessees as well. In considering these issues, we seek to assess what measures can be taken to facilitate leasing, while at the same time ensuring that our approach does not invite circumvention of the underlying purposes of our service rules.

21. In the discussion that follows, we set forth and seek to examine a continuum of possible approaches to this issue. At one end of the continuum, one proposal would be to make all service rules that are applicable to the licensee applicable to the lessee as well. We examine and clarify how such a proposal might be implemented, and seek comment. We recognize, however, that strict adherence to such a proposal might unnecessarily impede the development of many kinds of spectrum leasing arrangements that would serve the public interest. Thus, at the other end of the continuum, we also set forth and seek comment on proposals under which spectrum lessees would not be subject to the same service rules as licensees. There may well be contexts in which such an approach would be justified, especially in the case of short term spectrum capacity leases. Ultimately, we seek to develop a record regarding how our service rules should be crafted in the context of spectrum

leasing in order to facilitate secondary markets without circumventing the underlying purposes of the rules.

22. *Qualification, eligibility and use restrictions.* As indicated, one possible proposal would be to apply the qualification and eligibility rules applicable to the licensee of any particular service to the entity seeking to lease the licensed spectrum. Under such a proposal, licensees would be responsible for ensuring that the same rules that restrict their qualification or their eligibility would restrict the respective qualification or eligibility of entities seeking to enter into spectrum leasing arrangements. We also seek comment on a different proposal, under which we would not require lessees to meet the same qualifications as that of the licensee. In what circumstances would such requirements not be necessary, without undermining the underlying purposes) of the particular service rule? Are there any implementation considerations we should take into account in this context?

23. *Attribution rules.* For many licenses, we have established various attribution rules that affect which entities might be licensees as well as what other interests entities may have in licenses that raise issues under various Commission policies and rules. One possible approach to addressing these service rules in the leasing context would be to require the attribution rules applicable to a licensee to be applied to a spectrum lessee as if that lessee were the licensee. We seek comment on this approach. We also seek comment on alternative proposals with regard to our attribution rules in the context of spectrum leasing. In what circumstances should we not apply our attribution rules to lessees? Why would such circumstances not circumvent the underlying purposes of our rules? To the extent we determine that attribution rules should apply to lessees, we also seek comment on how best to ensure that licensees and lessees comply with those rules. Should, for instance, licensees and/or lessees have to certify that they comply with the applicable attribution rules, and if so, to whom must they certify? Are there any additional compliance concerns raised with regard to subleasing?

24. *Aggregation limits.* With regard to the aggregation limit or ''spectrum cap'' that applies to some licenses, one approach would be to apply that aggregation limit to any of the licensed spectrum leased. Under this approach, if an entity leases any licensed spectrum that falls under the CMRS spectrum cap rule, 47 CFR 20.6, the amount of spectrum leased is attributable under current rules both to the licensee and to the spectrum lessee for the purpose of determining compliance with the cap. We seek comment on such a proposal. We also request comment on possible alternative proposals, including not applying the CMRS spectrum cap to spectrum leasing. In what instances does spectrum leasing not raise concerns about market concentration that the CMRS spectrum cap seeks to address?

25. *Construction or substantial service requirements.* Because a spectrum lessee operates under the authority granted to the licensee, we propose to permit a licensee to rely on the activities of its lessee(s) when establishing that the licensee has met the applicable construction, substantial service, or similar requirements.

26. *Bidding credits, installment payments, and unjust enrichment.* Bidding credits for small businesses are often made available for particular auctioned licenses. In addition, installment payment plans were available with respect to licenses won in certain past auctions. If we applied the existing rules to spectrum lessees, then if a licensee that received bidding credits or participates in an installment payment plan wishes to lease its rights to use portions of its licensed spectrum to an entity that would not meet the eligibility standards for a similar bidding credit, we would require the licensee to reimburse the government for unjust enrichment. We seek comment on such an approach, and how it could be implemented. We also seek comment on a different proposal, in which lessees would not be required to pay unjust enrichment payments in leasing contexts. In which spectrum leasing arrangements should we not require any unjust enrichment payments? Would there be any reason to apply unjust enrichment payments with respect to short-term leases, such as leases for one year or less? Should we establish any ''safe harbors'' in which unjust enrichment payments should not be required? Should we require such payments if the licensee leases only excess capacity on its own facilities?

27. *Regulatory status.* We also seek comment on how issues relating to a licensee's regulatory status should be applied with respect to spectrum lessees. We could require that spectrum lessees would be subject to the same rules regarding regulatory classification as the licensee, and would be required to meet the same regulatory requirements associated with its classification. For instance, in services such as cellular, our rules require licensees to provide service on a common carrier basis and to comply with the requirements of Title II of the Communications Act, 47 U.S.C. 201 *et seq*. Thus, under this approach, an entity leasing spectrum usage rights from a cellular carrier would also be classified as a common carrier (just as cellular resellers are currently), and would be held to the requirements of Title II. We seek comment on such a proposal. We also invite comment on a completely different approach. Should we determine that a licensee's regulatory status should not necessarily be applied to spectrum lessees? We also seek comment on whether the requirements placed on the licensee should apply to lessees in cases where services are not limited to one regulatory classification.

28. *Periodic filings and other interactions with Commission.* As for the filing requirements not discussed above and the other required interactions with the Commission, we propose that the licensee remain responsible for compliance. We seek comment, however, on whether placing this regulatory burden directly on licensees may unnecessarily restrict their ability to lease spectrum usage rights. Commenters should specifically address how the leasing of spectrum usage rights in the secondary market may be hindered by requiring licensees, rather than lessees (or sublessees), to bear these administrative burdens.

29. *Renewal.* Finally, given that a spectrum lessee can have no greater rights than the licensee, no spectrum lease agreement may legally grant an absolute term beyond the term of the licensee's authorization. This restriction does not, however, prohibit a spectrum lessee from entering into a contingent agreement with the licensee providing for an option or right to renew the agreement if it is able to renew its authorization with the Commission.

3. Other Licenses

30. As noted above, in this document our specific proposals focus on licenses in the Wireless Radio Services in which licensees have exclusive rights to use the licensed spectrum. We seek comment on whether we should clarify and/or revise policies and rules with respect to the following licenses in order further to promote the development of secondary markets in radio spectrum usage rights.

a. ''Shared use'' Wireless Radio Services licenses.

31. We invite comment on whether we should permit spectrum leasing by licensees that share use of the same spectrum. We believe there may be reasons to look at spectrum leasing

differently in the context of shared spectrum. First, radio services in which licensees share the use of spectrum raise interference and frequency coordination issues that are more complex than for licensees that have exclusive rights to use their licensed spectrum. In addition, where licensees do not hold spectrum on an exclusive basis, other potential spectrum users are not precluded from obtaining their own licenses, provided that appropriate sharing arrangements can be reached. This may reduce the need for leasing as an alternative to facilitate efficient spectrum use. We therefore seek comment on whether allowing spectrum leasing is likely to have any practical applicability to shared spectrum. Assuming that we do allow some form of spectrum leasing on shared spectrum, we seek comment on how it would be implemented. In particular, we seek comment on how licensees and lessees would coordinate frequency use with neighboring licensees and lessees so as to avoid interference problems.

b. Satellite licenses.

32. The Commission has interpreted its rules for the Fixed Satellite Service (FSS) in a manner that has fostered the development of a secondary market in space station capacity. Since 1981, the Commission has permitted satellites located in geostationary orbits and licensed as FSS satellites to lease or sell any or all of the transponders on the satellite to third parties. Further, we have permitted licensees of satellite systems operating on a non-common carrier basis, such as most Big and Little Low-Earth Orbit (LEO) satellite systems, to offer capacity on their satellites to individual customers on individualized terms, ranging from short-term leases to sales. In this document, we request comment on whether any changes are needed with respect to the Commission's policy on transponder leases or sales. In particular, are there any changes that we should consider making that would make it even easier to develop a market in the use of transponders or in the leasing of rights to use satellite spectrum? More generally, we also request comment on any other proposals to bolster secondary markets in or otherwise improve the efficiency of the use of satellite spectrum. We also seek comment on whether any modifications to our earth station rules might be appropriate as a means of fostering a more efficient secondary market in earth station capacity.

c. Mass Media licenses.

33. At this time, we are not exploring whether the Commission should revise any of its policies and rules within the mass media services to facilitate more robust secondary markets in the broadcast field. We make this decision because of the unique obligations placed on broadcasters and the public interest considerations applicable in this context. We seek comment on this approach and, in particular, whether the Commission should address the mass media services in any subsequent rulemaking regarding these issues.

4. The Commission's Requirements Relating to Transfer of Control

34. As we explore these spectrum leasing initiatives, we are mindful that there are statutory limitations on the kinds of arrangements which licensees may enter into with third parties without Commission approval. In particular, licensees may not enter into arrangements that would violate Section 310(d) of the Act, 47 U.S.C. 310(d), which requires prior Commission approval to transfer control of or assign licenses (or parts of licenses, where permitted) to third parties. This section has been interpreted such that approval must be sought not only for transfers of legal (de jure) control, but also for transfers of actual (de facto) control under the special circumstances presented.

35. For many of the Wireless Radio Services licenses, the Commission historically has interpreted Section 310(d) control requirements pursuant to its 1963 Intermountain Microwave decision, 12 FCC 2d 558, which set forth the following six factors for determining whether a de facto transfer of control has occurred: (1) Does the licensee have unfettered use of all facilities and equipment? (2) who controls daily operations? (3) who determines and carries out policy decisions, including preparing and filing applications with the Commission? (4) who is in charge of employment, supervision, and dismissal of personnel? (5) who is in charge of payment of financial obligations, including expenses arising out of operation? and (6) who receives monies and profits from the operations of the facilities? For other sets of licenses, however, the Commission has determined to apply other criteria, depending on the Commission's particular concerns about licensee control with respect to those licenses.

36. We recognize that the types of leasing arrangements that we propose to allow in this document potentially conflict with the six criteria that the Commission used to evaluate Section 310(d) control in the Intermountain Microwave decision. The Intermountain Microwave factors focus on whether the licensee, as opposed to an unlicensed third party, controls the operation of the facilities that are the subject of the license. In the leasing arrangements we propose here, however, a licensee could lease its facilities for use by a third party lessee, or could lease all or a portion of its spectrum usage rights, to enable a third party lessee to use the spectrum with facilities constructed and owned by the lessee.

37. In the context of the spectrum leasing arrangements discussed in this document, we tentatively conclude that the Intermountain Microwave criteria do not provide the appropriate framework for analysis of control under Section 310(d). As we consider the ''current realities'' of spectrum licensing today, however, we believe that it is no longer viable to analyze spectrum leasing arrangements through the lens of the Intermountain Microwave factors, even if we attempt to apply those factors ''flexibly.''

38. In our discussion of Intermountain Microwave in this document, we neither address, nor propose to limit, the use of the Intermountain Microwave standard in contexts other than spectrum leasing as discussed above. For instance, the Intermountain Microwave standard is applied when interpreting our spectrum aggregation and cellular cross-ownership rules. These rules deal with ''control'' issues that are distinct from those in this document. In particular, these rules are concerned with whether entities have a sufficient attributable interest in certain licenses to affect competition, even when such interests do not rise to the level of ''control'' under our precedent. Similarly, we have relied in part on Intermountain Microwave to determine de facto control for attribution purposes to determine eligibility for small business status under our competitive bidding rules and eligibility for the PCS C- and F-Blocks. These rules are intended to ensure that small entities are not controlled by larger entities that would not be eligible under our auction rules, and accordingly address concerns that are distinct from the secondary market issues we address here.

39. In lieu of Intermountain Microwave, we propose to develop a new standard for the purpose of interpreting Section 310(d) requirements relating to de facto control with respect to spectrum leasing arrangements and the licenses affected in this document. We seek to develop a standard that would permit greater flexibility to licensees to enter into spectrum leasing arrangements without the need for prior Commission approval.

40. We seek comment on a specific proposal that, at a minimum, includes certain essential rights and obligations

that licensees must retain as part of any lease agreement in order to ensure that licensees retain control for Section 310(d) purposes when entering into leasing arrangements. Specifically, we propose that a wireless licensee entering into a leasing arrangement must: (1) retain full responsibility for compliance with the Act and our rules with regard to any use of licensed spectrum by any lessee or sublessee; (2) certify that each spectrum lessee (or sublessee) meets all applicable eligibility requirements and complies with all applicable technical and service rules; (3) retain full authority to take all actions necessary in the event of noncompliance, including the right to suspend or terminate the lessee's operations if such operations do not comply with the Act or Commission rules.

41. We also seek comment on whether holding licensees responsible for their lessees' compliance with the Act and our rules, as described above, is sufficient to ensure that the licensee retains control of the license for purposes of Section 310(d), or whether additional provisions are also needed to ensure that the licensee retains control. We seek comment on whether other standards incorporating such provisions, or taking a different approach, might be appropriate.

42. To the extent that commenters believe instead that Section 310(d) requires licensees to obtain approval from the Commission in order to enter into some or all of the types of spectrum leasing arrangements proposed in this document, we seek comment on whether the Commission could make a blanket determination that such transfers of control were in the public interest and would be automatically granted, so long as the licensees complied with certain minimal requirements, as specified by the Commission. In other words, could the Commission, by policy or rule, determine that if licensees leased spectrum usage rights under the specific conditions set forth in this document, those transfers should be deemed automatically approved because they would satisfy the requirement under Section 310(d) that the Commission find that the transfers are in the public interest? We have issued such blanket determinations in other instances.

43. Finally, to the extent that commenters believe that Section 310(d) requires licensees to obtain approval from the Commission in order to lease spectrum usage rights, or alternatively that the Commission could not issue a blanket determination automatically approving such agreements, we seek comment on whether forbearance from enforcement of Section 310(d), pursuant to Section 10 of the Act, is permitted and warranted for spectrum in use for those telecommunications services subject to forbearance.

B. Increasing Flexibility in Technical Rules

44. We seek comment on whether there are technical requirements in spectrum-based services that unnecessarily deter the operation of secondary markets. As we observe in the Policy Statement, essential ingredients of fluid secondary markets include clearly defined technical rights and obligations, and harmonization of operating rules for similar services to promote the fungibility of spectrum usage rights. Where the potential uses of spectrum are fungible, or easily substitutable in a different frequency band or radio service, transactional costs of trading are lower and trading in spectrum rights may be facilitated. Put another way, where blocks of spectrum can be readily defined and grouped in a manner that spectrum users can easily understand, spectrum usage rights becomes more like a commodity and may be readily exchanged in a secondary market. Thus, we request comment on whether there are rules in specific services that might be revised to make spectrum usage rights in various bands more fungible. If so, how might these rules be changed?

C. Increasing Flexibility in Service Rules

45. We seek comment on revisions that should be made to our service rules that could promote the development of secondary markets while also continuing to serve the public interest objectives upon which the service rules are based. We are particularly interested in steps that can be taken to harmonize our service rules so that spectrum usage rights may be an increasingly fungible commodity in secondary markets. These steps may include eliminating unnecessary requirements, reducing the number of service categories, and other changes that will allow spectrum to be put to use in ways that maximize its value. These changes not only enhance secondary markets in the rights to use spectrum, but may also allow existing licensees to introduce innovative and distinct services that may not be permissible under our existing rules.

46. Flexible use—that is, expanding the range of permissible uses within a particular service—may increase efficient use of spectrum in general and enhance the operation of secondary markets in the use of spectrum. The Commission has recognized that public interest considerations may favor flexible use, particularly in regard to new spectrum allocations. We have taken a number of steps to establish or update our rules to provide more flexibility and eliminate unnecessary burdens. The Commission has, however, recognized that increased flexibility may not be appropriate in all instances.

47. We invite comment on specific service rules that might be revised to achieve more fluid secondary markets in spectrum usage rights. We encourage commenters to advance suggestions for changes to our service rules that may promote more flexible and efficient use of licensed spectrum either by licensees or through secondary market mechanisms. Specifically, we seek comment on whether the Commission should in some circumstances modify its various service rules to allow spectrum to be used for services other than that for which it was licensed.

48. In this context, we also seek specific comment on whether we should revise our policies and rules to allow for either license ''swaps'' or ''cross-leasing'' of spectrum usage rights by licensees for whom different eligibility or use restrictions apply.

49. We also seek comment on whether the Commission might take steps to lower barriers which unnecessarily inhibit the development and introduction of new spectrum-efficient technologies.

D. Facilitating Availability of Information on Spectrum

50. We believe that secondary markets in spectrum usage rights will operate more efficiently if adequate information on licensed spectrum that could potentially be available to secondary markets is readily accessible by entities interested in using such spectrum. We also request comment on whether the Commission should have a greater role in collecting and disseminating such information beyond the activities described above. We tentatively conclude, however, that the private sector is better suited both to determine what types of information parties might demand, and to develop and maintain information on the licensed spectrum that might be available for use by third parties. For example, band manager licensees will have incentives to disseminate this type of information in order to obtain third party spectrum users. We seek comment on how the Commission can encourage the creation of private information clearinghouses on available spectrum. We also seek comment on whether any regulatory barriers exist that may have the unintended effect of hindering private parties from developing such

information and contributing to fluid secondary markets in the use of licensed spectrum.

III. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

51. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals in the Notice of Proposed Rulemaking. The IRFA is set forth. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice of Proposed Rulemaking, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act. See 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

53. This document seeks comment on a proposed information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this document and must have a separate heading designating them as responses to the Initial Paperwork Reduction Analysis (IPRA). OMB comments are due 60 days from date of publication of this document in the **Federal Register**. Comments should address: (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 estimates; (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.

OMB Control Number: 3060–XXXX.

Title: Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 50,000.

Estimated Time per Response: 1,050,000 hours.

Cost to Respondents: $144,250,000.00.

Needs and Uses: The information and verification requirements and the prospective coordination requirement proposed by this document will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information and verification requirements have been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and determine compliance with Commission Rules. The information that licensees and lessees may ultimately be asked to file will be used to assist parties interested in obtaining such spectrum.

D. Comment Dates

54. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 9, 2001, and reply comments on or before March 9, 2001. Comments and reply comments should be filed in WT Docket No. 00–230. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments.

55. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: ''get form <your E-Mail address>.'' A sample form and directions will be sent in reply.

56. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, D.C. 20037, (202) 857–3800.

Initial Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking (document), WT Docket No. 00–230. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this document, as set forth above, and they must have a separate and distinct heading designating them as responses to IRFA.

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

58. This rulemaking proceeding outlines a number of approaches that would promote more robust secondary markets in radio spectrum usage rights. First, we propose to promote wider use of leasing of spectrum usage rights throughout our wireless services, particularly our Wireless Radio Services. In so doing, we examine whether Section 310(d) of the Communications Act, as amended (the ''Act''), 47 U.S.C. 310(d), or the Commission's policies and rules, including its application of the Intermountain Microwave standard for interpreting de facto transfer of control of licenses, may unnecessarily impede the ability of licensees to enter such leasing arrangements. Second, we

explore whether additional flexibility in our technical and service rules would further enhance the development of secondary markets. Finally, we request comment on whether, and if so how, the Commission should facilitate the development of secondary markets by making certain information on spectrum available to the public.

B. Legal Basis

59. The potential actions on which comment is sought in this document would be authorized under Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), and §§ 1.411 and 1.412 of the Commission's rules, 47 CFR 1.411 and 1.412.

C. Description and Estimate of the Small Entities Subject to the Rules

60. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that ''the rule will not, if promulgated, have a significant impact on a substantial number of small entities.'' See 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' This IRFA describes and estimates the number of small-entity licensees that may be affected if the proposals in this document are adopted.

61. This document could result in rule changes that, if adopted, would create new opportunities and obligations for Wireless Radio Services licensees and other entities that may lease spectrum usage rights from these licensees. To assist the Commission in analyzing the total number of potentially affected small entities, we request commenters to estimate the number of small entities that may be affected by any rule changes resulting from this document.

Wireless Radio Services

62. Many of the potential rules on which comment is sought in this document, if adopted, would affect small licensees of the Wireless Radio Services identified.

63. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by these proposals, if adopted.

64. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

65. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, 62 FR 15978 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses.

66. 700 MHz Guard Band Licensees. In the 700 MHz Guardband Order, 65 FR 17594 (April 4, 2000), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 176 Economic Area (EA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold.

67. Private and Common Carrier Paging. In the Paging Third Report and

Order, 62 FR 15978, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. 57 companies claiming small business status won. At present, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these proposals and policies, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

68. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies, and the most recent Telecommunications Industry Revenue data shows that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the policies and proposals, if adopted.

69. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules.

70. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

71. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies—*i.e.,* stan entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

72. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

73. Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

74. The auction of the 1,030 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The Commission anticipates that a total of 2,823 EA licenses will be auctioned in the lower 80 channels of

the 800 MHz SMR service. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 80 channels that may ultimately be affected by these proposals could be as many as 2,823. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz band. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.

75. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

76. The Commission is unable at this time to estimate the number of small businesses, which could be impacted by these policies and proposals. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the policies and proposals in this context could potentially impact every small business in the United States.

77. Fixed Microwave Services. Microwave services include common carrier and private-operational fixed services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies '' i.e., an entity with no more than 1,500 persons. We estimate, for this purpose, that all of these Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

78. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

79. Local Multipoint Distribution Service. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A block licenses and 387 B block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licensees will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

80. 39 GHz Service. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The Commission defined ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of 39 GHz auctions have been approved by the SBA.

81. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected is eight entities.

International Services

82. International Broadcast Stations. Commission records show that there are 20 international broadcast station licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

83. International Public Fixed Radio (Public and Control Stations). There are 3 licensees in this service. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

84. Fixed Satellite Transmit/Receive Earth Stations. There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

85. Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

86. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of VSAT systems that would constitute a

small business under the SBA definition.

87. Mobile Satellite Earth Stations. There are 11 licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

88. Radio Determination Satellite Earth Stations. There are four licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

89. Space Stations (Geostationary). Commission records reveal that there are 64 Geostationary Space Station licensees. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

90. Space Stations (Non-Geostationary). There are 12 Non-Geostationary Space Station licensees, of which only three systems are operational. We do not request or collect annual revenue information for these licenses, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

91. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11.0 million or less in annual receipts. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these policies and proposals. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

92. With certain exceptions, the polices and proposals in this document could apply to all Commission licensees holding licenses under Title III of the Communications Act or which engage in spectrum leasing on their authorized systems. This document proposes to require licensees and lessees engaging in spectrum leasing to comply with the Commission's rules and policies, including, but not limited to, regulatory fees, universal service fund, and reporting requirements. Licensees and lessees would ordinarily comply with these requirements as part of their normal business practices. This document also seeks comment on potential reporting, recordkeeping and compliance requirements for spectrum lessors and lessees including: (1) Retention of lease agreements; (2) reporting of spectrum leasing terms to the Commission; (3) licensee and lessee compliance with the Commission's technical and service rules; (4) licensee filings with the Commission on behalf of the lessee; (5) licensee verification of lessee compliance with FCC rules; (6) licensee supervision of a lessee's adherence to the Commission's rules and policies; and (7) the leasing of spectrum by entities designated as ''small business'' or ''very small business'' under the Commission's rules. Licensees and lessees may retain or hire outside professionals (e.g., legal and engineering staff) to draft lease agreements, provide consulting service, maintain records, and comply with applicable Commission rules. They also may choose employees to be responsible for reporting, recordkeeping and other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

93. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

94. This document proposes to reduce regulatory burdens on Commission licensees (including small-business) that may wish to lease their spectrum to third parties. It also creates economic opportunities for third parties (including small businesses) that may wish to lease spectrum usage rights from certain licensees. In particular, it would provide licensees, including small-business licensees, flexibility to subdivide and apportion the spectrum and lease the spectrum usage rights to various third party users—in any geographic or service area, in any quantity of frequency, and for any period of time during the term of their licenses—without having to secure prior Commission approval. In addition, many different types of spectrum users (including small businesses) would be permitted to satisfy their spectrum needs without having to acquire a license or go through the Commission's procedures for assigning or transferring control of a license or a partial license through partitioning, disaggregation, or partial assignment. By reducing the transactional costs for users, including small businesses, spectrum leasing could facilitate more intensive and efficient use of spectrum in both underserved areas and more congested areas.

95. A key issue in this proceeding concerns how the Commission can ensure that licensees and lessees comply with the Communications Act and the Commission's rules. As explained below, we are considering a number of alternative approaches to achieve this goal. We consider these different alternatives partly because we seek to minimize, to the extent possible, the economic impact of these potential requirements on small businesses.

96. A core feature of this proposal is that licensees (including small-business licensees) will retain ultimate responsibility for ensuring that spectrum lessees comply with the Communications Act and the Commission's rules. We therefore solicit comment on whether we should impose additional requirements on the licensee to ensure that each lessee complies with the Commission's rules. These requirements could include having the licensee require that the lessee certify that it complies with all rules, and requiring the licensee to verify that the lessee is complying with all rules.

97. In addition, we seek comment on whether there are circumstances in which we should hold lessees (which would include small businesses) responsible for non-compliance with the Communications Act or the Commission's rules in addition to, or instead of, the licensee.

98. We also solicit comment on whether to require all spectrum leasing agreements to include certain contractual provisions, which would define the minimum basic rights, obligations, and responsibilities of the licensee and lessee. We also seek comment on whether to require licensees and lessees to keep copies of

spectrum leasing agreements and keep them current and available upon request for the inspection by the Commission.

99. The Commission's unjust enrichment rules require that licensees that received bidding credits or participated in installment plans, which are often small entities, reimburse the U.S. Treasury if they assign or transfer all or part of the licenses to an entity that would not meet the eligibility standards for similar bidding credits. In this document, we inquire whether licensees that received bidding credits or participates in installment plans should reimburse the U.S. Treasury if they lease spectrum usage rights to entities that would not meet the eligibility standards for similar bidding credits.

F. Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

None.

Ordering Clauses

100. Pursuant to the authority of Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309, and 310, this Notice of Proposed Rulemaking is hereby adopted.

101. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–32789 Filed 12–22–00; 8:45 am]

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Notices

Federal Register
Vol. 65, No. 248
Tuesday, December 26, 2000

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 COMMERCE

International Trade Administration

[A–337–803]

Notice of Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile

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

SUMMARY: In response to requests by eleven producers/exporters of subject merchandise and the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. This review covers thirteen producers/exporters of the subject merchandise for the period of review from July 1, 1999, through June 30, 2000. The administrative review of the remaining 70 companies originally requested by the petitioners is being rescinded.

EFFECTIVE DATE: December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, at (202) 482–3003 or (202) 482–3813, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Case History

On July 30, 1998, the Department's *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile* was published in the **Federal Register** (63 FR 40699 (July 30, 1998)). On July 9, 1999, the Department issued a notice of opportunity to request the second administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 65 FR 45,036 (July 20, 2000). On July 31, 2000, in accordance with 19 CFR 351.213(b), the Coalition for Fair Atlantic Salmon Trade (the petitioners) requested a review of 83 producers/exporters of fresh Atlantic salmon.

On August 25, 2000, the Department published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 2000, through June 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 65 FR 53980 (September 6, 2000).

On September 12, 2000, the petitioners withdrew their request for all companies except: (1) Best Salmon; (2) Chisal S.A (Chisal); (3) Cultivadora de Salmones Linao Ltda. (Linao); (4) Cultivos Marinos Chiloe Ltda. (Cultivos Marinos); (5) Fiordo Blanco, S.A. (Fiordo Blanco); (6) Fitz Roy S.A.; (7) Invertec Pesquera Mar de Chiloe, S.A. (Invertec); (8) Pesca Chile S.A.; (9) Pesquera Eicosal Ltda. (Eicosal); (10) Pesquera Mares Australes Ltda. (Mares Australes); (11) Salmones Mainstream, S.A. (Mainstream); (12) Salmones Multiexport Ltda. (Multiexport); (13) Salmones Pacific Star Ltda. (Pacific Star); (14) Salmones Pacifico Sur, S.A. (Pacifico Sur); and (15) Salmones Tecmar, S.A. (Tecmar).

Partial Rescission of Antidumping Duty Administrative Review

By their letter of September 12, 2000, the petitioners withdrew their requests for an administrative review of the following companies:

Acuicultura de Aquas Australes
Agromar Ltda.
Aguas Claras S.A.
Antarfish S.A.
Aquachile S.A.
Aquasur Fisheries Ltda.
Asesoria Acuicola S.A.
Australis S.A.
Cenculmavique
Centro de Cultivo de Moluscos
Cerro Farrellon Ltda.
Comercializadora Smoltech Ltda.
Complejo Piscicola Coyhaique
Cultivos San Juan
Cultivos Yardan S.A.
Empresa Nichiro Chile Ltda.
Fisher Farms
Friosur S.A.
Ganadera Del Mar
G.M. Tornagaleones S.A.
Hiuto Salmones S.A.
Huitosal Mares Australes Salmo Pac.
Instituto Tecnologico Del Salmon S.A.
Inversiones Pacific Star Ltda.
Manao Bay Fishery S.A.
Mardim Ltda.
Ocean Horizons Chile S.A.
Pacific Mariculture
Patagonia Fish Farming S.A.
Patagonia Salmon Farming S.A.
Pesquera Antares S.A.
Pesquera Chiloe S.A.
Pesquera Friosur S.A.
Pesquera Los Fiordos Ltda.
Pesquera Mares de Chile S.A.
Pesquera Pacific Star
Pesquera Quellon Ltda.
Pesquera Y Comercial Rio Peulla S.A.
Piscicola Entre Rios S.A.
Piscicultura Iculpe
Piscicultura La Cascada
Piscultura Santa Margarita
Prosmolt S.A.
Quetro S.A.
River Salmon S.A.
Robinson Crusoe Y Cia. Ltda.
Salmoamerica
Salmones Andes S.A.
Salmones Antarctica S.A.
Salmones Aucar Ltda.
Salmones Caicaen S.A.
Salmones Calbuco S.A.
Salmones Chiloe S.A.
Salmones Friosur S.A.
Salmones Huillinco S.A.
Salmones Ice Val Ltda.
Salmones Llanquihue
Salmones Quellon
Salmones Ranco Sur Ltda.
Salmones Tierra Del Fuego Ltda.
Salmones Unimarc S.A.
Salmosan
Seafine Salmon S.A.
Soc. Alimentos Maritimos Avalon Ltda.
Soc. Aquacultivos Ltda.
Truchas Aguas Blancas Ltda.
Trusal S.A.
Ventisqueros S.A.

Subsequently, on September 26, and on October 16, 2000, the petitioners

withdrew their request that the Department conduct an administrative review of the entries of Best Salmon and of Invertec, respectively. No other party requested an administrative review of any of these companies.

Pursuant to 19 CFR 315.213(d)(1), we are rescinding the administrative review with respect to each of the companies for which the petitioners withdrew their request for such a review.

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

Dated: December 18, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 00–32792 Filed 12–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Stainless Steel Plate in Coils From the Republic of Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the review of stainless steel plate in coils from the Republic of Korea. This review covers the period November 4, 1998 through April 30, 2000.

EFFECTIVE DATE: December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Rick Johnson at (202) 482–3818; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results of the administrative review within the current time limit of January 31, 2001. *See Decision Memorandum from Edward C. Yang, Director, Office 9, to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III.* Therefore, the Department is extending the time limit for completion of the preliminary results until March 19, 2001, in accordance with section 751(a)(3)(A) of the Act.

Dated: December 18, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 00–32872 Filed 12–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–038.

Applicant: University of Colorado, Department of MCD Biology, 347 UCB, Boulder, CO 80309–0347.

Instrument: Electron Microscope, Model Tecnai F30.

Manufacturer: FEI Company, The Netherlands.

Intended Use: The instrument is intended to be used to study the structure of biological materials in three dimensions. Sometimes these are components of cells such as organelles or filaments; sometimes they are large molecules within cells. The general goal of these investigations is to achieve a detailed understanding of the 3-dimensional structure of some cellular components, which in turn can be used to increase understanding of the function of that component. Application accepted by Commissioner of Customs: November 27, 2000.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–32874 Filed 12–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

ACTION: Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1999 through September 30, 2000. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 1999 through September 30, 2000.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies

(as defined in section 702 (g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 19, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	0.12	0.12
Belgium	EU Restitution Payments	0.01	0.01
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.06	0.06
Finland	EU Restitution Payments	0.17	0.17
France	EU Restitution Payments	0.09	0.09
Germany	EU Restitution Payments	0.12	0.12
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.06	0.06
Italy	EU Restitution Payments	0.11	0.11
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.05	0.05
Norway	Indirect (Milk) Subsidy	0.28	0.28
	Consumer Subsidy	0.13	0.13
Total.		0.41	0.41
Portugal	EU Restitution Payments	0.05	0.05
Spain	EU Restitution Payments	0.04	0.04
Switzerland	Deficiency Payments	0.20	0.20
U.K.	EU Restitution Payments	0.09	0.09

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 00–32875 Filed 12–22–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–810]

Pure Magnesium From Israel: Postponement of Time Limit for Preliminary Determination of Countervailing Duty Investigation

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

EFFECTIVE DATE: December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Marian Wells, Melanie Brown, Office of CVD/AD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–6309 or (202) 482–4987.

POSTPONEMENT OF PRELIMINARY DETERMINATION: On November 14, 2000, the Department initiated the countervailing duty investigation of pure magnesium from Israel. *See* Notice of Initiation of Countervailing Duty Investigation: Pure Magnesium From Israel, 65 FR 68126 (November 14, 2000). The preliminary determination currently must be issued by January 10, 2001.

On December 8, 2000, the petitioners made a timely request pursuant to 19 CFR 351.205(e) of the Department's regulations for a postponement of the preliminary determination in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). The petitioners requested a postponement until February 14, 2001, in order to allow time for petitioners to submit comments regarding the respondents' questionnaire response and to allow time for the Department to determine the extent to which particular subsidies are being used.

The petitioners' request for the postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the preliminary determination until no later than February 14, 2001.

This notice of postponement is published pursuant to section 703(c)(2) of the Act.

Dated: December 19, 2000.

Richard W. Moreland,

Deputy Assistant Secretary For Import Administration.

[FR Doc. 00–32873 Filed 12–22–00; 8:45 am]
BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') will submit a public information collection request (ICR) on the revised Senior Corps Grant Application to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35) 30 days after this Notice is printed in the **Federal Register**, thereby providing an 30 extra days for public comment prior to providing OMB with the ICR.

Copies of the revised Grant Application may be obtained by calling the Corporation for National Service, Peter L. Boynton, (202) 606–5000, extension 499. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316, within 60 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information to 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.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: 424–NSSC.

Affected Public: Prospective Sponsors for National Senior Service Corps Grants.

Total Respondents: Estimated at 1,513 annually.

Frequency: Annually, with exceptions.

Estimated Time Per Respondent: Averages 13.2 hours. Estimated at 16.5 hours for first-time respondents, 15 hours for continuation sponsors, and 5 hours for revisions.

Estimated Annual Reporting or Disclosure Burden: 20,027 hours.

Total Annualized Capital/Startup Costs: None.

Total Annualized Burden Costs: $6,497.

Description: The National Senior Service Corps Grant Application is submitted by prospective grantees to apply for sponsorship of projects under the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP, and Senior Demonstration Program (SDP), collectively known as the Senior Corps. Completion of the Grant Application is required to obtain sponsorship.

In August 2000, the National Senior Service Corps (Senior Corps) announced a 60-day review and comment period, ending October 10, 2000, during which project sponsors and the public were encouraged to submit comments on revising the current Grant Application (424–NSSC) in order to:

(1) reflect evolution in programming that places greater emphasis on measurable Accomplishments and impact in the community and meeting the requirements of the Government Performance and Results Act (GPRA);

(2) streamline the instructions for greater clarity and ease of completion;

(3) eliminate redundant or unused sections and/or pages, such as the Five Element Statement page;

(4) standardize submission of certain types of information, such as the Active Volunteer Station Lists;

(5) strengthen the project work plan as a more comprehensive planning and reporting tool; and

(6) update current page 13 (NSSC 3-Digit Issue Area and Service Category Codes).

Twelve comments were received from over 1,300 existing Senior Corps projects and the public. As many of the comments as feasible were incorporated into the revised Grant Application. Key changes made in the application include the following:

(1) clarification of general instructions and Part IV, Attachments, with special attention to requirements for new projects and continuation projects;

(2) revision of the budget page and corresponding instructions;

(3) revision of Part III, Project Narrative and Workplans to relate the workplan more clearly to programming emphases;

(4) elimination of all references to a Five Element Statement;

(5) standardization of the Active Volunteer Station list; and

(6) updating of the NSSC 3-Digit Issue Area and Service Category Codes.

Once approved by OMB, the revised Grant Application will be completed by all public and private, non-profit organizations applying for National Senior Service Corps funds. The anticipated implementation schedule calls for the revised Grant Application to be used with grants having a start date of July 1, 2001, or thereafter.

Dated: December 20, 2000.

Tess Scannell,

Acting Director, National Senior Service Corps.

[FR Doc. 00–32840 Filed 12–22–00; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Grant of Partially Exclusive License

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice; correction.

SUMMARY: Reference the previous **Federal Register** notice published on Thursday, December 7, 2000 (Vol 65, No. 236), page 76613, the notice inadvertently announced information under the Supplementary Information paragraph.

On page 76613, column 2, line 44, the information should indicate ''aqueous sludge dewatering'' vice ''concrete armor unit''.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Borland, ATTN: CEERD–RV—I; (603) 646–4735, FAX (603) 646–4448; Internet Sharon.L.Borland@erdc.usace.army.mil; U.S. Army Corps of Engineers Research and Development Center, Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–32849 Filed 12–22–00; 8:45 am]

BILLING CODE 3710–92–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Tuesday, January 9, 2001. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the West Chester University Sykes Student Union, located on Rosedale Avenue in West Chester, Pennsylvania.

The conference among the Commissioners and staff will begin at 10:00 a.m. Topics of discussion will include a progress report on the Commission's Comprehensive Plan; a proposal to institute project review upon retirement of entitlements; and Delaware Estuary Program (DELEP) organizational issues. Summaries of the following meetings will be presented: The Flood Advisory Committee meeting of December 5; the Monitoring Advisory Committee meeting of December 12; the Toxics Advisory Committee meeting of December 13; the Water Quality Advisory Committee meeting of December 14; and the Water Management Advisory Committee meeting of January 4.

The subjects of the public hearing to be held during the 1:00 p.m. business meeting include, in addition to the dockets listed below, resolutions to: (1) Amend the Comprehensive Plan with respect to recreation areas in the state of New York; (2) amend the Comprehensive Plan with respect to national recreation areas; and (3) amend the Comprehensive Plan and Water Code with respect to water usage reporting requirements. A public notice on the proposal to amend water usage reporting requirements was published on the Commission's web site, *www.drbc.net*, on October 23, 2000 and will remain there through January 9, 2001. Notices also appeared in the Delaware Register (December 1, 2000), the New Jersey Register (December 4, 2000), the New York State Register (November 22, 2000), the Pennsylvania Register (November 11, 2000), and the **Federal Register** (November 29, 2000). Submission of written comments on the proposed amendment was requested by December 20, 2000.

The dockets scheduled for public hearing will be as follows:

1. *Borough of Ambler D–85–26 CP RENEWAL 2.* A renewal of a ground water withdrawal project to supply up to 116 million gallons (mg)/30 days of water to the applicant's public water distribution system from Wells Nos. 1 through 14 and Spring Well, all in the Stockton Formation. The total withdrawal from all wells of 116 mg/30 days is a decrease in allocation (from 134.4 mg/30 days) to accurately reflect the applicant's system capacity and demand. The project is located in Ambler Borough and portions of Lower Gwynedd, Upper Dublin, Whitemarsh and Whitpain Townships, all in Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Limekiln Golf Course D–2000–17.* A ground water withdrawal project to supply a combined total of 5.4 mg/30 days of supplemental water to the applicant's holding pond for irrigation of the applicant's golf course from existing Wells Nos. 1 through 3 and new Well No. 4, located in the mixed zone of the Lockatong and Upper Stockton Formations. The total withdrawal from all sources is limited to 5.4 mg/30 days. The project is located in Horsham Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

3. *Lehigh Valley Water Company, LLC D–2000–34.* A ground water withdrawal project to supply a combined total of 8.6 mg/30 days of water to the applicant's Arcadia West Industrial Park from new Wells Nos. PW–1, PW–2 and PW–3, all in the Martinsburg Formation. The project is located in Weisenberg Township, Lehigh County, Pennsylvania.

4. *Upper Saucon Township D–2000–51 CP.* A ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's public water distribution system from the new Colonial Crest Well and the existing abandoned New Jersey Zinc Mine Company mine shaft, without an increase in the existing allocation of 30 mg/30 days from all sources. The abandoned mine shaft is located in limestone and dolomite of the Beekmantown Formation. The Colonial Crest Well is completed in the Quartz Fanglomerate member of the Brunswick Formation. The project is located in Upper Saucon Township, Lehigh County, Pennsylvania.

5. *West Bradford Township D–2000–54 CP.* An application to construct a 0.135 mgd secondary lagoon sewage treatment plant (STP) to replace failing on-lot septic systems in Marshallton and to serve the proposed Tattersall community, both located in West Bradford Township, Chester County, Pennsylvania. The proposed STP is located off State Route 162 approximately one-half mile south of Strasburg Road and treated effluent will be utilized for farmland spray irrigation in West Bradford Township along its border with Newlin Township.

6. *Hemlock Farms Community Association D–2000–60 CP.* A ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's public water distribution system from new Well No. 4, and existing Wells Nos. 1, 10, 49 and 80, and to limit the withdrawal from all wells to 30 mg/30 days. New Well No. 4 is completed in the Catskill Formation. The project is located in the Special Protection Waters of the Bushkill and Shohola Creek watersheds in Blooming Grove Township, Pike County, Pennsylvania.

7. *M.C. Resource Development Company D–2000–65.* A ground water withdrawal project to supply a combined total of 6.9 mg/30 days of water to the applicant's bottled water facility from new Wells Nos.P–1 and P–2 in the Bloomsburg Formation. The project is located in the Indian Run watershed, a tributary to the Little Schuylkill River, in East Brunswick Township, Schuylkill County, Pennsylvania.

8. *South Coventry Township D–2000–67 CP.* A project to construct a 55,000 gallons per day (gpd) STP and effluent drip irrigation system to serve the proposed Ridglea Farm subdivision and the existing Pughtown Village residential area, all within South Coventry Township, Chester County, Pennsylvania. The proposed advanced secondary treatment plant will be located just east of State Route 100 approximately one-quarter mile north of Pughtown Road, and the proposed 12.5 acre drip irrigation system will be located approximately one-half mile northeast of the STP. No alternate surface water discharge is proposed as the applicant will store treated effluent in a 725,000 gallon lagoon for later disposal during storm and freezing conditions.

In addition to the public hearing, the Commission will address the following at its 1:00 p.m. business meeting: minutes of the November 15, 2000 business meeting; announcements; report on hydrologic conditions in the basin; reports by the Executive Director and General Counsel; resolution to adopt the Commission's FY 2002 budgets (on which a public hearing was held on November 15, 2000); and public dialogue.

Documents relating to the dockets and other items may be examined at the Commission's offices. Preliminary dockets are available in single copies

upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Secretary at (609) 883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary, Pamela M. Bush, directly at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs. Driving directions to the meeting location are posted on the Commission's web site, at *www.drbc.net.*

Dated: December 18, 2000.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 00–32811 Filed 12–22–00; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 19, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Grantee Reporting Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 165. Burden Hours: 165.

Abstract: Rehabilitation Services Administration (RSA) training grants provide stipends to ''RSA Scholars'' in order to train skilled rehabilitation personnel. Grantees are required to ''track'' Scholars relative to the ''payback'' provision in the Rehab. Act. Data collection is reported annually to RSA in order to monitor performance and report progress to Congress.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to CAREY at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–32808 Filed 12–22–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 2001–2002 for collaborative projects in spinal cord injury research.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces final funding priorities for collaborative spinal cord injury research, a spinal cord injury data center, and a spinal cord injury dissemination center under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2001–2002. The Assistant Secretary takes this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: These priorities take effect on January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: donna_nangle@ed.gov

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program (DRRP) for collaborative spinal cord injury research, a spinal cord injury data center, and a spinal cord injury dissemination center.

The final priorities refer to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *www.ed.gov/offices/OSERS/NIDRR/#LRP.*

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping

communities to exchange ideas and obtain information needed to achieve the goals.

These final priorities will address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the program to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764(b)(4)). Regulations governing this program are found in 34 CFR part 350.

Note: This notice does not solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On September 1, 2000, the Assistant Secretary published a notice of proposed priorities in the **Federal Register** (65 FR 53512). The Department of Education received 5 letters commenting on the notice of proposed priorities by the deadline date. Technical and other minor changes—and suggested changes the Assistant Secretary is not legally authorized to make under statutory authority—are not addressed.

Disability and Rehabilitation Research Projects and Centers Program; Collaborative Spinal Cord Injury Research

Comment: One comment suggested that there is a need for research on initial surgical treatments of the spinal injured patient.

Discussion: NIDRR agrees that this is an appropriate topic for a collaborative research proposal, but elects to leave the choice of topics up to the applicant. The peer review process will evaluate the merits of each proposal.

Changes: None.

Spinal Cord Injury Data Center and Spinal Cord Injury Dissemination Center

Comment: One comment indicated that the requirement that the data center must ''incorporate culturally appropriate methods of community outreach and education in areas such as health and wellness, housing, transportation, recreation, employment, and other community activities for individuals with diverse backgrounds with SCI'' is inconsistent with other requirements of the data center.

Discussion: NIDRR agrees. Culturally appropriate methods must be applied to the data collection and dissemination activities that are required of the data center.

Changes: The priority has been changed to reflect this requirement.

Comment: One comment suggested that the data center and dissemination center should be combined to achieve greater efficiency.

Discussion: Historically, the data base and dissemination activities have been conducted as separate projects in this program. Applicants are not precluded from applying for both centers. NIDRR agrees that collaboration between these centers is important and the priority has been modified to include this requirement.

Changes: The data center priority has been modified to require collaboration with the dissemination center.

Comment: One comment suggested that a system for uniform reporting and collection of presentations by the Model SCI Centers to all audiences be a requirement of the dissemination center.

Discussion: NIDRR agrees.

Changes: The priority has been changed to require that the center collect, maintain, and disseminate consumer and professional education materials.

Comment: One comment noted that, while the dissemination center is required to collaborate with the Model SCI Centers, the Model SCI Centers are not required to collaborate with the dissemination center.

Discussion: While the Model SCI Center priority could be interpreted to require such collaboration, the Model SCI Center grants have been awarded and the requirements cannot be changed.

Changes: None.

Disability and Rehabilitation Research Projects and Centers Program

The authority for Disability and Rehabilitation Research Projects (DRRP) is contained in section 204 of the Rehabilitation of 1973, as amended (29 U.S.C. 762(g) and 764(b)(4). The purpose of the DRRP program is to plan and conduct research, demonstration projects, training and related activities to—

(a) Develop methods, procedures, and rehabilitation technology that maximizes the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

Background

The projects in these final priorities are to conduct research in collaboration with Centers established under the Special Projects and Demonstrations for Spinal Cord Injury (SCI) Program. The following section provides background information regarding that program to assist applicants in developing appropriate collaboration projects.

Special Projects and Demonstrations for Spinal Cord Injury

The authority for Model Spinal Cord Injury Centers (MSCI) is contained in section 204(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(4)). We may make awards for up to 60 months through grants or cooperative agreements. The MSCI program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with SCI.

The MSCI program provides assistance for projects that provide comprehensive rehabilitation services to individuals with SCI and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Each MSCI Center establishes a multidisciplinary system of providing rehabilitation services, specifically designed to meet the special needs of individuals with SCI. This includes acute care as well as periodic inpatient or outpatient follow up and vocational services. MSCI Centers demonstrate and evaluate the benefits and cost effectiveness of such a system for the care of individuals SCI and demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with SCI. MSCI Centers demonstrate and evaluate methods of community outreach and education for individuals with SCI in connection with the problems of those individuals in areas such as housing, transportation, recreation, employment, and community activities.

NIDRR is in the final selection process for MSCI Centers for the period 2000–2005. The priority announcement and notice inviting applications were published in the **Federal Register** on March 16, 2000 (65 FR 14346–14377). Additional information about the MSCI Centers Program is available on the World Wide Web at *www.ncddr.org/rpp/hf/hfdw/mscis* and in the special issue ''Current Research Outcomes from the Model Spinal Cord Injury Care Systems'', *Archives of Physical Medicine and Rehabilitation*, Vol. 80, No. 11, November 1999. NIDRR's

currently funded MSCI Centers are at Thomas Jefferson University; Kessler Medical Rehabilitation Research & Education Corp.; University of Michigan Health Systems, Dept. of Physical Medicine & Rehabilitation; Craig Hospital; Mount Sinai School of Medicine; University of Miami, School of Medicine; University of Missouri, Department of Physical Medicine and Rehabilitation; Santa Clara Valley Medical Center; Virginia Commonwealth University, School of Medicine, Department of Physical Medicine & Rehabilitation; University of Alabama, Department of Physical Medicine & Rehabilitation; University of Washington, Department of Rehabilitation Medicine; Boston Medical Center Corporation, Department of Rehabilitation Medicine; The Institute for Rehabilitation and Research (TIRR); Los Amigos Research & Education Institute, Inc.; and Shepherd Center, Inc., Crawford Research Institute. Contact information and project descriptions can be found for each of these projects on NIDRRs on-line program directory at the National Rehabilitation Research Information Center (NARIC) at www.naric.com/search/

Priority for Collaborative Research Projects in Spinal Cord Injury

In the announcement of March 16, 2000 it was indicated that a separate competition would be held for collaborative projects in SCI. We now propose to establish a priority for those collaborative projects. In addition, we proposed to establish a Data Center to maintain and manage the database of information regarding individuals with SCI who receive treatment in the MSCI Centers. We also proposed to establish a Dissemination Center to manage the collection and dissemination of academic and consumer information developed by those centers.

Collaborative Spinal Cord Injury Research Projects

Estimates of the number of people living with traumatic SCI range from 183,000 to 230,000, with an incidence of approximately 10,000 new cases each year (''Spinal Cord Injury Facts and Figures at a Glance,'' National Spinal Cord Injury Statistical Center (NSCISC), University of Alabama at Birmingham. Although SCI predominately affects young adults (56% of SCIs occur among people aged 16–30 years), there is an increasing proportion of new SCI cases in the population over 60 years of age (NSCISC, ibid.). The true significance of traumatic SCI lies not primarily in the numbers affected, but in the substantial impact on individuals' lives and the associated substantial health care costs and living expenses. A traumatic SCI has far-reaching repercussions on the lives of the injured persons and their families that can be devastating if not addressed effectively. According to a report from the Agency for Health Care Policy and Research (Hospital Inpatient Statistics, 1996, AHCPR Publication No. 99–0034), SCI is the most expensive condition or diagnosis treated in U.S. hospitals. The estimated lifetime costs for an individual injured at the age of 25 range from $365,000 for an incomplete injury to more than $1.7 million for an individual with a high cervical injury (NSCISC, op cit).

Collaborative research projects are essential in the development of new knowledge for improved treatment and services for people with SCI. Multi-center collaboration enables the collection of data from a larger number of subjects, increasing the statistical reliability of the information. Collaborative research enables projects with a wider range of expertise than may be available at a single center. Multi-center collaboration may also enable comparisons of different health care delivery systems. Additionally, multi-center projects may facilitate the inclusion of a more diverse range of individuals with SCI than may be available at a single center. It is a requirement of this final priority that the research include two or more centers from the MSCI Centers Program. However, to achieve the combination of target populations and professional expertise necessary to answer relevant questions, collaboration with other NIDRR centers, including the MSCI centers and centers supported by the Department of Veterans Affairs, the National Institutes of Health, and other public and private agencies are encouraged.

Spinal Cord Injury Data Center

The database of the MSCI Centers Program is a collaborative project in which all of the centers participate. The parameters of the database are determined by the directors of the centers, in consultation with NIDRR. The specification of the database as it is currently implemented can be obtained from the National SCI Statistical Center at the University of Alabama at Birmingham. The Center may be contacted on the World Wide Web at *www.ncddr.org/rpp/hf/hfdw/mscis/index.html* or by e-mail at *NSCISC@uab.edu* or by telephone at (205) 934–5049). The SCI data center will maintain the database, provide technical assistance regarding data collection, and collaborate with all of the centers to publish information from the database. Historically the data center has been funded as a supplement to one of the centers in the program. However, we propose to establish a separate center to maintain this information.

Spinal Cord Injury Dissemination Center

The collection and dissemination of academic and consumer education products produced by the centers has been conducted by collaborative efforts among the centers in the program. This has resulted in a bibliography of articles published in professional journals and a database of consumer education materials. The center is to maintain and continue to collect and disseminate this information. This center will be required to collaborate with all of the MSCI Centers and collaborative research projects as well as the Data Center and other NIDRR supported dissemination centers, the National Rehabilitation Information Center (NARIC) and the National Center for the Dissemination of Disability Research (NCDDR).

Priority 1: Collaborative Research in Spinal Cord Injury

The Assistant Secretary will fund collaborative projects in SCI research for the purpose of generating new knowledge through research, development, or demonstration to improve outcomes for SCI through improved interventions and service delivery models. A collaborative SCI Project must:

(1) Conduct a significant and substantial research project in SCI that will contribute to the advancement of knowledge in SCI consistent with the Plan.

Applicants may select from the following examples of research objectives related to specific areas of the Plan or other research objectives, including those that cut across areas of the Plan:

(Chapter 3, Employment Outcomes): Either (1) Assess barriers to employment of people with SCI; or (2) conduct multi-center evaluation of direct intervention strategies for improving employment outcomes.

(Chapter 4, Maintaining Health and Function): Either (1) Conduct multi-center evaluations of interventions to improve outcomes in the preservation or restoration of function or the prevention and treatment of secondary conditions; or (2) assess service delivery models that provide quality care under constraints imposed by recent changes in the health care financing system.

(Chapter 5, Technology for Access and Function): Either (1) Conduct a multi-center evaluation of the impact of selected innovations in technology and rehabilitation engineering on service delivery; or (2) assess the impact of selected innovations in technology and rehabilitation engineering on outcomes such as function, independence, and employment.

(Chapter 6, Independent Living and Community Integration): Measure the environmental factors influencing independence and community integration, employment function, and health maintenance.

(Chapter 7, Associated): Either (1) Evaluate methods to build the capacity for rehabilitation services for individuals with SCI; or (2) Investigate the impact of national telecommunications and information policy on the access of persons with SCI to related education, work, and other opportunities.

(2) Disseminate research and demonstration findings to SCI centers, rehabilitation practitioners, researchers, individuals with SCI and their families or other authorized representatives, and other public and private organizations involved in SCI care and rehabilitation.

In carrying out these purposes, the project must:

- Include two or more centers from the MSCI Centers Program.
- Incorporate culturally appropriate methods of community outreach and education in areas such as health and wellness, housing, transportation, recreation, employment, and other community activities for individuals with diverse backgrounds with SCI;

Priority 2: Data Center

The Assistant Secretary will establish a data center to manage and facilitate the use of information on individuals with SCI collected by the MSCI Centers. The Data Center must:

(1) Establish a hardware and software system to securely maintain data from the MSCI Centers. The system must maintain individual confidentiality and provide for data entry, quality control, data retrieval, and data analysis.

(2) Train and provide technical assistance to the MSCI Centers on proper data collection methods, data entry, and utilization of the database.

(3) Establish methods and procedures to communicate with NIDRR and the directors of the MSCI Centers regarding submissions to the database and the quality and utility of data elements.

(4) Demonstrate the capacity to conduct, facilitate, and disseminate research utilizing the database in collaboration with the dissemination center.

(5) Develop and facilitate methods for linking the data from the MSCI Centers with other databases to advance knowledge regarding SCI.

In carrying out these purposes the center must:

- Incorporate culturally appropriate methods of data collection and dissemination, including culturally sensitive measurement approaches; and
- Demonstrate the capacity to provide technical assistance to the MSCI Centers and to other related projects regarding database development and maintenance.

Priority 3: Dissemination Center

The Assistant Secretary will establish a center for the purpose of collecting, maintaining and disseminating academic and consumer education materials produced by the MSCI Centers and the Collaborative Research Projects in SCI. The Dissemination Center must:

(1) Establish, maintain, and disseminate a bibliography of the academic publications of the MSCI Centers and the Collaborative Research Projects in SCI.

(2) Establish a system to collect, maintain, and disseminate consumer and professional education materials produced by the MSCI Centers and the Collaborative Research Projects in SCI.

(3) Establish collaborative relationships with NIDRR supported dissemination centers, NARIC (www.naric.com) and NCDDR (www.ncddr.org).

In carrying out these purposes, the project must:

- Incorporate culturally appropriate methods of community outreach and education in areas such as health and wellness, housing, transportation, recreation, employment, and other community activities for individuals with diverse backgrounds with SCI; and
- Establish procedures to collaborate with the SCI Data Center and other information sources supported by public or private agencies to facilitate dissemination of information regarding SCI research.

Additional Selection Criterion

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, we will also use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points.

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR part 350.

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 either of the following sites:

ocfo.ed.gov/fedreg.htm
www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the preceding sites. 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 the document is 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.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b)(4).

Dated: December 18, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–32785 Filed 12–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Disability and Rehabilitation Research Projects for Fiscal Year 2001–2002

Note to Applicants

This notice is a complete application package. Together with the statute

authorizing the programs and applicable regulations governing the programs including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Reasonable Accommodations: We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

Applications Available: December 26, 2000.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; Disability and Rehabilitation Research Projects and Centers Program—34 CFR Part 350, and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

APPLICATION NOTICE FOR FISCAL YEAR 2001.—DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84.133A–11 Spinal Cord Injury collaborative Projects	February 26, 2001	4–8	$350,000	60
84.133A–12: Spinal Cord Injury Data Center	February 26, 2001	1	350,000	60
84.133A–15: Spinal Cord Injury Dissemination Center	February 26, 2001	1	150,000	60

*Note: Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Program Title: Disability and Rehabilitation Research Projects and Centers Program.

CFDA Number: 84.133A

Purpose of the Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973. The Assistant Secretary takes this action to focus research attention on an area of national need. The priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Estimated Average Range of Awards: $150,000–$350,000.

Selection Criteria

Collaborative Spinal Cord Injury Research Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for Collaborative Spinal Cord Injury Research.

(a) *Importance of the problem* (10 points total). (1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant clearly describes the need and target population (5 points).

(ii) The extent to which the proposed project will have beneficial impact on the target population (5 points).

(b) *Design of research activities* (30 points total). (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(c) *Design of dissemination activities* (10 points total). (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (5 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (5 points).

(d) *Plan of operation* (10 points total). (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (10 points).

(e) *Collaboration* (10 points total). (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (4 points).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (3 points).

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (3 points).

(f) *Adequacy and reasonableness of the budget* (5 points total). (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (3 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(g) *Plan of evaluation* (10 points total). (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(h) *Project staff* (15 points total). (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

Spinal Cord Injury Data Center and Spinal Cord Injury and Dissemination Center Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for a Spinal Cord Injury Data Center and a Spinal Cord Injury and Dissemination Center.

(a) *Responsiveness to an absolute or competitive priority* (20 points total). (1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (5 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (15 points).

(b) *Quality of the project design* (40 points total).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (10 points).

(ii) The quality of the methodology to be employed in the proposed project (10 points).

(iii) 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 (5 points).

(iv) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (10 points).

(v) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (5 points).

(c) *Technical Assistance* (10 points total). (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (5 points).

(ii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (5 points).

(d) *Plan of evaluation* (10 points total). (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(e) *Project staff* (15 points total). (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(f) *Adequacy and reasonableness of the budget* (5 points total). (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (3 points).

Additional Selection Criterion

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under these programs. The maximum score for all the criteria is 100 points; however, we will also use the following criterion so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Instructions for Application Narrative

We will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

We strongly recommend the following:

(1) a one-page abstract;

(2) an application narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more 75 pages for Project applications, double-spaced (no more than 3 lines per vertical inch) 8″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [Applicant should add name of program], Washington, DC 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.133A [Applicant should add name of program]), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Education Assistance (ED 424 (Rev. 11/12/99)) and instructions.

Part II: Budget Form—Non-Construction Programs (ED Form 524) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form 80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., Switzer Building, 3317, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the GCST. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW.,

room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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 either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

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

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

(Catalog of Federal Domestic Assistance Numbers: 84.133A, Disability and Rehabilitation Research Projects)

Program Authority: 29 U.S.C. 762(g) and 764(b)(4).

Dated: December 18, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not *useful* to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one nidrr program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15 percent. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can nidrr staff advise me whether my project is of interest to nidrr or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the ED 424, and including a project title that describes the project.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call nidrr to find out if my application is being funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
   Legal Name:
   Address:
   City State County ZIP Code + 4

   Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 8 4 ➡ Title:
5. Project Director:
   Address:
   City State ZIP Code + 4
   Tel. #: ( ) - Fax #: ( ) -
   E-Mail Address:
6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
   (If "Yes," attach an explanation.)
7. Type of Applicant *(Enter appropriate letter in the box.)* ☐
   - A State
   - B County
   - C Municipal
   - D Township
   - E Interstate
   - F Intermunicipal
   - G Special District
   - H Independent School District
   - I Public College or University
   - J Private, Non-Profit College or University
   - K Indian Tribe
   - L Individual
   - M Private, Profit-Making Organization
   - N Other *(Specify)*:
8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:
   - *—PreApplication*
     - ☐ Construction
     - ☐ Non-Construction
   - *—Application*
     - ☐ Construction
     - ☐ Non-Construction
10. Is application subject to review by Executive Order 12372 process?
    - ☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
    - ☐ No *(If "No," check appropriate box below.)*
      - ☐ Program is not covered by E.O. 12372.
      - ☐ Program has not been selected by State for review.
11. Proposed Project Dates: **Start Date:** ___/___/___ **End Date:** ___/___/___
12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
    - a. If "Yes," Exemption(s) #:
    - ***OR***
    - b. Assurance of Compliance #:
    - c. IRB approval date: ☐ Full IRB **or** ☐ Expedited Review
13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
    - a. Typed Name of Authorized Representative
    - b. Title
    - c. Tel. #: ( ) - Fax #: ( ) -
    - d. E-Mail Address:
    - e. **Signature of Authorized Representative** Date: ___/___/___

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time 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 collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

ESTIMATED PUBLIC REPORTING BURDEN

Public reporting burden for these collections of information is estimated to average 30 hours 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 these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Disability and Rehabilitation Research Projects (CFDA No. 84.133A) 34 CFR Part 350 Subpart B.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 00–32786 Filed 12–22–00; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–01NT40869 entitled ''Methane Hydrates.'' This solicitation supports the Department of Energy's Strategic Plan to develop the knowledge base for assessing the vast deposits of methane hydrates and to promote the technology for their safe and effective recovery. The solicitation is being issued by the Natural Gas Hydrate Program which is part of NETL's Strategic Center for Natural Gas. This solicitation will focus on gas hydrates in the Gulf of Mexico and the North Slope of Alaska. These are the two principal regions of industry interest, primarily because they contain known occurrences of hydrates the existing infrastructure for drilling and production of conventional hydrocarbons.

DATES: The solicitation will be available on the DOE/NETL's Internet address at http://www.netl.doe.gov/business on or about January 12, 2001. Since DOE does not intend to issue a draft solicitation on the subject solicitation, prospective applicants are invited to e-mail any comments and/or questions associated with the ''need'' areas identified in this announcement. Please submit all comments/questions to Dona Sheehan via the Internet at sheehan@netl.doe.gov by COB on January 5, 2001.

FOR FURTHER INFORMATION CONTACT: Dona G. Sheehan, U.S. Department of Energy, Nation Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236–0940, E-mail Address: *sheehan@netl.doe.gov,* Telephone Number: 421/386–5918.

SUPPLEMENTARY INFORMATION: The solicitation will request R&D proposals for work in the Gulf of Mexico that will result in information and technology that promotes: (1) Safe drilling and production operations for conventional hydrocarbons in hydrate-bearing areas, (2) a better understanding of seafloor stability issues related to gas hydrates, (3) improved methodologies for hydrate resource characterization and (4) initiation of feasibility studies for producing methane from hydrates. Offerors should propose research that supports the needs of industry, as outlined in the ''Gulf of Mexico Hydrates R&D Planning Workshop'' report which is available on the web at www.netl.doe.gov/publications/proceedings/00/hydrates/00hydrate.html.

R&D proposals for work in the Alaskan North Slope will be requested that will result in information and technology leading to: (1) Improved imaging and characterization of the hydrate resource, (2) improved sampling and modeling techniques to develop hydrate reservoir information and (3) planning and feasibility analysis of production test well(s).

R&D proposals to evaluate the potential of utilizing synthetic hydrates to transport stranded gas to market, both in the offshore Gulf of Mexico and the onshore North Slope of Alaska, will also be requested.

DOE anticipates issuing financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how may awards will be made.

Multiple awards are anticipated. Approximately $15 million of DOE funding is planned over a 3 year period for this solicitation. National Laboratories may participate as team members; however, they may not act as the prime awardee and total funding to the Laboratory must not exceed 15% of the total project cost. If a project which includes National Laboratory participation is approved for funding, DOE intends to make an award to the applicant for its portion of the effort and to provide direct funding for the National Laboratories portion of the effort as a Field Work Proposal (FWP). DOE has determined that a minimum cost share of 20 percent of the total project cost is required for this solicitation. Details of the cost sharing requirement and the specific funding levels will be contained in the solicitation. The anticipated period of performance of the projects will range in duration from 12 months to 48 months.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the ''Oil & Gas'' technology choice located under the heading ''Fossil Energy.'' Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on December 14, 2000.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 00–32858 Filed 12–22–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for Emergency OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for Emergency OMB Review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for emergency processing under section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*) by January 3, 2001. The reason for this emergency clearance request is that Congress has funded an EIA project in Fiscal Year 2001 to institute a bi-weekly survey of companies during the heating season to monitor interruptible natural gas contracts. For this project EIA is proposing three related information collections. Information will be collected from natural gas suppliers, petroleum product suppliers, and a sample of major energy consumers in the Northeast United States to assess energy activities, especially volumes of fuel switching between natural gas and petroleum fuels. Normal clearance procedures would prevent the timely collection of information during the 2000–2001 heating season.

DATES: Comments must be filed by January 2, 2001.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC.

20503. The OMB DOE Desk Officer may be telephoned at (202) 395–7318. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC. 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711, FAX at (202) 287–1705, or e-mail at Herbert.Miller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection number and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–911A–C, ''Bi-Weekly Surveys to Assess Effects of Interruptions of Natural Supplies in the Northeast United States''
2. Energy Information Administration
3. OMB Number 1905–NEW
4. New (emergency clearance request)
5. Mandatory
6. Beginning with the period January 1–14, 2001 and continuing through the two-week period ending April 8, 2001, forms EIA–911A–C will collect information for use in assessing the interactions of energy markets in the Northeast United States. The survey requests will include: (1) Information from natural gas suppliers on deliveries and interruptions in service to customers; (2) information from petroleum product suppliers on sales, inventories, and customers that can switch between natural gas and petroleum; and (3) information from large energy consumers regarding energy-related matters. Data will be used to monitor energy supply and consumption activities in the Northeast U.S. Respondents will be natural gas suppliers, petroleum product suppliers, and a sample of large energy consumers (*e.g.,* electric power generators, industrial establishments, commercial establishments, institutional facilities, and government facilities) in the Northeast United States (*i.e.,* the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, and Pennsylvania).
7. Businesses or other for-profit; Federal Government; Not-for-profit institutions; and State, Local or Tribal Governments
8. 6,650 total burden hours; EIA–911A (natural gas suppliers) will entail 560 total burden hours (40 respondents × 7 reports × 2 hours/report); EIA–911B (petroleum product suppliers) will entail 1,890 total burden hours (270 respondents × 7 reports × 1 hour/report); EIA–911C (large energy consumers) will entail 4,200 total burden hours (300 respondents × 7 reports × 2 hours/report)

Statutory Authority: Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC., December 20, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–32859 Filed 12–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revision, and three-year extension of the Office of Management and Budget (OMB) expiration date of the form RW–859, ''Nuclear Fuel Data Survey''.

DATES: Comments must be filed on or before February 26, 2001. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650, telephone: (202) 287–1966, e-mail: *jim.finucane@eia.doe.gov,* and fax (202)-287–1934.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Jim Finucane at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(a) of the Paperwork Reduction Act of 1995.

This data collection will provide the Office of Civilian Radioactive Waste Management of DOE with detailed information concerning the spent nuclear fuel generated by the respondents (commercial generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and needs this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.) which will be the final storage/disposal site for all of the spent fuel and high level radioactive waste materials.

II. Current Actions

The current proposed action is: A revision and three-year extension of an existing data collection, RW–859. As

before, all data will be collected once; only changes in the specific data element will require updating. This revision will also facilitate the streamlining of data elements, which will be collected. Specifically, all of the data which is needed on an assembly specific basis will be collected at one time; thereafter referring this data by reference to the assembly serial number.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 40 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, December 19, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–32857 Filed 12–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–546–000, FERC–546]

Proposed Information Collection and Request for Comments

December 19, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before February 26, 2001.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–546 ''Certificated Rate Filings: Gas Pipeline Rates'' (OMB No. 1902–0155) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), (15 U.S.C. 3301–3432) and Sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). The Commission has the regulatory responsibility under these Acts to ensure that pipeline rates and services are just and reasonable and not unduly discriminatory. Accordingly, jurisdictional natural gas pipeline companies are required to obtain Commission approval for all rates and charges made, or demanded, in connection with the transportation or sale of natural gas in interstate commerce.

Service and tariff revision information necessary for Commission examination and subsequent approval of any certificated pipeline change in service is collected under FERC–546. (Information necessary to examine and approve any change in rates is collected separately under FERC–542 for tracking filings (non-formal), and 544 and 545 for general rate change filings, including NGA Section 4 major rate cases, (formal and non-formal respectively)). The required FERC–546 information is set forth in each pipeline's tariff, and must be filed in compliance with Commission regulations found in 18 CFR Part 154.4; 154.7; 154.202; 154.204–.209; and 154.602–.603.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection remains unchanged from the previous renewal and is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
77	4	40	12,320

The estimated total cost to respondents is: $683,268 (12,320 hours/2,080 hours per year per employee times $115,357 [1] per year per average employee = $683,268). The cost per respondent is equal to $8,874.

The reporting burden includes the total time, effort, or financial resources expended to assemble and disseminate the information including: (1) Reviewing the instructions; (2) developing, or acquiring appropriate technological support systems necessary for the purposes of collecting, validating, processing, and disseminating the information; (3) administration; and (4) transmitting, or otherwise disclosing the information.

The cost estimate for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's burden estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 00–32798 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

[1] The cost per year per average employee estimate is based on the annual allocated cost per Commission employee for fiscal year 2001. The estimated $115,357 cost consists of approximately $92,286 in salary and $23,071 in benefits and overhead.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–677–000]

American Transmission Company LLC; Notice of Filing

December 19, 2000.

Take notice that on December 18, 2000, American Transmission Company LLC filed Attachment 1 which was inadvertently omitted from its December 15, 2000 filing of proposed Open Access Transmission rates under Section 205 of the Federal Power Act (FPA).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 27, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32803 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–017]

Dominion Transmission, Inc.; Notice of Compliance Filing

December 19, 2000.

Take notice that on December 14, 2000, in compliance with the Commission's Letter Order, dated November 30, 2000, in Docket No. RP96–383–014] Dominion Transmission Inc. (DTI) tendered for filing Substitute Third Revised tariff Sheet No. 1300, together with an explanation of the contractual rights and obligations under a negotiated rate agreement for FT service between DTI and Central Hudson Enterprises Corporation (Central Hudson).

DTI states that Exhibit A to the October 2000 FT Agreement clarifies that the maximum quantities of gas that DTI shall deliver and that Customer may tender are a MDTQ of 15,000 Dt and a MATQ of 5,940,000 DT. DTI notes that these figures are the same as the contract quantities specified on Second Revised Sheet No. 1406, thus alleviating the Commission's concern expressed in the Letter Order. The contract exhibit also clarifies that DTI's obligation is a fixed daily and annual contract maximum quantity entitlement and that DTI is not obligated in any way to provide service at an unstated ''full requirements'' level.

DTI states that copies of its letter of transmittal and enclosures have been served upon the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32800 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–051]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report—November 1999–October 2000

December 19, 2000.

Take notice that on December 14, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Federal Energy Regulatory Commission (Commission) in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Document No. RP91–143–000, *et al.*

Great Lakes states that this report reflects application of the revenue sharing mechanism and revenue sharing amounts determined for remittance to eligible firm shippers for I/O revenue collected for the November 1, 1999 through October 31, 2000 period, in accordance with Article IV of the Settlement.

Great Lakes states that I/O revenue collected for the applicable period did not exceed the threshold level of fixed costs allocated to I/O services. Therefore, revenue subject to sharing was zero. Great Lakes further states that as revenue subject to sharing was zero, it did not make any remittances to eligible firm shippers for I/O Revenue Sharing for the November 1, 1999 through October 31, 2000 period.

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 26, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32801 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–33–001]

Questar Pipeline Company; Notice of Compliance Filing

December 19, 2000.

Take notice that on November 21, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 79, to be effective November 1, 2000.

Questar states that the purpose of this filing is to comply with Ordering Paragraph (C) of the Commission's Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L issued November 9, 2000, in Docket Nos. RM96–1–014, *et al.* which directed Questar to file revised tariff sheets, within 15 days of the order. The revision to be included will permit netting and trading across Questar's no-notice Rate Schedule NNT.

Questar seeks waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective November 1, 2000, the implementation date of Order No. 587–L.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 27, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32799 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–187–000]

Southern Natural Gas Company; Notice of Refund Report

December 19, 2000.

Take notice that on December 14, 2000, Southern Natural Gas Company (Southern Natural) tendered for filing a Refund Report.

Southern Natural states that as a final reconciliation pursuant to section 23.3 and Section 38.3 of the General Terms and Conditions of Southern Natural's Tariff, Seventh Revised Volume No, 1, the Refund Report sets forth ISS Revenues and Excess Storage Usage Charges to be refunded to Rate Schedule CSS customers. These sections have been terminated and removed from Southern's Tariff in accordance with Southern's Rate Case Settlement dated March 10, 2000 in Docket No. RP99–496.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 26, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32802 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3596–001, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 19, 2000.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER00–3596–001]

Take notice that on December 12, 2000, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amendment to Filing in Docket ER00–3596–000. In AEPSC's initial filing on September 1, 2000, AEPSC failed to provide designations for two service agreements which were submitted for filing by the AEP Companies in the above referenced docket under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). Pursuant to the Commissions' Order No. 614 in Docket No. RM99–12–000, AEPSC respectfully designates the service agreements with TransCanada Power Marketing Ltd. as Service Agreement No. 267 and with Wisconsin Public Power, Inc. as Service Agreement 268. The Power Sales Tariff was accepted for filing effective October 10, 1997, and has been designated AEP Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit this service agreement to be made effective as initially requested on or prior to August 7, 2000.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas & Electric Corporation

[Docket No. ER00–3661–000]

Take notice that on December 11, 2000, Central Hudson Gas and Electric Corporation (Central Hudson), tendered for filing its Rate Schedule FERC No. 201 which sets forth the terms and charges for transmission facilities provided by the Company to Consolidated Edison Company of New York, Inc. and Niagara Mohawk Power Corporation for the transmission of output from the Roseton Generating Station.

Rate Schedule FERC No. 201 is issued in compliance with the October 10, 2000 Order issued in Docket No. ER00–3661–000, which required the Company to file rate schedule designations as required in Order No. 614. Accordingly, Rate Schedule FERC No. 201 supersedes Rate Schedule FERC No. 42.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER01–646–000]

Take notice that on December 12, 2000, Oklahoma Gas and Electric Company (OG&E), tendered for filing, an Interconnection Agreement with Redbud Energy LP (Redbud). The Interconnection Agreement provides for interconnection of the Redbud facility to the OG&E transmission system at the rates, terms, charges, and conditions set forth therein.

OG&E is requesting that the Interconnection Agreement become effective as of November 27, 2000 and is also requesting waiver of the Commission's Notice requirements. OG&E designates the Interconnection Agreement as Service Agreement No. 45 under FERC Electric Tariff, Second Revised Volume 2.

Copies of this filing have been served upon the Oklahoma Corporation Commission, the Texas Public Utility Commission and on Redbud.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER01–647–000]

Take notice that on December 12, 2000, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement with PacifiCorp Power Marketing, Inc. (PacifiCorp) under the terms of PNM's Open Access Transmission Tariff for short-term firm point-to-point transmission service. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to PacifiCorp and to the New Mexico Public Regulation Commission.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. The Dayton Power and Light Company

[Docket No. ER01–648–000]

Take notice that on December 12, 2000, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Engage Energy America Corp. as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon Engage Energy America Corp. and the Public Utilities Commission of Ohio.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER01–649–000]

Take notice that on December 12, 2000, The Dayton Power and Light Company (Dayton) submitted service agreements establishing with Engage Energy America Corp. as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon Engage Energy America Corp. and the Public Utilities Commission of Ohio.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER01–650–000]

Take notice that on December 12, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Tenaska Power Services Co. This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER01–651–000]

Take notice that on December 12, 2000, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed fixed return on common equity to be used in establishing estimated and final redetermined formula rates for wholesale service to

Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, Rayburn Country Electric Cooperative, Inc., LaGen Generating LLC, Inc., Tex-La Electric Cooperative of Texas Inc. and East Texas Electric Cooperative, Inc. SWEPCO currently provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity which SWEPCO proposes to replace with a fixed return on common equity. SWEPCO proposes no other changes to the formula rates.

Copies of the filing were served on the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. American Transmission Systems, Inc.

[Docket No. ER01–661–000]

Take notice that on December 13, 2000, American Transmission Systems, Inc., tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000.

The proposed effective date under the Service Agreement is December 11, 2000 for the above mentioned Service Agreement in this filing.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. EWO Marketing, L.P.

[Docket No. ER01–666–000]

Take notice that on December 12, 2000, EWO Marketing, L.P. tendered for filing an application for authorization to sell wholesale power at market-based rates.

Copies of this filing have been served on the Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, and the Council of the City of New Orleans.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Axia Energy, L.P.

[Docket No. ER01–667–000]

Take notice that on December 12, 2000, Axia Energy, L.P. tendered for filing an application for authorization to sell wholesale power at market-based rates. Copies of this filing have been served on the Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, and the Council of the City of New Orleans.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER01–675–000]

Take notice that on December 13, 2000, PJM Interconnection, L.L.C. (PJM) tendered for filing: (1) Ten signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), six of which are replacement pages for entities which have changed their corporate name and four of which are additional parties to the RAA; (2) request for Commission approval of the withdrawal of six parties from the RAA; (3) an amended Schedule 17 of the RAA adding the new entities to the list of RAA signatories, deleting the entities that are withdrawing or have withdrawn from the RAA, and reflecting the corporate name changes; (4) Notice of Cancellation for Citizens Power Sales to terminate its membership in PJM and to withdraw it as a signatory to the RAA; (5) Notice of Cancellation of DTE-CoEnergy, L.L.C. to terminate its membership in PJM, to cancel certain service agreements with PJM, and to withdraw it as a signatory to the RAA; and (6) Notices of Cancellation for CNG Energy Services Corporation, Coral Power, L.L.C., and FPL Energy Services, Inc. to withdraw them as a signatories to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including the parties for which a signature page is being tendered with this filing, the parties that are withdrawing from the RAA, the PJM members, and each of the state electric regulatory commissions within the PJM control area.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–672–000]

Take notice that on December 13, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed transmission service agreement with Engage Energy America Corp (Engage). The agreement allows Engage to take firm point-to-point transmission service from LG&E/KU.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–671–000]

Take notice that on December 13, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed Netting Agreement between the Companies and MIECO, Inc.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–670–000]

Take notice that on December 13, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed transmission service agreement with Engage Energy America Corp., (Engage). This agreement allows Engage take non-firm point-to-point transmission service from LG&E/KU.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–669–000]

Take notice that on December 13, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral Service Sales Agreement between Companies and MIECO, Inc., under the Companies' Rate Schedule MBSS.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Southern California Edison Company

[Docket No. ER01–660–000]

Take notice that on December 15, 2000, Southern California Edison Company (SCE) tendered for filing an Interconnection Facilities Agreement (Interconnection Agreement) between Wintec Energy, Ltd. (Wintec) and SCE.

This Interconnection Agreement specifies the terms and conditions

pursuant to which SCE will interconnect Wintec's 45 MW generating facility to the ISO Controlled Grid.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER01–653–000]

Take notice that on December 13, 2000, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Consolidated Water Power Company under its Market-Based Rate Tariff, FERC Electric Tariff Volume No. 10.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER01–497–001]

Take notice that on December 13, 2000, Commonwealth Edison Company (ComEd) tendered for filing three executed Non-Firm Transmission Service Agreements with the Ameren Energy Marketing (AEM), Consumers Energy Company (CEC), and Upper Peninsula Power Company (UPP); one unexecuted Non-Firm Transmission Service Agreement with LS Power, LLC (LSP); ten executed Short-Term Firm Transmission Service Agreements with Aquila Energy Marketing Corporation (AEMC), Ameren Energy Marketing (AEM) Florida Power Corporation (FPC), Griffin Energy Marketing, L.L.C. (GEM), Minnesota Power, Inc. (MP), New York State Electric & Gas Corporation (NYSEG), City of Rochelle, Illinois (ROCH), Strategic Energy, L.L.C. (SEL), Upper Peninsula Power Company (UPP), and Williams Energy Marketing & Trading Company (WEMT) under the terms of ComEd's Open Access Transmission Tariff (OATT). Due to an administrative oversight, some pages of these agreements were not included in the original November 22, 2000 filing. Per an informal request of FERC Staff, ComEd is accordingly resubmitting the entire filing.

Upon the request of AEMC and WEMT, ComEd is submitting re-executed Agreements for AEMC and WEMT that reflect the new names of these companies. The Agreement with AEMC was previously filed in Docket No. ER98–446–000, granted an effective date of October 8, 1997 and designated Service Agreement No. 195. The Agreement with WEMT was previously filed in Docket No. ER98–3779–000, granted an effective date of June 21, 1998 and designated Service Agreement No. 296. ComEd respectfully requests that the re-executed Agreements for AEMC and WEMT be granted the same effective dates as was accorded them in the Docket No. ER98–446–000 and Docket No. ER98–3779–000 proceedings. Good cause supports ComEd's request as the re-execution of these Agreements is being done at the request of AEMC and WEMT so as to reflect the new names of AEMC and WEMT. See Central Hudson Gas & Electric Company, 60 FERC 61,106 (1992).

ComEd also submitted for filing an updated Index of Customers reflecting name changes for current customers Aquila Power renamed Aquila Energy Marketing Corporation (AEMC), Ameren Services Company renamed Ameren Energy Inc. (AEI), Public Service Electric and Gas Company renamed PSEG Energy Resources & Trade LLC (PSEG ER&T), Calpine Power Services Company renamed Calpine Energy Services, L.P. (CES), Amoco Energy Trading Corporation renamed BP Energy Company (BP), Minnesota Power and Light Company renamed Minnesota Power, Inc. (MP), Citizens Power LLC renamed Edison Mission Marketing & Trading, Inc. (EMMT), and Williams Energy Services Company renamed Williams Energy Marketing & Trading Company (WEMT).

ComEd requests an effective date of November 22, 2000 for the Non-Firm Agreements with AEM, CEC and LSP; an effective date of November 9, 2000 for the Non-Firm Agreement with UPP to coincide with the first day of service; and an effective date of November 22, 2000 for the Short-Term Firm Agreements with AEM, FPC, GEM, MP, NYSEG, ROCH, SEL, and UPP, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER01–668–000]

Take notice that on December 14, 2000, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered an amendment to the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Third Revised Volume No. 5) (Tariff). The purpose of the amendment is to incorporate into the Tariff specific Creditworthiness criteria, Procedures for Obtaining Interconnection Service, and Source and Sink Requirements for Point-to-Point Transmission Service. In addition, the Tariff is being refiled in its entirety so as to comply with the Commission's Order No. 614 pertaining to electric rate schedule sheet designations. Electronic copies of this filing (including the amended Tariff) are available for download on OASIS.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–673–000]

Take notice that on December 13, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed Netting Agreement between the Companies and TXU Energy Trading Company.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Mobile Energy LLC

[Docket No. ER01–480–001]

Take notice that on December 13, 2000, Mobile Energy LLC tendered for filing an amendment to its application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 filed in the above-referenced docket.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–337–001]

Take notice that on December 13, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an amendment to its November 1, 2000, executed Netting Agreement (LGE/KU Rate Schedule 9) between the Companies and Rainbow Energy Marketing Corporation.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. California Power Exchange Corporation

[Docket No. ER01–80–001]

Take notice that on December 13, 2000, the California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing revised tariff sheets to comply with the Commission's November 22, 2000 order in this proceeding (93 FERC ¶61,199).

CTS has served copies of the filing on the official service list in this proceeding and on the California Public Utilities Commission and has posted a copy of the filing on its website.

Comment date: January 4, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Indianapolis Power & Light Company

[Docket No. ER00–3518–002]

Take notice that on December 18, 2000, Indianapolis Power & Light Company (IPL) tendered for filing notice that its Interconnection, Maintenance and Operation Agreement accepted for filing in Docket No. ER00–3518–000 became effective November 20, 2000 upon closing of the sale of IPL's Perry Steam Plant and electric generators to Citizens Gas & Coke Utility.

Copies of this filing have been served upon Citizens Gas & Coke Utility and the Indiana Utility Regulatory Commission.

Comment date: January 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER01–676–000]

Take notice that on December 13, 2000, PECO Energy Company (PECO), tendered under Section 205 of the Federal Power Act, 16 U.S.C. S 792 et seq., an Agreement dated December 11, 2000 with The Detroit Edison Company (DECO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of December 11, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to The Detroit Edison Company and to the Pennsylvania Public Utility Commission.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Consumers Energy Company

[Docket No. ER01–654–000]

Take notice that on December 14, 2000, Consumers Energy Company (Consumers), tendered for filing a Letter Agreement between Decker Energy International, Inc. (Decker) and Consumers, dated November 14, 2000, (Agreement). Under the Agreement, Consumers is to procure property interests associated with providing an electrical connection between a generating plant to be built by Decker and Consumers' transmission system.

Consumers requested that the Agreements be allowed to become effective November 14, 2000.

Copies of the filing were served upon Decker and the Michigan Public Service Commission.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Southwestern Electric Power Company

[Docket No. ER01–655–000]

Take notice that on December 14, 2000, Southwestern Electric Power Company (SWEPCO) tendered for filing a Restated and Amended Power Supply Agreement (Restated PSA) between SWEPCO and the City of Bentonville, Arkansas (Bentonville). The Restated PSA supersedes, in its entirety, the 1991 Power Supply Agreement, as amended, between SWEPCO and Bentonville.

SWEPCO seeks an effective date of June 15, 2000 for the Restated PSA and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Bentonville and on the Arkansas Public Service Commission.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Automated Power Exchange, Inc.

[Docket No. ER01–659–000]

Take notice that on December 14, 2000, Automated Power Exchange, Inc., tendered for filing a rate schedule under which APX will offer power exchange services in the APX Midwest Market.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. West Texas Utilities Company

[Docket No. ER01–665–000]

Take notice that on December 14, 2000, West Texas Utilities Company (WTU) filed revisions to the service agreements under WTU's Wholesale Power Choice Tariff (WPC Tariff) between WTU and Concho Valley Electric Cooperative, Inc., Coleman County Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Electric Cooperative, Inc. and Taylor Electric Cooperative, Inc., (WPC Customers). WTU states that these revisions reflect changes in the Points of Delivery for these WPC Customers. WTU requests an effective date for these revisions of January 1, 2001.

Accordingly, WTU requests waiver of the Commission's notice requirements.

WTU states that a copy of the filing was served on the WPC Customers and the Public Utility Commission of Texas.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Company of New Hampshire; Citizens Utilities Company

[Docket No. ER01–674–000]

Take notice that on December 14, 2000, Public Service Company of New Hampshire, tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 110 providing wholesale requirements service to Citizens Utilities Company.

Copies of this filing were served upon Citizens Utilities Company, the Clerk of the Vermont Public Service Board and the Executive Director and Secretary of the New Hampshire Public Utilities Commission.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

32. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–312–001]

Take notice that on December 14, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an amendment in the captioned proceeding requesting that its amended open access transmission tariff be accepted for filing effective as of the date American Transmission Company, LLC (ATCLLC), commences operations and Wisconsin Power and Light Company and its wholly-owned subsidiary, South Beloit Water, Gas and Electric Company, transfer their transmission facilities to ATCLLC.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

33. American Electric Power Service Corporation

[Docket No. ER01–664–000]

Take notice that on December 14, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement for Tennessee Valley Authority and executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Engage Energy America Corporation. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after December 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

34. Edison Sault Electric Company

[Docket No. ER01–663–000]

Take notice that on December 14, 2000, Edison Sault Electric Company (Edison Sault) tendered for filing a fully executed Supplemental Agreement No. 9 to the Contract for Electric Service, dated December 12, 2000 between Edison Sault and Cloverland Electric Cooperative, Inc.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

35. Central Maine Power Company

[Docket No. ER01–657–000]

Take notice that on December 14, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12, an executed interconnection agreement (the Agreement) between CMP and Kennebec Water District (Kennebec).

The Agreement is intended to replace and supersede the unexecuted interconnection agreement filed by CMP on March 31, 2000. As such, CMP is requesting that the Agreement become effective March 1, 2000.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and Kennebec.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

36. Central Maine Power Company

[Docket No. ER01–656–000]

Take notice that on December 14, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12, an executed interconnection agreement (the Agreement) between CMP and Moosehead Energy, Inc., (Moosehead).

The Agreement is intended to replace and supersede the unexecuted interconnection agreement filed by CMP on March 31, 2000. As such, CMP is requesting that the Agreement become effective March 1, 2000.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and Moosehead.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

37. Automated Power Exchange, Inc.

[Docket No. ER01–658–000]

Take notice that on December 14, 2000, Automated Power Exchange, Inc., tendered for filing a new rate schedule under which APX will offer power exchange services in the APX California Market.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

38. Northeast Utilities Service Company

[Docket No. ER01–662–000]

Take notice that on December 14, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to USGen New England Inc., under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to USGen New England Inc.

NUSCO requests that the Service Agreement become effective January 8, 2001.

Comment date: January 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

39. U.S. Department of Energy, Bonneville Power Administration

[Docket No. NJ01–1–000]

Take notice that on December 13, 2000, the Bonneville Power Administration (Bonneville), tendered for filing pursuant to 18 CFR 35.28(e) and 18 CFR part 385.207, its Open Access Transmission Tariff (OATT) terms and conditions to the Federal Energy Regulatory Commission (Commission) and petitioned the Commission for a declaratory order finding that Bonneville's proposed OATT satisfies the Commission's reciprocity compliance principles. Bonneville seeks such approval to be effective October 1, 2001.

Bonneville currently has an open access transmission tariff which has received the Commission's reciprocity approval. *Order Granting Petition for Declaratory Order, Subject to Filing of Tariff Modifications, and Granting Exemption from Filing Fee,* 80 F.E.R.C. 61,119 (1997); *Order Accepting Compliance Reciprocity Tariff Subject to Certain Required Modifications,* 84 F.E.R.C. 61,068 (1998); *Order Accepting Compliance Reciprocity Tariff,* 86 F.E.R.C. 61,278 (1999); *Order Finding Amended Open Access Tariff to be Acceptable Reciprocity Tariff and Dismissing Complaint,* 87 F.E.R.C. 61,351 (1999). Bonneville is revising its tariff at this time to ensure consistency with Bonneville's proposed FY 2002–2003 transmission rates, and to conform more closely to the Commission's *pro forma* tariff.

Comment date: January 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–32820 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Reporting Procedures for Public Utility Sellers

December 19, 2000.

The Commission's order in *San Diego Gas & Electric Co., et al.* v. *Sellers of Energy and Ancillary Services et al.,* Docket No. EL00–95–000 *et al.,* 93 FERC ¶ 61,294 (December 15, 2000), requires public utility sellers to make weekly reports to the Commission's Division of Energy Markets beginning on January 10, 2001 for the week of January 1, 2001. Public Utility Sellers must report all hourly transactions into the California ISO and PX markets when the real-time price exceeds $150 per MWh. This

notice specifies procedures for filing the reports.

Public utility sellers are to file the reported information with the Commission's Secretary on diskette or CD with a transmittal letter. The transmittal letter must identify the report as the ''Public Utility Sellers Weekly Report'' and include the name of the reporting public utility seller, the week covered in the report and the name, *and* telephone number and e-mail address of a contact person. The diskette or CD must be labeled with the following information: ''Public Utility Sellers Weekly Report'', name of the reporting public utility seller, the week covered in the report. No paper copies of the report should be submitted. The specific requirements for the content of the electronic report are set forth in the Commission's order, *San Diego Gas & Electric et al.. Sellers of Energy and Ancillary Services,* slip at 58–59. The order is accessible on-line at *www.ferc.fed.us* under ''Bulk Power Markets''.

If the reporting public utility seller seeks confidential treatment of this information under section 388.112 of the Commission's regulations, a statement requesting confidential treatment must be included in the transmittal letter and the diskette or CD must be labeled ''confidential.''

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–32797 Filed 12–22–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6922–2]

Agency Information Collection Activities; EPA ICR No. 0155.07; Submission to OMB; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Certification of Pesticide Applicators; Renewal of Pesticide Information Collection Activities and Request for Comments [EPA No. 0155.07; OMB No. 2070–0029]. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 28, 2000 (65 FR 39894). EPA received one comment, which has been addressed in this ICR.

DATES: Additional comments may be submitted on or before January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on 202–260–2740 or by e-mail: *farmer.sandy@epa.gov.* You may also access the ICR at *http://www.epa.gov/icr/icr.htm.* Refer to EPA ICR No 0155.07 and/or OMB Control No. 2070–0029.

ADDRESSES: Send your comments, referencing the proper ICR numbers to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and send a copy of your comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Title:* Certification of Pesticide Applicators (EPA ICR No.0155.07, OMB No. 2070–0029). This is a request for extension of an existing approved collection that is currently scheduled to expire on December 31, 2000. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) allows EPA to classify a pesticide as ''restricted use'' if the pesticide meets certain toxicity or risk criteria. Restricted use pesticides, because of their potential to harm persons or the environment, may be applied only by a certified applicator or someone under the direct supervision of a certified applicator. In order to become a certified applicator, a person must meet certain standards of competency. Once approved by EPA, participating States can implement a certified applicator program. In non-participating States, EPA administers certification programs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR Part 9.

Burden Statement: The total annual public burden is estimated to be 1,285,865 hours; or 3.1 hours per commercial applicator/firm response, 5 hours per response for pesticide dealers in Colorado, 0.17 hours per response for certifying applicators in Colorado, and 78.4 hours per response for each participating State and Tribal government and Federal agency. 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. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 57 States, Federal Agencies and Indian Tribes; 266 pesticide dealers, 48 applicators in Colorado and 412,922 commercial pesticide applicators and firms.

Estimated total number of potential respondents: 413,293.

Frequency of response: Once annually.

Estimated total/average number of responses for each respondent: One.

Estimated total annual burden hours: 1,285,865 hours.

Estimated total annual non-labor burden costs: $0.

List of Subjects

EPA, Pesticides, certified pesticide applicators, information collection.

Dated: December 18, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–32846 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6922–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Performance Evaluation Studies on Water and Wastewater Laboratories

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Performance Evaluation Studies on Water and Wastewater Laboratories, EPA ICR No. 0234.07, OMB Control No. 2080–0021: currently expiring December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 25, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 0234.07 and OMB Control No. 2080–0021, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202)260–2740, by email at *farmer.sandy@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0234.07. For technical questions about the ICR contact Ray Wesselman at (513) 569–7194.

SUPPLEMENTARY INFORMATION: *Title:* Performance Evaluation studies on Water and Wastewater Laboratories (OMB Control No. 2080–0021; EPA ICR No. 0234.07). This is a request for extension of a currently approved collection expiring December 31, 2000.

Abstract: The EPA receives analytical results on drinking waters and wastewaters from a variety of laboratories and must rely on these data as a primary basis of its regulatory decisions. As a consequence, it had become desirable to have an objective demonstration that the contributing laboratories are capable of producing valid data. The subject Performance Evaluation Studies are designed to fulfill this need to document and improve the quality of analytical data from certain critical analyses within drinking water, major point-source discharge and ambient water quality samples. Participation in Water Pollution (WP) studies that relate to wastewater analyses, and Water Supply (WS) studies that relate to drinking water analyses, is only mandated by the EPA for those laboratories that receive federal funds to do such analyses; however successful performance in these studies is often required by states that certify laboratories for drinking water and wastewater analyses. Participation in the Discharge Monitoring Report—Quality Assurance (DMR–QA) studies is mandatory for those designed wastewater discharges who are doing self-monitoring analyses required under a National Pollutant Discharge Elimination System (NPDES) permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 29, 2000 (65 FR 16589); no comments were received.

Burden Statement: The annual public reporting and record-keeping burden for this collection of information is estimated to average 10.3 hours per response. 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.

Respondents/Affected Entities: Wastewater labs, NPDES permittees and toxicity labs, and water chemistry microbiological labs.

Estimated Number of Respondents: 23,430.

Frequency of Response: Annual.

Estimated Total Annual hour Burden: 241,619 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0234.07 and OMB Control No. 2080–0021 in any correspondence.

Dated: December 18, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–32847 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6922–1]

Pesticide AudioTechnology Initiative Pilot Program Announcement

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice.

SUMMARY: EPA invites interested individuals and organizations to participate in a new pesticide educational outreach pilot program entitled the Pesticide Audio Technology Initiative (PATI) which will develop educational kits for use in schools. The kits will be used to teach about the Consumer Labeling Initiative's (CLI) national educational campaign to ''READ the Label First!'' and the importance of safe and proper use, storage, and disposal of pesticides and household cleaners.

DATES: The PATI pilot program will begin January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Drew Burnett (202) 564–0448, *Burnett.andrew@epamail.epa.gov;* or Amy Breedlove, (703) 308–9069, *Breedlove.amy@ epamail.epa.gov;* Office of Environmental Education (1704 A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA has three primary objectives for the PATI pilot program: (1) To develop an effective educational program to teach school age children about the importance of first reading the label before any member of the household uses a pesticide or household cleaner;

(2) promoting household safety to reduce children's exposure to potentially harmful chemicals; and (3) utilizing this pilot program as an opportunity to foster partnerships among EPA, State and Local Agencies, industry, and other potential stakeholders.

In March 1996, EPA announced the CLI after finding that label information is often difficult for the general public to read and understand. CLI is a voluntary, cooperative partnership among federal, state, and local government agencies, industry, and other interested groups working to improve product labels on indoor insecticides, outdoor pesticides, and household cleaners. CLI's educational goals are to foster pollution prevention and to improve consumer understanding of information on consumer products, particularly pesticides and cleaners. To bring these new labels to the attention of the public, the CLI developed a national consumer education campaign entitled ''Read the Label FIRST!'' (RtLF!).

According to the American Association of Poison Control Centers, 36 children age 14 and under died from poisoning in 1997. More than 1 million children were victims of accidental poisoning. Introducing school age children to the RtLF! campaign and child safety issues via the PATI pilot program will allow them to become better-informed consumers and reduce their risks of accidental poisonings. In turn, they can carry this knowledge back to their families.

Currently, participants in the PATI pilot program include New Mexico's Family Career and Community Leaders of America and SpaceMark Talking Technologies, Inc. EPA is announcing this initiative to promote the broadest possible participation by interested individuals and organizations in order to develop an effective education program for school age children.

List of Subjects

Environmental protection; Environmental education, and outreach.

Dated: December 14, 2000.

Michael Baker,

Acting Director, Office of Environmental Education.

[FR Doc. 00–32844 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 18, 2000.

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 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 26, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0253.

Title: Part 68—Connection of Telephone Equipment to the Telephone Network (Sections 68.106, 68.108, 68.110).

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 57,540.

Estimated Time Per Response: .057 hours per response (avg).

Total Annual Burden: 3,270.

Estimated Annual Reporting and Recordkeeping Cost Burden: 0.

Frequency of Response: On occasion.

Needs and Uses: Part 68 sets forth the terms and conditions for connection and for the registration of customer provided terminal equipment. Section 68.106 requires customers connecting terminal equipment or protective circuitry to the telephone network to provide, upon request, the particular lines to which such connection is made, the FCC registration number and ringer equivalence numbers necessary to the telephone company. Section 68.108 requires telephone companies to notify customers of possible discontinuance of service when customer's equipment is malfunctioning and to inform them of their right to file a complaint. Section 68.110 requires telephone companies to provide technical information concerning inter-face parameters not specified in Part 68 and notify customers of changes in telephone company facilities, equipment, operations or procedures where such changes can be reasonably expected to render any customer's terminal equipment incompatible with the telephone company's communication facilities. The purpose of this is to prevent harm to the telephone network and degradation of our telephone service.

OMB Control No.: 3060–0807.

Title: 47 CFR Section 51.803 and Supplemental Procedures for Petitions Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 52.

Estimated Time Per Response: 40.8.

Total Annual Burden: 2,040 hrs.

Estimated Annual Reporting and Recordkeeping Cost Burden: 0.

Frequency of Response: On occasion.

Needs and Uses: In response to petitions seeking preemption pursuant to section 252(e)(5) of the Communications Act of 1934, as amended, the Commission implemented procedures to help ensure the expeditious processing of petitions filed pursuant to section 252(e)(5). Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act

shall notify the Commission as follows: (1) file with the secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition.

OMB Control No.: 3060–0439.

Title: Regulations Concerning Indecent Communications by Telephone.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 10,200.

Estimated Time Per Response: .13 hours per response (avg) (about 8 minutes).

Total Annual Burden: 1,632 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: 0.

Frequency of Response: On occasion.

Needs and Uses: Section 223 requires telephone companies, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. Section 64.201 implements Section 223 and contains several information collection requirements: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) a requirement that adult message service providers notify their carriers of the nature of their programming; and (3) a requirement that a provider of adult message services request that their carriers identify it as such in bills to its subscribers. The information requirements are imposed on carriers, adult message service providers, and those who solicit their services to ensure that minors are denied access to material deemed indecent. The information collections are necessary for the Commission to fulfill its mandate under Section 223 of the Communications Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–32787 Filed 12–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the ''discussion agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Thursday, December 21, 2000, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum and resolution re: Disclosure and Reporting of Community; Reinvestment Act-Related Agreements: Joint Final Rule.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Federal Deposit Insurance Corporation.

Dated: December 20, 2000.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–32915 Filed 12–21–00; 8:45 am]

BILLING CODE 6714–01–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Equal Employment Opportunity, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0228).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0228, ''Nondiscrimination in Federal Financial Assistance Programs.'' This information is needed to ensure that recipients of Federal financial assistance distribute Federal surplus property in a nondiscriminatory manner.

DATES: January 25, 2001.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503.

Annual Reporting Burden: Respondents: 55; annual responses: 1; average hours per response: 16; burden hours: 16,200.

FOR FURTHER INFORMATION CONTACT: William Conley, Office of Equal Employment Opportunity, (202) 501–0767.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: December 19, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 00–32841 Filed 12–22–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1502]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Adverse Experience Reporting for Licensed Biological Products, and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 25, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Experience Reporting for Licensed Biological Products; and General Records--21 CFR 600.12 and Part 600 Subpart D (OMB Control Number 0910-0308)--Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA is required to ensure the marketing of only those biological products which are safe and effective. FDA must therefore be informed of all adverse experiences occasioned by the use of licensed biological products. FDA issued the adverse experience reporting (AER) requirements to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to flag potentially serious safety problems with licensed biological products, focusing especially on newly licensed products. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, physicians, foreign regulatory agencies, and clinical investigators. Information derived from the AER system contributes directly to increased public health protection because such information enables FDA to recommend important changes to the product's labeling (such as adding a new warning), to initiate removal of a biological product from the market when necessary, and to ensure the manufacturer has taken adequate corrective action if necessary.

Section 600.80(c)(1) (21 CFR 600.80(c)(1)) requires the licensed manufacturer to report each adverse experience that is both serious and unexpected, regardless of source, as soon as possible but in any case within 15 working days of initial receipt of the information. Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report obtained from a postmarketing clinical study only if there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires the licensed manufacturer to report each adverse experience not reported under paragraph (c)(1) at quarterly intervals, for 3 years from the date of issuance of the product license, and then at annual intervals. The majority of the periodic reports will be submitted annually since a large percentage of the current licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires the licensed manufacturer to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 (21 CFR 600.81) requires the licensed manufacturer to submit information about the quantity of the product distributed under the product license, including the quantity distributed to distributors at an interval of every 6 months. The semiannual distribution report informs FDA of the quantity, the lot number, and the dosage of different products. Section 600.90 (21 CFR 600.90) requires a licensed manufacturer to submit a waiver request with supporting documentation when asking for waiving the requirement that applies to them under §§ 600.80 and 600.81.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of products including recalls of the product. The recordkeeping requirements serve preventative and remedial purposes. These requirements establish accountability and traceability in the manufacture and distribution of products, and enable FDA to perform meaningful inspections.

Section 600.12 (21 CFR 600.12) requires that all records of each step in the manufacture and distribution of a product be made and retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, records of sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing of a product are required to be maintained. Section 600.12(b)(2) requires complete records to be maintained pertaining to the recall from distribution of any product.

Respondents to this information collection are manufacturers of biological products. In fiscal year (FY) 99 there were approximately 79 licensed manufacturers. This number excludes those manufacturers who produce blood and blood components and in vitro diagnostic licensed products because they are specifically exempt from the regulations. However, not all manufacturers may have any submissions in a given year and some may have multiple submissions. FDA received four waiver requests under § 600.90, of which one was approved for exemption of the AER requirements. In FY 99, there were an estimated 3,662 15-day alert reports, 13,238 periodic reports, and 502 distribution reports submitted to FDA. The number of 15-day alert reports for postmarketing studies as stated in § 600.80(e) was minimal and is included in the total number of 15-day alert reports. The hours per response are based on FDA experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB Control No. 0910-0291.

In the Federal Register of September 25, 2000 (65 FR 57612), the agency requested comments on the proposed collection of information. No significant comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.80(c)(1) and (e)	78	46.95	3,662	1	3,662
600.80(c)(2)	78	169.72	13,238	1	13,238
600.81	78	6.4	502	1	502
600.90	4	1	4	1	4
Total					17,407

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

There are approximately 343 licensed manufacturers of biological products. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding paragraph (b)(2) is estimated to be 111. This number excludes

manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB Control No. 0910-0116. The recordkeeping burden is based on the number of lots released (6,446), the number of recalls made (1,176), and the total number of AER reports received (16,900) for FY 99. The hours per record are based on FDA experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
600.12	111	58.1	6,446	32	206,272
600.12(b)(2)	343	3.4	1,176	24	28,224
600.80(i)	79	213.92	16,900	1	16,900
Total					251,396

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 18, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32783 Filed 12–22–00; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1501]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 25, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Threshold of Regulation for Substances used in Food-Contact Articles--21 CFR 170.39 (OMB Control Number 0910-0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless: (1) It conforms to an exemption for investigational use under 409(j); (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6), there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

In the **Federal Register** of July 17, 1995 (60 FR 36582), § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 parts per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

In the **Federal Register** of September 19, 2000 (65 FR 56585), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.39	6	1	6	48	288

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The above annual reporting estimate is based on information received from representatives of the food packaging and processing industries and on agency records. In the past, FDA has typically received 60 threshold of regulation exemption requests per year.

However, it is estimated that up to 90 percent of the requests that would have previously been submitted under § 170.39 will now be submitted under the premarket notification process for food-contact substances established by section 409(h) of the act.

Dated: December 18, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–32784 Filed 12–22–00; 8:45 am]

BILLING CODE: 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; comment request; Evaluation of a Public Education Campaign on Drinking During Pregnancy

SUMMARY: Under the provisions of Section 3507(a)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 18, 2000, page 56316 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Evaluation of a Public Education Campaign on Drinking During Pregnancy.

Type of Information Collection Request: New Collection.

Need and Use of Information Collection: The evaluation is being conducted to determine whether the public education campaign on alcohol consumption during pregnancy raises awareness and attentiveness to the problems of drinking during pregnancy among the target audience of African American women ages 21–29 residing in Washington, DC. The public education campaign, funded by NIAAA, is in response to a need for increased awareness among African American women of childbearing age about the consequences of drinking during pregnancy, the most severe of which is Fetal Alcohol Syndrome (FAS). The two-year campaign will be launched during the spring of 2001, and will serve as a pilot program for possible replication in other communities across the country.

The information from the evaluation of the public information campaign is to be used by NIAAA to inform policy and practice related to public education efforts targeted toward preventing drinking during pregnancy. The collection of information will take place at two points (pretest and posttest): (1) In the spring, 2001, prior to commencement of the public education campaign, to gather baseline data on knowledge of the effects of drinking during pregnancy; and (2) in the winter, 2003, immediately following the conclusion of the public education campaign, to determine whether the message to the target audience had its intended effect. The data collected will be analyzed to: (1) Increase understanding about the extent of African American women's knowledge of the risks of drinking during pregnancy; (2) evaluate whether a public education campaign targeted towards African American women is effective in increasing awareness; and (3) assess the campaign's strengths and weaknesses in order to provide guidance to other similar public education campaigns.

The public education campaign and evaluation are new efforts that will continue for approximately two years.

Frequency of Response: Once per respondent. Potential respondents will be screened to avoid including individuals in both the pre- and post-test invervals as well as including individuals multiple times in a single test interval.

Affected Public: Individuals.

Type of Respondents: Adults. The annual reporting burden is as follows:

Estimated Number of Respondents: 400 at each of the two data collection points, for a total of 800 respondents.

Estimated Number of Responses per Respondent: One response per respondent.

Average Burden Hours per Response: 5-minute response per individual, for a total respondent burden of 4045 minutes, including pilot test responses.

Estimated Total Annual Burden Hours Requested: 67.4 hours. There are no Costs to Respondents to report. There are no Capital Costs to report. There are no Operating or Maintenance costs to report.

Request for Comments

Written comments and suggestions from the public and affected agencies are invited on the following points: (1) Whether the data collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) 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 Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection

plans and instruments, contact: Ms. Diane Miller, Scientific Communications Branch, Office of Scientific Affairs, NIAAA, NIH, Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD, 20892–7003 or e-mail your request, including your address to: dmiller@willco.niaaa.nih.gov. Ms. Miller can be contacted by telephone at 301–443–3860.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 25, 2001.

Dated: December 15, 2000.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 00–32817 Filed 12–22–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Dombrock Blood Typing

Jeffery L. Miller, Alexander Gubin, Marion E. Reid (NIDDK)

[DHHS Reference No. E–185–00/0 filed 23 Sep 2000]

Licensing Contact: John Rambosek; 301/496–7056 ext. 270; email: rambosej@od.nih.gov.

The Dombrock blood group was first discovered in 1965. It is comprised of five alleles: two common alleles, Do(a+) and Do(b+), and three very rare alleles Gy(a), Hy, and Jo(a) which are essentially different null alleles. The Dombrock blood group system has been estimated to be the fifth most useful blood group marker in Caucasians. Blood typing for this blood group is hard to do, since there is a limited amount of antibodies, and the antigens are tricky to work with. This invention discloses the gene and polymorphisms of that gene that result in the Dombrock blood group antigenicity. Thus this invention provides for the first time a method for reliably typing the human blood supply for the Dombrock blood group antigenicity. The genetic information may also be used to generate antigen-specific antibodies for blood typing. The primary use for the technology is to improve blood typing practices through molecular means and thereby prevent clinical problems (transfusion reactions, etc.) associated with improperly mismatched blood.

Microbial Identification Databases

Jon G. Wilkes, Fatemeh Rafii, Katherine L. Glover, Manuel Holcomb, Cao M. Xiaoxi, John B. Sutherland (FDA)

[DHHS Reference No. E–169–00/0 filed 10 Oct 2000]

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

The invention is a method for assembling a coherent database containing an essentially unlimited number of pyrolysis mass spectra to enable rapid chemotaxonomy of unknown microbial samples. The invention corrects for short and long-term drift of microbial pyrolysis mass spectra by using spectra of similar microbes as internal standards. The invention provides for the first time a practical way to assemble a coherent database containing an essentially unlimited number of pyrolysis mass spectra, where one or more is representative of each relevant strain, and representative of additional strains as they are added to the pool of microbial agents. Microorganisms can be identified using the invention from their fingerprint spectra regardless of the growth medium used to culture the bacteria. This is a result of the discovery that corrections made to the fingerprint spectrum of one type of bacterium to compensate for changes in growth medium may be applied successfully to metabolically similar bacteria. Fingerprint spectra to which the method of the invention may be applied include mass spectra, infrared spectra, chromatograms, NMR spectra and ion-mobility spectra. The present invention is especially useful for the rapid identification of microorganisms, including human pathogens.

Quantifying Gene Relatedness via Nonlinear Prediction of Gene Expression Levels

Dougherty et al. (NHGRI)

[Serial No. 09/595,580 filed 15 Jun 2000]

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

This invention relates to a new way to analyze the function of a newly identified gene. Working together, the genes within a genomic system constitute a control system for modulating gene expression activity and protein production. Regulation within this control system depends on multivariate relations among genes. Therefore, a key window into understanding genomic activity is to quantify the manner in which the expression profile among a set of genes can be used to predict the expression levels of other genes. This invention provides the experimental, statistical, and computational basis for nonlinear and linear multivariate prediction and co-determination among gene expression levels, and it is applied in the context of cDNA microarrays. Using these measures of multi-gene interactivity, it is possible to infer genomic regulatory mechanisms and thereby identify the manner in which genetic malfunction contributes to cancer and developmental anomalies.

Dated: December 14, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–32814 Filed 12–22–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Vibrio cholerae O139 Conjugate Vaccines

Shousun Szu, Zuzana Kossaczka, John Robbins (NICHD)

DHHS Reference No. E–274–00/1; PCT/US00/24119 filed 01 Sep 2000

Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov

Cholera remains an important public health problem. Epidemic cholera is caused by two *Vibrio cholerae* serotypes O1 and O139. The disease is spread through contaminated water. According to information reported to the World Health Organization in 1999, nearly 8,500 people died and another 223,000 were sickened with cholera worldwide. This invention is a polysaccharide-protein conjugate vaccine to prevent and treat infection by *Vibrio cholerae* O139 comprising the capsular polysaccharide (CPS) of *V. cholerae* O139 conjugated through a dicarboxylic acid dihydrazide linker to a mutant diphtheria toxin carrier. In addition to the conjugation methods, also claimed in the invention are methods of immunization against *V. cholerae* O139 using the conjugates of the invention. The inventors have shown that the conjugates of the invention elicited in mice high levels of serum antibodies to CPS, a surface antigen of *Vibrio cholerae* O139, that have vibriocidal activity. Clinical trials of the two most immunogenic conjugates have been planned by the inventors. This invention is further described in *Infection and Immunity* 68(9), 5037–5043, Sept. 2000.

Inhibition of MXR Transport by Acridine Derivatives

Susan Bates, Robert Robey (NCI)

DHHS Reference No. E–258–99/0 filed 20 Jan 2000

Licensing Contact: Vasant Gandhi; 301/496–7056 ext. 224; e-mail: gandhiv@od.nih.gov

The invention relates to a new use for a compound, an acridine derivative, as an inhibitor of multidrug resistance in cancer cells. Specifically, the inventors have shown that the compound modulates the transport of compounds from mitoxantrone-resistant (MXR) cells wherein the cells overexpress an MXR gene. The MXR gene is also known by the following designations: BCRP, ABCP, and ABCG2.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–32815 Filed 12–22–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Hydroxylamine Compositions for the Prevention or Retardation of Cataracts

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c))1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, in contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Number 6,001,853 issued December 14, 1999 entitled, ''Hydroxylamine Compositions for the Prevention or Retardation of Cataracts'', to SL Pharmaceuticals, having a place of business in Kennett Square, PA 19348. The contemplated exclusive license may be limited to use for human therapeutics and diagnostics. The United States of America is the assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which is received by the NIH Office of Technology Transfer on or before February 26, 2001, will be considered.

ADDRESSES: Request for a copy of the patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Marlene Shinn, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–496–7056 ext. 285; Facsimile: 301–402–0220; E-mail: ms482m@nih.gov.

SUPPLEMENTARY INFORMATION: Cataracts are believed to be a disease of multifactorial origin involving many of the same processes that characterize the process of aging in other issues. This invention relates generally to a pharmaceutical composition and treatment to inhibit the development of cataracts in the crystalline lens of the eye by administering a hydroxylamine to a patient at risk of developing a cataract. This technology is an improvement over what is presently known, in that it allows for a clinically useful non-surgical treatment that retards the development of age-related cataracts.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 15, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–32816 Filed 12–22–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR 4563–N–21]

Notice of Proposed Information Collection for Public Comment; Annual Lead-Based Paint (LBP) Activity Report

AGENCY: Office of the Assistant Secretary for Public and Indian 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 comments on the subject proposal.

DATES: Comments due: February 26, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as requried 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 of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Lead-Based Paint Activity Report.

OMB Control Number: 2577–0090.

Description of the need for the information and proposed use: HUD needs the information to assure statutory and regulatory compliance with The Lead-Based Paint Poisoning Prevention Act (LBPPA), as amended (42 U.S.C. 4821–4846) which requires public and Indian housing agencies (HAs) to randomly sample their pre-1978 developments for the presence of LBP. Congress directed HUD to establish an adequate management information system for measuring and reporting on HAs' performance on LBP activities. HUD revised the tracking system for collecting lead-based paint data. The system collects less, but different data. HAs use the Form HUD-52850 to submit information on LBP. HUD reports the information to Congress as required by statute.

Agency form number: HUD–52850.

Members of affected public: State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 3,100 respondents; one response per respondent annually; one hour average per response, 3,100 total reporting burden hours per year.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 19, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Annual Lead-Based Paint (LBP) Activity Report

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0090 (Exp. 11/30/2000)

Public reporting burden for this collection of information is estimated to average 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. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

The Lead-Based Paint Poisoning Prevention Act, (42 U.S.C. 4821-4846) requires Housing Agencies to randomly sample their pre-1978 developments for the presence of Lead-Based Paint. Congress directed HUD to establish an adequate management information system for measuring and reporting HAs use of funds designated for lead paint testing and abatement. The information will be used by HUD to ensure statutory and regulatory compliance with the Act, to respond to Congressional inquiries and to monitor HAs' LBP activities. Responses to the collection of information are mandatory. The information requested does not lend itself to confidentiality.

Name of Housing Authority	Housing Authority Code

(Enter data for up to ten seperate developments below - For additional developments, if needed, use the form on the back)

Reporting Period From (mm/dd/yyyy) / / To / /

Development Code with Suffix					
Total number of family units in Development					
EBLs					
(1) Number of children identified with an EBL					
(2) Number of units with EBLs					
(3) Average number of days to perform testing					
(4) Number of times EBL resulted in abatement or relocation					
Testing					
(5) Number of units actually tested					
(6) Number of tested units with LBP hazards					
(7) Total amount of all funds expended for testing					
(8) Total amount of MOD funds expended for testing					
Abatement					
(9) Number of units planned to be abated					
(10) Number of units actually abated					
(11) Total amount of all funds expended for abatement					
(12) Total amount of MOD funds expended for abatement					

Development Code with Suffix					
Total number of family units in Development					
EBLs					
(1) Number of children identified with an EBL					
(2) Number of units with EBLs					
(3) Average number of days to perform testing					
(4) Number of times EBL resulted in abatement or relocation					
Testing					
(5) Number of units actually tested					
(6) Number of tested units with LBP hazards					
(7) Total amount of all funds expended for testing					
(8) Total amount of MOD funds expended for testing					
Abatement					
(9) Number of units planned to be abated					
(10) Number of units actually abated					
(11) Total amount of all funds expended for abatement					
(12) Total amount of MOD funds expended for abatement					

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. **(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)**

Executive Director of PHA (Signature and Date)

X

Note: If the Housing Authority has performed any LBP activities and incurred any cost related to acquisition under the development program, provide the above information on a separate activity report form. **Previous edition is obsolete**

form **HUD-52850** (8/97)
ref. Handbook 7487.1

Development Code with Suffix					
Total number of family units in Development					
EBLs					
(1) Number of children identified with an EBL					
(2) Number of units with EBLs					
(3) Average number of days to perform testing					
(4) Number of times EBL resulted in abatement or relocation					
Testing					
(5) Number of units actually tested					
(6) Number of tested units with LBP hazards					
(7) Total amount of all funds expended for testing					
(8) Total amount of MOD funds expended for testing					
Abatement					
(9) Number of units planned to be abated					
(10) Number of units actually abated					
(11) Total amount of all funds expended for abatement					
(12) Total amount of MOD funds expended for abatement					

Instructions For Completing The Annual LBP Activity Report

The following requested data should be provided on an **annual basis** based on the HA's Fiscal Year. Reports shall be sent to the local HUD Field Office and are due 30 days after the end of the HA's Fiscal Year.

The following information is to be submitted on **each development** engaged in LBP activities during this reporting period.

Header: Enter the Development Code and Suffix (where applicable) for each development engaged in LBP activities during this reporting period.

Total Family Units in Development: Enter the total number of family units within each development engaged in LBP activities during this reporting period.

EBLs:

1. Enter the number of children identified by the health community as having an elevated blood lead (EBL) level. If a parent informs the HA that their child has an EBL, the HA should confirm this with the child's physician, nurse, or health care facility.
2. Enter the number of HA units associated with resident children identified as having an EBL.
3. Enter the average number of days to test a unit.
4. Enter the number of times an EBL resulted in relocation of the family or abatement of the unit.

Testing:

5. Enter the number of pre-1978 family units that were actually tested for LBP hazards during this reporting period.
6. Enter the number of units which were tested during this reporting period which were found to contain LBP hazards. This number represents either:

   (a) the total number of units randomly sampled and found to contain LBP hazards represents the total number of units in the development and therefore all units in the development require abatement (i.e., there are 100 units in the development, of which 51 were tested, and 51 of those tested contain a LBP hazard; therefore, all 100 units in the development are considered to contain LBP hazards). Therefore, the number to be recorded on line 12 should be 100 units; or

   (b) the total number of units randomly sampled is 51 units out of 100; however, 100 units are eventually sampled (tested); of the 100 tested, only 40 are found to contain LBP hazards. Therefore, the number to be recorded on line 12 should be 40 units.
7. Enter the total amount of funds expended for LBP random sampling during this reporting period.
8. Enter the total amount of MOD (CIAP and/or CGP) funds expended for LBP random sampling this reporting period. This amount may be less than or equal to the amount on line 7.

Abatement:

9. Enter the number of units planned to be abated during this reporting period.
10. Enter the number of units actually abated during this reporting period.
11. Enter the total amount of funds expended for abatement this reporting period.
12. Enter to total amount of MOD funds expended during this reporting period. This amount may be less than or equal to the amount on line 11.

Note: If the Housing Authority has performed any LBP activities and incurred any cost related to acquisition under the development program, provide the above information on a separate activity report form. **Previous edition is obsolete**

form **HUD-52850** (8/97)
ref. Handbook 7487.1

[FR Doc. 00–32794 Filed 12–22–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–78]

Notice of Submission of Proposed Information Collection to OMB—Historically Black Colleges and Universities (HBCUs)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 25, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0122) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Historically Black Colleges and Universities (HBCUs).

OMB Approval Number: 2506–0122.

Form Numbers: HUD–40076HBCU.

Description of The Need for The Information and Its Proposed Use: Annually, HUD conducts competitions for HBCUs to compete for funds. HBCUs use HUD funds to expand their role and effectiveness in addressing community development needs in their localities.

Respondents: Not-for-profit institutions.

Frequency of Submission: On occasion quarterly.

Reporting Burden:

Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
105		10.62		38.30		42,700

Total Estimated Burden Hours: 42,700.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–32795 Filed 12–22–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–82]

Notice of Submission of Proposed Information Collection to OMB; Public and Indian Housing-LOCCS/VRS Payment Vouchers

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 25, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0166) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This not a toll-free number Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal Public and Indian Housing-LOCCS/VRS Payment Vouchers.

OMB Approval Number: 2577–0166.

Form Numbers: HUD–50080 Series.

Description of the Need for the Information and Its Proposed Use: Grant recipients will use the payment vouchers to request funds from HUD through the LOCCS/VRS voice activated system. The information collected on the form will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–50080 Series	5,312		22		.15		17,540

Total Estimated Burden Hours: 17,540.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–32796 Filed 12–22–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: January 11–12, 2001, at 9:00 a.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will feature an orientation for new Public Advisory Group members and briefings on research issues, the annual restoration work plan, and the status of habitat protection measures in the spill impact area.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 00–32813 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan

ACTION: Notice of availability of an environmental assessment/habitat conservation plan for issuance of an endangered species act section 10(a)(1)(b) permit for the incidental take of the houston toad (*Bufo houstonensis*) during construction of one single-family residence on 0.5 Acres of the 10.0-acre tract 2 out of the James West survey, abstract No. 334, Bastrop County, Texas.

SUMMARY: Michael and Judy Harding (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–036096–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single-family residence on 0.5 acres of the 10.0-acre Tract 2 out of the James West Survey, Abstract No. 334, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 25, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–036096–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Michael and Judy Harding plan to construct a single-family residence on 0.5 acres of the 10.0-acre Tract 2 out of the James West Survey, Abstract No. 334, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the property. The Applicants propose to compensate

for this incidental take of the Houston toad by providing $2,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Bryan Arroyo,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–32860 Filed 12–22–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single-Family Residence on 0.5 Acres of the 2.04-Acre Property on Old Pin Oak Road, Bastrop County, Texas (Beeman)

SUMMARY: Kathy and Jerry Beeman (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–035919–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 2.04-acre property on Old Pin Oak Road, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by January 25, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–035919–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicants

Kathy and Jerry Beeman plan to construct a single-family residence on 0.5 acres of the 2.04-acre property on Old Pin Oak Road, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicants propose to compensate for this incidental take of the Houston toad by providing $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Bryan Arroyo,

Assistant Regional Director, Ecological Services Albuquerque, New Mexico.

[FR Doc. 00–32861 Filed 12–22–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan

Notice of availability of an environmental assessment/habitat conservation plan and receipt of an application for a permit for the incidental take of the Houston toad (*Bufo houstonensis*) during construction of one single family residence on approximately 0.5 acres of a 10.0-acre property out of the Sarah Cottle survey, abstract No. A21, off Cottletown Road, Bastrop County, Texas (Skye).

SUMMARY: Catherine Skye and Kenneth Eckart (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–035908–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of a 10.0-acre property out of the Sarah Cottle Survey, Abstract No. A21, off Cottletown Road, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 25, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–035908–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under

limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicants

Catherine Skye and Kenneth Eckart plan to construct a single family residence on approximately 0.5 acres of a 10.0-acre property out of the Sarah Cottle Survey, Abstract No. A21, off Cottletown Road, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicants propose to compensate for this incidental take of the Houston toad by providing $3,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Albuquerque, New Mexico.

[FR Doc. 00–32862 Filed 12–22–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of Golden-Cheeked Warbler (Dendroica chrysoparia) During the Construction and Operation of Residential Development on Portions of the Approximately 50.08-acre CT 620 Residential Property, Austin, Travis County, TX

SUMMARY: CT 620 Partnership, Ltd. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–036095–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of five residences on 50.08 acres on Hughes Park Road near RR 620, Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by February 26, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas at the above address. Please refer to permit number TE–036095–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

CT 620 Partnership, Ltd. plans to construct five residences on portions of 50.08 acres on Hughes Park Road near RR 620, Austin, Travis County, Texas. This action will indirectly impact the habitat of the golden-cheeked warbler. The development will eliminate approximately 16 acres of golden-cheeked warbler habitat which may result in the take of one to two golden-cheeked warbler territories. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by providing $304,000 to the Balcones Canyonlands Preserve for the purchase and preservation of golden-cheeked warbler habitat; minimization of on site habitat destruction; education and encouragement of the homeowners in the use of xeriscaping, clearing only between August 1 to March 1 when the warblers are not present; and prohibition of deer and bird feeders that encourage the growth of populations of species that parasitize, predate or out compete the golden-cheeked warbler or destroy its habitat. Alternatives to this action are not preferred because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would increase the impacts.

Bryan Arroyo

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–32863 Filed 12–22–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mr. Jeffrey M. Bridges, Fort Collins, Colorado. The applicant wishes to establish a cooperative breeding program for East African cut-throat finch (*Amadina fasciata alexanderi*) and South African cut-throat finch (*Amadina fasciata meridionalis*). The applicant wishes to be an active participant in this program along with one other individual. The Zebra Finch Society of the USA has assumed the responsibility for oversight of this program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington,

Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 19, 2000.

Andrea Gaski,

Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 00–32807 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Otoe-Missouria Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Otoe-Missouria Tribe of Oklahoma Liquor Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Otoe-Missouria Tribe trust lands, and is in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on April 13, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631-MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Otoe-Missouria Tribe of Oklahoma Liquor Ordinance, Resolution No. OMTC #43–FY–00, was duly adopted by the Otoe-Missouria Tribal Council on April 13, 2000. The Otoe-Missouria Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members with the Otoe-Missouria Tribe of Oklahoma.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 9.

I certify that by Resolution No. OMTC #43–FY–00, the Otoe-Missouria Tribe of Oklahoma Liquor Ordinance, was duly adopted by the Otoe-Missouria Tribal Council on April 13, 2000.

Dated: December 12, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

The Otoe-Missouria Tribal Council Liquor Ordinance, Resolution No. OMTC #43–FY–00, reads as follows:

Liquor Control Ordinance of the Otoe-Missouria Tribe of Oklahoma

Introduction

Title. This Ordinance shall be known as the ''Otoe-Missouria Tribe of Oklahoma Liquor Ordinance.''

Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161, by the authority of the Otoe-Missouria Tribal Council under the Constitution and Bylaws of the Otoe-Missouria Tribe of Oklahoma.

Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor within the Indian Country Otoe-Missouria Tribe of Oklahoma. The enactment of a tribal ordinance governing liquor possession and sale on the Otoe-Missouria Tribe of Oklahoma Indian Country will increase the ability of the tribal government to control the sale, distribution and possession of liquor and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Effective date.

This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register**.

Article I. Declaration of Public Policy and Purpose

(1) The introduction, possession, and sale of liquor in the Otoe-Missouria Tribe of Oklahoma are a matter of special concern to the Otoe-Missouria Tribe.

(2) Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. 1154 and other statutes), except when same is in conformity both with the laws of the State and the Tribe (18 U.S.C. 1161). As such, compliance with this ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

(3) The Otoe-Missouria Tribal Council finds that a complete ban on liquor within the Otoe-Missouria Tribe of Oklahoma Indian Country is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Otoe-Missouria Tribe of Oklahoma Indian Country because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Otoe-Missouria Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Otoe-Missouria Tribe of Oklahoma Indian Country.

(4) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the Otoe-Missouria Tribe of Oklahoma Indian Country, which provides for purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Otoe-Missouria Tribe of Oklahoma Indian Country. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at a tribally-owned gaming facility complex.

Article II. Definitions

(1) As used in the title, the following words shall have the following meaning unless the context clearly requires otherwise:

(a) *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever source or by whatever process produced.

(b) *Alcoholic Beverage* is synonymous with the term liquor as defined in Article II(f) of this Chapter.

(c) *Bar* means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Otoe-Missouria Tribal Council* means the governing body of the Otoe-Missouria Tribe of Oklahoma.

(f) *Liquor* includes all fermented, spirituous, vinous, malt liquor, or combinations thereof, and mixed liquor a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable

alcohol, beer, wine, brandy, whiskey, rum, gin aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one-half of 1 percent of alcohol.

(g) *Liquor Store* means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.

(h) *Malt Liquor* means beer, strong beer, ale, stout and porter.

(i) *Package* means any container or receptacle used for holding liquor.

(j) *Public Place* includes state, county, tribal, federal highways, or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access and which are generally used by the public.

(k) *Sale and Sell* include exchange, barter and traffic, and also include the selling or supplying or distributing by and means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) *Spirits* mean any beverage which contains alcohol obtained by distillation including wines exceeding 17 percent of alcohol by weight.

(m) *Wine* means any alcohol beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding 17 percent of alcohol by weight.

(n) *Otoe-Missouria Tribe of Oklahoma General Council* means the general council of the Otoe-Missouria Tribe of Oklahoma which is composed of the voting membership of the Tribe.

(o) *Otoe-Missouria Tribe of Oklahoma Indian Country* means all lands which are recognized by the Federal Government as the Otoe-Missouria Tribe of Oklahoma Indian Country.

(p) *Tribal Court* means the Otoe-Missouria Tribe of Oklahoma Tribal Court.

Article III. Powers of Enforcement

(1) *Otoe-Missouria Tribal Council.* In furtherance of this ordinance, the Tribal Council shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Tribal Council governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Otoe-Missouria Tribe of Oklahoma Indian Country;

(b) To employ managers, accountants, security personnel, inspectors and such other persons shall be reasonably necessary to allow the Tribal Council to perform its function. Such employees shall be tribal employees;

(c) To bring suit in the Tribal Court or other appropriate Court to enforce this ordinance as necessary;

(d) To determine and seek damages for violation of the ordinance;

(e) To make such reports as may be required by the Otoe-Missouria Tribal Council;

(f) To collect taxes and fees levied or set by the Otoe-Missouria Tribal Council; and

(g) Keep accurate records, books and accounts.

(2) *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Tribal Council and its individuals members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee; or

(b) Waive the immunity of the Otoe-Missouria Tribe of Oklahoma from suit without the express written consent and resolution of the Tribal Council.

(3) *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Tribal Council and this ordinance are being complied with.

Article IV. Sales of Liquor

(1) The Otoe-Missouria Tribe may make retail sales of liquor in gaming facilities owned by the Tribe and the patrons of the Tribe's gaming facilities may consume said liquor on the gaming facility complex. The introduction and possession of liquor consistent with this section shall also be allowed. All other purchases and sales of liquor within the Otoe-Missouria Tribe of Oklahoma Indian Country shall be prohibited.

(2) *Sales for Cash.* All liquor sales on the Otoe-Missouria Tribe of Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.

(3) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage on the Otoe-Missouria Tribe of Oklahoma Indian Country is prohibited. Any person who purchases an alcoholic beverage on the Otoe-Missouria Tribe of Oklahoma Indian Country and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Otoe-Missouria Tribe of Oklahoma as set forth herein.

Article V. Taxes

(1) *Tax Levied.* There is hereby levied a liquor tax of 5 percent on the sale of each and every alcoholic beverage sold within the Otoe-Missouria Tribe of Oklahoma Indian Country. The incidence of said tax shall be on the consumer. The liquor tax shall be collected by the gaming facility and paid over to the Otoe-Missouria Tribe Tax Commission as provided herein.

(2) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages on the Otoe-Missouria Tribe of Oklahoma Indian Country are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes.* Past due taxes shall accrue interest at 2 percent per month.

(4) *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Article VI. Rules, Regulations and Enforcement

(1) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(2) Any person who buys liquor within the boundaries of the Otoe-Missouria Tribe of Oklahoma Indian Country contrary to this ordinance shall be guilty of a violation of this ordinance.

(3) Any person who sells or offers for sale any liquor within the boundaries of the Otoe-Missouria Tribe of Oklahoma Indian Country shall be guilty of a violation of this ordinance.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

(7) No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely supports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

(11) Any person guilty of a violation of this ordinance shall be liable to pay the Otoe-Missouria Tribe of Oklahoma the amount of $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military; or

(c) Passport.

(13) Liquor which is possessed, including for sale, contrary to the terms of this ordinance is declared to be contraband. Any tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the reservation of impounded property.

(14) Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Otoe-Missouria Tribe of Oklahoma.

Article VII. Abatement

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

(2) The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of 1 year or until the owner, lessee, tenant, or occupant thereof shall give bond of a sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future and any other appropriate criteria, payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other violation of this ordinance or other tribal liquor laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Tribe under this ordinance.

(3) In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article VIII. Revenue

Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Tribal Council for essential governmental and social services.

Article IX. Severability and Effective Date

(1) If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

(2) This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

(3) Any and all prior liquor control enactments of the Tribal Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article X. Amendment and Construction

(1) This ordinance may only be amended by a vote of the Tribal Council, the governing body of the Otoe-Missouria Tribe of Oklahoma.

(2) Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Otoe-Missouria Tribe of Oklahoma or its tribal government.

[FR Doc. 00–32812 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management; Alaska

[AK–962–1410-HY-P]

Notice for Publication; AA–14015; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving

lands for conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(h)(8), will be issued to Sealaska Corporation, for approximately 1,049 acres. The lands involved are located within T. 78 S., R. 82 E., Copper River Meridian, on Dall Island, Alaska.

Notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Juneau Empire.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until January 25, 2001 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Ronald L. Hunt,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 00–32864 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

[NV–055–7122–EA–8229]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the Score Interntional 2001 Laughlin Desert Challenge Race.

SUMMARY: The District Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the and to comply Score International 2001 Laughlin Desert Challenge Race with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway, Vehicle Events (1–95–F–237).

DATES: From 6 am January 18, 2001 through 9 pm January 21, 2001 Pacific Standard Time.

Closure Area: Public lands within as described below, an area within T. 32 to R. 66 E.

1. The closure is a square shaped area bound by State Route 163 on the north, Big Bend Drive on the east, Desert Road/Edison Way on the south, Hiko Springs to the west.

Exceptions to the closure area are: none.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are the closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator are only.

5. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property of feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor. Maps are available at the Las Vegas Field Office.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager or Ron Crayton, BLM Law Enforcement Ranger, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: December 15, 2000.

Mark Morse,

Las Vegas Field Office Manager.

[FR Doc. 00–32804 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park of American Samoa; Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 8 a.m. to 1 p.m., Monday, January 22, 2001, at the Fitiuta village malae, Fitiuta, Ta'u, American Samoa. An alternative site, in case of restricted travel to Ta'u, will be

Pago Plaza, Rm. 212, Pago Pago, Tutuila, American Samoa.

The agenda for the meeting will include:

Welcome and introductions Superintendents report and discussion Discussion of park related tourism Other Board issues Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082.

Dated: December 10, 2000.

Charles Cranfield,

Superintendent, National Park of American Samoa.

[FR Doc. 00–32829 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES00–59]

San Luis and Delta-Mendota Water Authority; Grassland Bypass Project, Fresno, Merced, and Stanislaus Counties, California

AGENCY: Bureau of Reclamation, Interior

ACTION: Notice of availability of the Draft Environmental Impact Report/ Draft Environmental Impact Statement (Draft EIR/EIS)

SUMMARY: Pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the San Luis and Delta-Mendota Water Authority (Authority) have prepared a joint Draft EIR/EIS for the renewal of the Grassland Bypass Project through 2009.

The purposes of the Proposed Project are to (1) continue separation of unusable agricultural drainwater discharged from the Grassland Drainage Area from wetland water supply conveyance channels for the period 2001–2009, and (2) facilitate drainage management that maintains the viability of agriculture in the Grassland Drainage Area and promote continuous improvement in water quality in the San Joaquin River. The Draft EIR/EIS addresses the potential environmental impacts expected to result from renewal of this Project through 2009.

DATES: Submit written comments on the Draft EIR/EIS on or before Tuesday, February 27, 2001. Comments may be submitted to Reclamation or the Authority at the addresses provided below. Three public hearings on the Draft EIR/EIS will be held on February 2, February 6, and February 7, 2001, at the addresses below.

ADDRESSES: Three public hearings will be held:

- Friday, February 2, 2001, 1:00 p.m., at the Miller and Lux Building, 1st Floor Conference Room, 830 6th Street, Los Banos, California 93635
- Tuesday, February 6, 2001, 7:00 p.m., at Board Room, Contra Costa Water District, 1331 Concord Avenue, Concord, California 94520
- Wednesday, February 7, 2001, 1:00 p.m., Best Western Expo Inn, 1413 Howe Avenue, Sacramento, California 95825

Written comments on the Draft EIR/ EIS should be addressed to Mr. Michael Delamore, Bureau of Reclamation, 1213 N Street, Fresno, California 93721, or Mr. Joe McGahan, Regional Drainage Coordinator, Summers Engineering, Inc., PO Box 1122, Hanford, California 93232. Copies of the Draft EIR/EIS may be requested from Mr. Delamore at the above address or by calling (559) 487–5133. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIR/EIS are available for public inspection.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Mr. Michael Delamore at (559) 487–5039, TDD (559) 487–5933, or e-mail: *mdelamore@mp.usbr.gov;* or Mr. Joe McGahan at (559) 582–9237 or e-mail *jmcgahan@summerseng.com.*

SUPPLEMENTARY INFORMATION: The current Grassland Bypass Project has operated since 1996. It has significantly improved the quality of water in more than 93 miles of channels used to deliver water to wetland habitat areas in central California. In addition, the action has prompted formation of a regional drainage entity with a program of innovative and aggressive drainage management techniques to meet selenium load values in the San Joaquin River. For example, the group was the first to obtain Waste Discharge Requirements from the California Regional Water Quality Control Board to address non-point-source agricultural drainage discharges and has developed a load trading program to regionally adjust selenium discharges. This work has taken advantage of state and federal funding programs, which have greatly served to accelerate drainage accomplishments.

Under the Proposed Action, unusable agricultural drainwater from about 98,000 acres of prime farmland would continue to be separated from 93 miles of wetland water supply channels and conveyed to Mud Slough, a tributary of the San Joaquin River. This would occur between October 1, 2001, and December 31, 2009.

In the Draft EIR/EIS, the Proposed Action is compared with two alternatives: a No-Project Alternative, and the Mud Slough Bypass Alternative that would be the Grassland Bypass Project plus the construction of a short facility that would convey drainwater directly to the San Joaquin River. The latter would remove drainwater from six additional miles of Mud Slough and discharge it into the San Joaquin River downstream of its confluence with the Merced River.

Under both the Proposed Action and the Mud Slough Bypass alternatives, the volume and concentration of this discharge would be progressively reduced to meet new water quality requirements in the river that will become effective in 2005 and 2010.

Copies of the Draft EIR/EIS are available for public inspection and review at the following locations:

- San Luis & Delta-Mendota Water Authority, 800 6th Street, Los Banos, California 93635; telephone (209) 826–9696
- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, California 93721; telephone (559) 487–5116
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, California 95825; telephone (916) 978–5100
- Fresno County Public Library, Government Publications, 2420 Mariposa Street, Fresno, California 93721; telephone (559) 488–3198

• Merced County Public Library, Los Banos Branch, 1312 South 17th Street, Los Banos, California 93635; telephone (209) 826–5254

• University of California, Berkeley, Water Resources Center Archives, 410 O'Brien Hall, Berkeley, California 94720; telephone (510) 642–2666

• Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington DC 20240; telephone (202) 208–4662

Hearing Process Information

The purpose of the three hearings is to provide the public with an opportunity to comment on environmental issues addressed in the Draft EIR/EIS. Written comments will also be accepted.

Dated: December 18, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00–32828 Filed 12–22–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

AGENCY: Department of Justice, Federal Bureau of Investigation, National Domestic Preparedness Office (NDPO), State and Local Advisory Group; Meeting

ACTION: Summary of meeting.

Authority: Title 5, United States Code, Appendix 2.

DATES: The State and Local Advisory Group of the NDPO was convened for its first meeting at 9 a.m. on September 26–27, 2000, at the Radisson Hotel, Old Town, Alexandria, Virginia.

SUMMARY: In accordance with provisions of Public Law 92–463, the meeting was open to the public from 9:00 a.m. to 5:30 p.m. on both days.

Thomas Kinnally, Administrator of the NDPO, introduced himself and welcomed members of the Advisory Group. The members then introduced themselves:

—Dr. Michael Ascher, Chief, Viral and Rickettsial Laboratory, Division of Communicable Disease Control, California Dept. of Health, Berkeley.
—Dr. Joseph Barbera, Co-Director of the Institute for Crisis, Disaster, and Risk Management, George Washington University Hospital, Washington DC.
—John Cline, CEM, State Director, Bureau of Disaster Services, Boise, ID.
—Steve Ennis, Volunteer Firefighter, Fredericksburg, VA.
—Dr. Michael Fagel, Ph.D., CEM, Director of Emergency Management, Cities of Aurora and North Aurora, IL.
—Woodbury Fogg, P.E., Director, New Hampshire Office of Emergency Management, Concord, NH.
—P. Michael Freeman, Chief, Los Angeles County Fire Department, Los Angeles, CA.
—Timothy Gablehouse, Chair, Jefferson County Local Emergency Planning Committee, Denver, CO.
—Jeff Griffin, Mayor, City of Reno, NV.
—Bert Langley, Ph.D., Emergency Response and SARA Title III. Coordinator, Georgia Environmental Protection Division, Atlanta, GA.
—Dave Lesak, Chief, Lehigh HAZMAT Team, Allentown, PA.
—Stan McKinney, Director, Emergency Preparedness Division, West Columbia, SC.
—Robert McNielly, Chief, Pittsburgh Police Department, PA.
—JoAnne Moreau, CEM, Director, East Baton Rouge Parish Office of Emergency Preparedness, Baton Rouge, LA.
—Lieutenant Colonel Mark Oxley, Deputy Superintendent, Louisiana State Police, Baton Rouge, LA.
—Dr. Kathy Rinnert, MD, MPH, Instructor, University of Texas Southwestern Medical Center, Department of Surgery, Division of Emergency Medicine, Dallas, TX.
—Michael Selves, CEM, Emergency Management Director, Johnson County, KS.
—Martin Singer, Director, State of New Hampshire Department of Safety, Division of Emergency Medical Services, Concord, NH.
—Richard Stilp, RN, MA, Director of Safety and Security, Orlando Regional Healthcare, Altamonte Springs, FL.
—Sergeant Charles Stumph, Orange County Sheriff's Department, Orange, CA.
—Sheriff Patrick Sullivan, Jr, Arapahoe County Sheriff's Office, Littleton, CO.
—John Teefy, Fire Captain, United Phoenix Firefighters Local, Phoenix, AZ.
—Cynthia Vlasich, RN, Nursing Spectrum, Hoffman Estates, IL.
—Richard Carmona, M.D., MPH, FACS, CEO, Pima Health Care System, Tucson, AZ.
—Rita Carty, D.N.Sc., RN, FAAN, Dean and Professor, College of Nursing and Health Sciences, George Mason University, Fairfax, VA.
—Bruce Morris, Deputy Secretary of Public Safety, Richmond, VA.
—Peter Beering, Esq., Terrorism Preparedness Coordinator, City of Indianapolis, IN.
—Joseph Waekerle, MD, Emergency Specialist, Leawood, KS.
—Michael Allswede, DO, Clinical Associate Professor, Allegheny General Hospital, Department of Emergency Medicine, Pittsburgh, PA.

Three Advisory Group members were not present:

—Dr. Michael Osterholm, Chairman and CEO, Infectious Control Advisory Network, Inc, Eden Prairie, MN.
—John Erversole, Deputy Chief, Chicago Fire Department. Chicago, IL.
—Chief Charles Ramsey, Metropolitan Police Department, Washington, DC.

Federal representatives of the NDPO attending, in addition to Mr. Kinnally, were:

—Tom Antush, Senior Terrorism Policy Specialist, Office of the Director, Federal Emergency Management Agency (FEMA).
—Christiana Briggs, National Security Council (NSC).
—Kathryn A. Condon, Special Assistant for Military Support, Office of the Secretary of the Army.
—Commander Daniel Danielczyk, U.S. Coast Guard.
—Ellen Embrey, Deputy Assistant Secretary for Military Assistance, Reserve Affairs, Office of the Secretary of Defense.
—Thomas Falvey, Director for National Security, U.S. Department of Transportation.
—Bill Finan, Program Officer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (EPA).
—James Jarboe, Section Chief, Domestic Terrorism/Counterterrorism Planning Section, Counterterrorism Division, Federal Bureau of Investigation (FBI).
—Leslie Kalan, Presidential Aide, Office of the Secretary of Defense.
—James Kish, Lieutenant Colonel, National Guard Bureau (NGB).
—Robert Knouss, M.D., Director, Office of Emergency Preparedness, National Disaster Medical System, Department of Health and Human Services (DHHS).
—John Magaw, Senior Advisor to the Director for Terrorism Preparedness, FEMA.
—Vic Mantrillo, Program Specialist, FEMA.
—James Mackris, Director, Chemical Emergency Preparedness and Prevention Office, EPA.
—Barbara Martinez, Unit Chief, WMD Operations Unit, Domestic Terrorism/Counterterrorism Planning Section, Counterterrorism Division, FBI.
—Andy Mitchell, Deputy Director, Office of State and Local Domestic Preparedness Support (OSLDPS), Office of Justice Programs (OJP), Department of Justice (DOJ).
—Darci Morgan, National Institutes of Justice Department of Justice.

—Michelle O'Shaughnessy, Department of Energy (DOE).
—Raymond F. Rees, Major General, Vice Chief, NGB.
—Cynthia Schaeffer, Centers for Disease Control.
—Ken Stroech, Deputy Emergency Coordinator, Chemical Emergency Preparedness and Prevention Office, EPA.
—Butch Straub, Director, OSLDPS, OJP, DOJ.
—Dale Watson, Assistant Director, Counterterrorism Division, FBI.
—Brenda Wise, FBI Liaison to the Department of Defense.

Mr. Dale Watson, Assistant Director of the Counterterrorism Division, FBI, delivered opening remarks. Mr. Watson reported on the history and current status of the NDPO, and noted that Attorney General Janet Reno and FEMA Director James Lee Witt would address the Advisory Group on the following day, September 27, 2000.

Mr. Kinnally charged the Advisory Group with providing advice to the NDPO on the progress of the federal government in areas of state and local domestic preparedness assistance, and outlined agenda items to be addressed: an overview of the Federal Advisory Committee Act; a presentation of legal/ethical issues and conflicts of interest as they relate to federal advisory committees; a review of the Advisory Group charter and bylaws; the election of a chair and vice-chair; a briefing on the NDPO Architectural Plan to Support State and Local WMD Terrorism Preparedness; a briefing on the Curriculum Review Panel; Breakout Sessions of three sub-groups: Law Enforcement/Fire HAZMAT; Emergency Management; and Public Health and Medical; administrative matters; remarks from the Attorney General and Director of FEMA; summaries of breakout sessions and sub-group recommendations; and public comments.

Following the order of the agenda, Allison Dunham of the NDPO delivered a briefing on the Federal Advisory Committee Act and how the State and Local Advisory Group will operate as a federal advisory committee.

Next, Mr. Robert Coyle of the FBI's Administrative Law Unit delivered a briefing on legal/ethical issues and conflicts of interest as they relate to members of federal advisory committees. He then answered related questions from the Advisory Group members.

After a break, the Advisory Group re-convened to discuss the charter and draft bylaws. It was agreed that after a chair and vice-chair were elected, the Advisory Group would then address amending the bylaws. The nominees for the Advisory Group chair were Stan McKinney, Joseph Waeckerle, and Timothy Gablehouse. The nominees for vice-chair were P. Michael Freeman and Patrick Sullivan. A vote was conducted by collecting paper ballots. As a result, Stan McKinney was voted chair, and P. Michael Freeman was elected vice-chair.

Mr. McKinney, presiding as chair, opened the discussion of the bylaws. A motion was made to adopt the bylaws and then amend them. This motion was passed. After some discussion, there was a move to table the motion to amend the bylaws until later. The vote on tabling the amendment of bylaws was accepted.

Major Thomas Leonard, NGB representative to the NDPO, asked each of the federal partner agency representatives to introduce themselves. Those presiding were: Major General Fred Rees, NGB; Ms. Ellen Embry, Office of the Secretary of Defense, DOD; Ms. Kathryn Condon, Office of the Secretary of the Army; Dr. Robert Knouss, DHHS; Mr. John Magaw, FEMA; Cindy Schaeffer, Centers for Disease Control; James Mackris, EPA; Mr. James Jarboe, FBI; Mr. Thomas Black, DOE; and Ms. Lisa Gordon-Hagerty, NSC.

Following the order of the agenda, Major Leonard then delivered a briefing on the Architectural Plan to Support State and Local WMD Terrorism Preparedness. The Architectural Plan's purpose is to develop a process by which all critical elements of an overall national domestic preparedness strategy can be identified. This would include a defined end-state, priorities, and soundly defined requirements based on valid assessments of the threat and risk of a terrorist attack; and a comprehensive inventory of existing capabilities and assets. Following discussion and questions relating to Major Leonard's presentation, the group adjourned for lunch.

The group re-convened after lunch. Stan McKinney asked that Advisory Group members review the member list and provide any necessary update information. Advisory Group member Peter Beering was identified to take the lead on getting volunteers to revise the bylaws before presenting them back to the entire group.

Next, FBI Supervisory Special Agent Robert Johnson of the NDPO delivered a briefing on the proposed Curriculum Review panel, whereby a pool of subject matter experts, nominated by the Advisory Group, shall review domestic preparedness training courses. The purpose of this panel is to verify that federally sponsored Weapons of Mass Destruction courses consistently meet the same performance objectives and standards accepted by the interagency. Currently, the NDPO lacks financial resources to implement this initiative.

Discussion was then opened on addressing the role of the Advisory Group and the NDPO, including their capabilities and limitations. The discussion ended with the announcement of the rooms where each subcommittee break-out session would be conducted: the Public Health and Emergency Medicine subcommittee met in the Madison North Room; the Law Enforcement/Fire/HAZMAT subommittee met in the Madison South Room; and the Emergency Managment subcommittee met in the Washington Ballroom. The remainder of the day was devoted to discussion in the break-out groups.

The first day of the Advisory Group meeting adjourned at 5:30 p.m.

On September 27, 2000, the Chairman Stan McKinney re-convened the Advisory Group at 9:00 a.m. It was determined that following the meeting, the NDPO would incorporate recommended changes to the revise the bylaws, which would then be sent to Mr. McKinney for review and approval.

The Advisory Group then discussed re-organizing the remaining agenda in order to meet all of its objectives. Also discussed were possible dates for the next Advisory Group meeting.

In order with the agenda, Attorney General Janet Reno and FEMA Director James Lee Witt arrived to deliver remarks and receive questions from the Advisory Group. Advisory Group Chair Stan McKinney updated them on the progress of the meeting, which he said would conclude that day with the identification of priorities and recommendations by the subcommittees, with the intent that constructive guidance would be provided to the federal partners, including Ms. Reno and Mr. Witt. Mr. McKinney articulated that this meeting sought to review the future of the NDPO, with the intent that it be a re-invigoration effort for the NDPO.

Attorney General Reno delivered her remarks, which included a brief history of the NDPO, and attributed the delay in its progress to the lack of federal funding. She said that she and Director Witt have met to address a course of action, including the requirement to move the NDPO out of FBI Headquarters. She said that she and Director Witt are committed to do everything they can now, but that her

term of service will be ending in three and a half months. She said that she is receptive to Advisory Group recommendations. Attorney General Reno remarked that the Top Officials (TOPOFF) exercise was useful to the federal partners in a number of areas where they interact with state and local agencies, including training, equipment and national policy. She reiterated that she would do everything she could to get momentum going and get funding for the NDPO.

Following the Attorney General, FEMA Director James Lee Witt delivered his remarks. He said that he and the Attorney General had met several times to discuss these issues with the intent of strengthening the NDPO and the national domestic preparedness program, although it has been difficult. He said that although it has been perceived as a fragmented federal effort it is not, but getting support has been complicated. Director Witt then said that getting a national strategy to support those at the local level is their goal. He remarked that what is important is that which can be accomplished in the next three and a half months and what is done by those who follow them. He noted that John Magaw, FEMA's Senior Advisor for Terrorism Preparedness, is in place to assist his agency on what needs to be done, and that the Attorney General is trying to get the Department of Justice and other agencies to work together. He concluded by saying that the NDPO is an issue-driven office, which has so far done a great job, and that FEMA would support a united effort to fund the NDPO.

Following their remarks, Attorney General Reno and Director Witt received questions from the Advisory Group.

Following a brief question and answer period, the subcommittee break-out groups from the previous day re-convened. After a lunch break, the entire group re-convened for the afternoon plenary session.

NDPO Administrator Thomas Kinnally asked the staff of the NDPO to introduce themselves. Those present were:

Chief William Terry, Prince Georges County Fire Department; Mr. Joseph Greenlee, FEMA; Mr. Hans Crump, EPA; Major Thomas Leonard, NGB; Mr. Scott Kelberg, DOJ/OJP/OSLDPS; Unit Chief Gary Rohen, FBI; Unit Chief Dan Estrem, FBI; Supervisory Special Agent (SSA) Robert Johnson, FBI; SSA Andrew Bringuel, FBI; SSA Jeanine Santa, FBI; SSA Joel Tsiumis, FBI; Intelligence Operations Specialist (IOS) Ron Willliams, FBI; IOS Caroline McCarthy, FBI; IOS Elaine Parks, FBI, IOS Richard Sanders, FBI; IOS Allison Dunham, FBI; Dr. Dickson Diamond, FBI; IOS Jerry Wheeler, FBI; IOS Sam Gonzales, FBI.

Following the NDPO staff introductions, the subcommittee leaders from each break-out session presented their findings:

• Law Enforcement/Fire/HAZMAT Workgroup Summary:

• NDPO?s information-sharing role is very critical.

• A common communication link (CCL) should be provided to all first responders.

• Curriculum review is a priority; need to get the right people from the various disciplines to be the reviewers.

• Inter-operability (ability to communicate with each other) at the scene is important; this is an equipment issue.

• Identification of model training and exercise programs needed.

• Public health and emergency medicine components need to be brought in closer.

• Exercises should continue at the Region, State, and local levels; experiences should be shared. Federal agency representatives need to participate on a state and local basis.

• Exercises should be carried through to the recovery phase

• Training courses need to be catalogued; NDPO could also provide information on training sources.

• Common communication linkage is needed.

• Current technologies need to be identified, supported, and made available to first responders.

• ICS needs some clarification. From the LE, fire, and HAZMAT perspective, need one unified, common command system, regardless of discipline.

• Terminology needs to be clarified and made the same.

• NDPO needs to function as a one-stop shopping clearinghouse.

• NDPO needs to prepare a national strategy to speak to all disciplines that are represented.

• Need to identify and build on what is in place already. Lessons learned need to be communicated.

• Need to emphasize sharing of equipment, principles and concepts at the local, state, and federal level.

• NDPO should take a leadership role in developing a national strategy.

• In planning for the NDPO, should make SOPs known and available.

• Continue to look toward the adoption of model guidelines and SOPs.

• NDPO should set up a means of reporting on the IAB's efforts regarding equipment.

• Should provide a list of alternative equipment items, and information on shelf lives.

• NDPO should function as an information pass-through from DOJ to responders on their needs.

• NDPO could also pass information from responders to others about their needs; these can be matched with scientific ideas and research.

• NDPO could assist other federal agencies, *i.e.,* National Institute of Justice.

• NDPO should be the information source on technical training in bomb detection and disposal.

• Health and Medical Workgroup Summary:

• NDPO concept is vital to adequate preparedness.

• NDPO's function is to be the coordinating body and information clearinghouse.

• NDPO lacks the budget, and the authority, to be anything else; would like it to be more.

• For NDPO to be seen as credible, it must demonstrate its value as an information management resource.

• NDPO needs to be more than an arm of the FBI and law enforcement programs; need to avoid stove-piping. High level jobs need to be performed by more than FBI and DOJ staff.

• All six agencies need to be integrated.

• As part of clearinghouse function, a detailed inventory of all federal programs, and what they address, needs to be prepared. This will show the current gaps and needs.

• Clearinghouse should also provide a detailed description of the WMD contracts and grants that are available, and funding mechanisms.

• Federal program products should be accessible to the public, through the clearinghouse. This will result in improved product quality.

• NDPO should promote peer review activities regarding products, etc.

• NDPO should promote operational and management integration of law enforcement, emergency management, and health components. The clearinghouse should be established to address all three components

• The clearinghouse should be a locus of information. The intent is to avoid duplication of efforts by the agencies, and to provide a single source of information to the public, and professionals in the field. This will enhance the credibility of the NDPO. Information is for federal agencies as well as state and local groups.

• The NDPO should provide programmatic direction and policy recommendations.

• Educate federal leadership about shortages, faults, etc.

• The NDPO should serve as a broad health and medical information

resource to field professionals, and to itself

• A new public policy approach is needed: Funding should be provided for a public safety initiative to prepare hospitals for catastrophic and hazardous events. Sustain-ability of equipment and services should also be addressed in the policy. Red Cross is an example.

• Public health and acute care medicine need to be integrated with each other, for terrorism and for general catastrophic disasters, and then integrated with law enforcement and emergency management.

• The need to keep current with regulatory issues was not discussed in the workgroup; need to show have addressed medical information that is out-of-date in documents. For example, still keep stating will use intra-muscular Valium for organophosphate seizure control although it is no longer used. This is an example of the type of information sharing that needs to be achieved.

• Comment: The Red Cross does not receive federal funding. It is funded strictly by voluntary contributions from individuals.

• Emergency Management/State and Local Agencies Workgroup Summary:

• NDPO has a coordination role for national preparedness. To perform this role, all federal agencies need to adopt and follow the National Contingency Plan (NCP). It is a tried and tested plan.

• All federal agencies should adopt, educate about, and practice the ICS system

• All participants must pursue planning efforts at the local level, such as LEPCs

• NDPO needs to have its own internal strategic plan, and align itself to accomplish the plan.

• DOJ and FEMA need to demonstrate a commitment to the NDPO. High visibility should be given to it throughout the transition period.

• Core interagency operation and leadership staff should be funded, and encouragement given to other agencies to also fund. It is critical for this to be done now.

• Pressure is needed from the top down to get the NDPO funded.

Following the presentations, NDPO Administrator Thomas Kinnally asked the Advisory Group whether they wanted to prioritize the points they had made, or pass them all forward to the Attorney General. A comment was made to identify the overlapping issues and concepts, and then compress the list. The list would be organized as to what the plenary group expects the NDPO to do, and what the group expects itself to do. In the next few weeks the NDPO staff would prepare an executive summary and include all critical issues identified by the Advisory Group, which would then be forwarded to the Attorney General and the NDPO federal partners. It was acknowledged that little could be accomplished in the absence of NDPO funding. In the interim, Chairman Stan McKinney would meet with the Attorney General on September 28 to brief her on the Advisory Group's recommendations.

The Group then took a break. Following the break, Chairman Stan McKinney made closing remarks and the floor was opened to comments from the public. A presentation was made by Christian Sommade of the Centech Group, Arlington, VA, on European versus the U.S. Approach on Domestic Preparedness.''

Following some discussion on scheduling the next Advisory Group meeting, Chairman Stan McKinney thanked all of the participants and adjourned the meeting at 5:30 p.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Dated: December 4, 2000.

Allison Dunham,

Administrative Officer, NDPO.

Dated: December 4, 2000.

Stan M. McKinney,

Chairman, State and Local Advisory Group for the NDPO.

These minutes will be formally considered by the Advisory Group at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

Responsible Federal Official: Thomas G. Kinnally, Administrator, NDPO.

ADDRESSES: The National Domestic Preparedness Office, JEH FBI Building, Room 5214, 935 Pennsylvania Ave., N.W., Washington, DC 20535.

FOR FURTHER INFORMATION CONTACT: Allison Dunham, NDPO, (202) 324–9037.

[FR Doc. 00–32818 Filed 12–22–00; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish a New Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by February 26, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Information Technology Innovation Survey.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish a new information collection.

Abstract:

Proposed Project: The NSF plans to survey a nationally representative sample of about 3,750 U. S. businesses in selected manufacturing and service-sector industries. The survey is designed to collect information about the planning for and impact of technological innovation. Using Web and Computer-Assisted Telephone Interviewing technologies, firms will asked about their strategic planning, use of technology, innovation activities based on information technology, factors influencing the decision to innovate, and the costs and expected benefits of information technology based innovation.

Use of the Information: The information will be used by NSF to: (1) Develop nationally representative profile of corporate information technology innovators and uses; (2) provide the means for comparative analyses among similar national studies; and (3) provide data for use by policy-makers to assist in understanding the development and use of information technology as they relate to formulating

technology policy, regulatory reform, and other issues.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response.

Respondents: Business or other for-profit.

Estimated Number of Responses Per Form: One.

Estimated Total Annual Burden on Respondents: 750 hours—3,750 respondents at 12 minutes per response.

Frequency of Responses: Once.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 19, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 00–32793 Filed 12–22–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear LLC and Atlantic City Electric Company (Hope Creek Generating Station); Order Extending the Effectiveness of the Approval of the Transfer of License and Conforming Amendment

I

PSEG Nuclear LLC and the Atlantic City Electric Company (ACE) are the joint owners of the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey. They hold Facility Operating License No. NPF–57, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on July 25, 1986, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Under this license, PSEG Nuclear LLC (currently owner of 95 percent of HCGS) is authorized to act as agent for ACE (owner of the remaining 5 percent of HCGS) and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility. It is noted that on August 21, 2000, the majority share of the HCGS license was transferred from the Public Service Electric and Gas Company to PSEG Nuclear LLC. This license transfer had previously been approved by an Order dated February 16, 2000.

II

By Order dated April 21, 2000, the Commission approved the transfer of the license for the HCGS, to the extent it is held by ACE, to PSEG Nuclear LLC. By its terms, the Order of April 21, 2000, becomes null and void if the license transfer is not completed by December 31, 2000, unless upon application and for good cause shown, such date is extended by the Commission.

III

By letter dated October 10, 2000, PSEG Nuclear LLC, on behalf of itself and ACE, submitted a request for an extension of the effectiveness of the Order of April 21, 2000, such that it would remain effective until December 31, 2001. According to the submittal, certain regulatory approvals in New Jersey that are needed before ACE can transfer its nuclear interests, which include interests in other facilities in addition to HCGS, are still pending. The submittal states that while the New Jersey Board of Public Utilities (BPU) has approved the transfer of the ACE interests, it has not yet issued a final order covering all aspects of the transaction. Additionally, an appeal of the BPU decision in the Public Service Electric and Gas restructuring case that challenges the BPU's implementation of the deregulation legislation in New Jersey has been filed. The submittal states that this situation has caused ACE to delay the closing on the transfer of its nuclear assets.

The NRC staff has considered the submittal of October 10, 2000, and has determined that good cause has been shown to extend the effectiveness of the Order of April 21, 2000, as requested.

IV

Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b) and 2201(i), *It is Hereby Ordered* that the effectiveness of the Order of April 21, 2000, described herein is extended such that if the subject license transfer from ACE to PSEG Nuclear LLC referenced above is not consummated by December 31, 2001, the Order of April 21, 2000, shall become null and void, unless upon application and for good cause shown, such date is further extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the submittal dated October 10, 2000, which may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site: *http://www.nrc.gov.*

Dated at Rockville, Maryland, this 19th day of December 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–32830 Filed 12–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.186, ''Guidance and Examples for Identifying 10 CFR 50.2 Design Bases,'' provides guidance to licensees and applicants on the definition of design bases as they are defined in the NRC's regulations in 10 CFR 50.2.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's web site at <*WWW.NRC.GOV*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site; Regulatory

Guide 1.186 is under Accession Number ML003754825. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301)415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of December 2000.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 00–32831 Filed 12–22–00; 8:45 am]

BILLING CODE 6560–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43729; File No. SR–ISE–00–09]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange LLC Relating to Chinese Wall Procedures

December 15, 2000.

I. Introduction

On September 12, 2000, the International Securities Exchange LLC (''ISE'' or ''Exchange'') submitted to 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 ISE Rule 810 relating to Chinese Wall procedures. The proposed rule change was published for comment in the **Federal Register** on November 13, 2000.[3] The Commission received no comments on the proposed rule change and this order approves the proposal.

I. Description of the Proposal

ISE Rule 810 requires that ISE market makers erect a ''Chinese Wall'' between their market making activity and certain other business activities, including their trading as an Electronic Access Member (''EAM''). The wall is intended prevent any real-time communication between the various business lines. Without the wall, a trader entering an order as an EAM could potentially inform the person making markets about the pending order. The market maker could then, based on this knowledge, move its quotation either (i) to ''intercept'' an order against which the firm wants to trade, or (ii) to avoid an order against which it does not want to trade. The Exchange adopted ISE Rule 810 because such behavior would be inconsistent with the agency auction market structure of the Exchange.

The ISE noted, however, that the broad restrictions of ISE Rule 810 limit the ability of certain market makers to send proprietary order flow to the ISE in options outside of their assigned groups of options (''bins'').[4] In particular, many market makers do not have the facilities to establish a ''Chinese Wall,'' which requires physical separation of functions (generally on separate floors), between their proprietary traders and individuals performing ISE market making activities.

The proposed rule change, therefore, will allow members to conduct proprietary trading in the same physical space as their market making activities, but only: (i) In options that are not within their market making assignments; or (ii) in options which, pursuant to regulatory requirements, the member is prohibited from making markets. This latter provision is intended to apply to market makers that are specialists in the underlying stock on the New York Stock Exchange, Inc. (''NYSE''), whose rules limit the options trading of specialists and affiliated firms to ''hedging activities,'' thus prohibiting them from making markets in options.[5] In addition, the proposed rule change would permit only proprietary trading without the Chinese Wall and would not permit the market maker to enter agency orders (except with respect to proprietary orders for its affiliates) without complying with the full restrictions of ISE Rule 810.

III. Discussion

The Commission has reviewed the ISE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[7] because it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest, by maintaining an information barrier that respects the integrity of the ISE while still permitting members, under certain circumstances, to conduct proprietary trading in the same physical space as their market making activities.[8]

The Commission notes that amending ISE Rule 810 will help attract proprietary order flow to the ISE. Although members will be allowed to conduct proprietary trading in the same physical space as their market making acitivites, they may do so only in options that are not within their market making assignments or in options which, pursuant to regulatory requirements, the member is prohibited from making markets. In addition, the proposed rule change would permit only proprietary trading without the Chinese Wall and would not permit the market maker to enter agency orders (except with respect to proprietary orders for its affiliates) without complying with the full restrictions of ISE Rule 810. Limiting such activity to these specific situations reduces the potential for the type of harm against which ISE Rule 810 is intended to protect, since the member will not be making markets in the stocks in which it is engaging in proprietary trading. The Commission emphasizes, however, that the information barrier between a market maker and affiliated EAM should protect against any inappropriate sharing of information that could result in market manipulation. The Commission continues to expect the ISE to be vigilant in monitoring for possible abuses in this context.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43508 (November 2, 2000), 65 FR 67784 (November 13, 2000).

[4] The ISE assigns market makers to bins of options. There are 10 bins, and each bin has one Primary Market Maker (''PMM'') and up to 10 Competitive Market Makers (''CMM'') assigned to each.

[5] *See* NYSE Rule 105. This applies solely to CMMs. Because CMMs are required to provide continuous quotes in only 60 percent of the options in a bin, it is possible that a CMM could be assigned a bin in which it is not permitted to make markets in certain options classes. Such a CMM simply would not quote in these ''restricted'' options. PMMs must provide continuous quotes in all options in a bin and thus were not assigned bins where these regulatory restrictions apply.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SE–ISE–00–09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32806 Filed 12–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43730; File No. SR–NYSE–00–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Amending Section 807 of Its Listed Company Manual

December 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Listed Company Manual, Section 807, Voluntary Transfer to Another Exchange by Company That Falls Below Criteria for Continued Listing, to state that the Exchange will daily disseminate ticker and information notices, and provide similar information on the Exchange's website, reflecting the status of the securities of a company which the Exchange has determined no longer meets its continued listing criteria and which has voluntarily undertaken to transfer the listing of its securities to another national securities exchange.

The text of the proposed rule change is available upon request from the Office of the Secretary, the NYSE, or the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May 2000, the Commission approved amendments to the Exchange's procedures for delisting securities and handling related issuer appeals.[5] In its proposal filed with the Commission, the Exchange stated its belief that it is important for investors to have timely notice whenever the Exchange determines that an issuer's listed securities no longer meet the NYSE's continued listing criteria or when the Exchange has initiated delisting proceedings against an issuer for any reason. The Exchange therefore proposed, among other things, to attach an identifier suffix (.DL) to the ticker symbol of a company during the transition phase in which, having failed to meet the NYSE's continued listing criteria, such company undertook to transfer the listing of its securities to another national securities exchange.

The Exchange subsequently determined that, without making significant and costly changes to its systems to accommodate the identifier suffix, appending such a suffix would in fact change a company's ticker symbol.[6] In other words, if the suffix were added to a subject company's ticker symbol, an investor or broker would have to know to enter the ''new'' symbol (with .DL suffix) into a quotation device in order to obtain quotation or last sale information. Entering the ''former'' symbol of one, two, or three letters (without the suffix) would elicit the message ''security not found.'' The NYSE felt that this possible confusion about a company's ticker symbol would not meet its stated goal of informing interested parties about the status of the securities of a company subject to delisting. In addition, the Exchange has noted that clearance and settlement systems do not recognize non-alphabetic characters in ticker symbols. The use of the .DL suffix might therefore give rise to possible confusion between a symbol bearing the suffix and another symbol that uses DL as its last two characters.

The Exchange has stated that, even if the necessary work were done to its systems to permit the use of a suffix without effecting a symbol change, it would remain concerned that the added suffix might not be carried by every vendor. This potential for inconsistency, like the possible confusion about a company's ticker symbol, would undermine the Exchange's motive of better disclosure in seeking to employ the identifier suffix.

As a result of these realizations, the Exchange has not yet implemented the amended procedure previously approved by the Commission. In order to do so now, the Exchange proposes to employ the following mechanisms to inform investors when a company that fails to meet NYSE continued listing criteria has undertaken to transfer listing of its securities to another national securities exchange:

a. The Exchange will circulate a ticker notice each day prior to the opening, specifying the delisting status of each subject company;

b. The Exchange will distribute the same information notice daily via the Exchange's online information notices system to vendors, member firms, and other interested parties;

c. The Exchange will post a subject company's delisting status and information on the Exchange's web site.

The Exchange believes that implementing these mechanisms will achieve better dissemination of information about companies subject to delisting to all market participants, both professional and non-professional, than would use of the .DL suffix previously proposed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in general and

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[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19(b)–4(f)(1).

[5] *See* Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000).

[6] *See* Securities Exchange Act Release No. 43442 (Oct. 13, 2000), 65 FR 63280 (Oct. 23, 2000) (notice of filing and immediate effectiveness of proposed rule change by the NYSE to amend its Listed Company Manual, Section 804).

[7] 15 U.S.C. 78f(b).

furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if its 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 purpose of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–00–54 and should be submitted by January 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32805 Filed 12–22–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] In its filing with the Commission, the Exchange inadvertently included the statement that the proposed new notification procedures would be implemented with any delisting determination made after August 10, 2000. The Exchange notes that the proposal should instead become effective upon filing with the Commission. Telephone conversation between Elena Daly, Assistant General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on Dec. 5, 2000.

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype

AGENCY: Social Security Administration.

ACTION: Notice of revision to the disability prototype in the State of New York.

SUMMARY: The Social Security Administration is announcing a revision to the disability prototype in the State of New York. The test will be performed in those locations in the State of New York, listed below, that are not already processing cases under the disability prototype. In addition, the test will measure the operational impact of modifying the process by ''grandfathering'' pending initial claims in the additional locations into the prototype process.

DATES: Selection of cases to be included in this test will begin on January 2, 2001 in one location, and on April 2, 2001 in the other locations, according to the schedule outlined under **SUPPLEMENTARY INFORMATION.** Case selection is expected to end on or about December 31, 2001. If the Agency decides to continue the test beyond this date, we will publish another notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Director, Disability Process Redesign Staff, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–5388.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.906 and 416.1406 authorize us to test modifications to the disability determination procedures individually or in any combination. Under this authority, several tests have been conducted, including a prototype that incorporates several modifications to the disability determination procedures employed by State disability determination services (DDS) which have been shown to be effective in earlier tests. (64 FR 47218.) The prototype incorporates a series of changes that improve the initial disability determination process by: Providing greater decisional authority to the disability examiner and making more effective use of the expertise of the medical consultant; ensuring appropriate development and explanation of key issues; increasing opportunities for claimant interaction with the decision maker before a determination is made; and simplifying the appeals process by eliminating the reconsideration step. When we started the prototype on October 1, 1999, we applied the modified process only to claims filed on or after October 1, 1999 in certain States, or parts of States. With respect to claims in the State of New York, we announced that only applicants whose initial disability claims were processed by certain branches of the DDS in New York would participate in the prototype. The **Federal Register** notice listed those branches of the DDS in New York where the prototype would be applied. (64 FR at 47219.)

We are now announcing that we will test the prototype process in the remaining branches of the DDS in New York, and in addition test the effect of ''grandfathering'' pending claims in those branches into the modified process in the remaining branches of the DDS in New York. ''Grandfathering'' means that, in addition to following the modified processes for claims filed on or after a certain date, we will follow the modified process for initial claims filed before that date if the disability determination forms that we use to have the State agency certify the determination of disability to us have not been signed by a disability examiner and, if applicable, by a medical or

psychological consultant by that date. Thus, in this test, we will apply the modified processes to: (1) New initial claims filed on or after the controlling date (see below), and (2) initial claims that are filed before that date but for which the disability determination forms we use to have the State agency certify the disability determination have not been signed by a disability examiner and, if applicable, by a medical or psychological consultant as of that date. We will send a letter explaining the process modifications to individuals whose pending claims are grandfathered into the modified process.

This means that the modified processes, including the opportunity for a claimant conference with the decision maker and elimination of the reconsideration step of the administrative review process, will be used for pending initial claims, resulting in fewer reconsideration claims flowing to the test site after the modified process is implemented. We believe this change will provide us with information that will enable us to manage the transition to the modified process more effectively and result in better service for all disability applicants. In order to measure the effect of this change on our operations, we will begin to follow the modified process in the following locations beginning on the date indicated for each location:

State of New York

Office of Temporary and Disability Assistance, Division of Disability Determinations, Region III, 22 Cortlandt Street, 6th Floor, New York, New York 10007–3107. Controlling date: January 2, 2001.

Office of Temporary and Disability Assistance, Division of Disability Determinations, Region I, 22 Cortlandt Street, 4th Floor, New York, New York 10007–3107. Controlling date: April 2, 2001.

Office of Temporary and Disability Assistance, Division of Disability Determinations, Region IV, 92–31 Union Hall Street, 6th Floor, Jamaica, New York, 11433–1127. Controlling date: April 2, 2001.

Office of Temporary and Disability Assistance, Division of Disability Determinations, Region V, Building #16, 3rd Floor, Glendale Technology Park Endicott, New York 13760. Controlling date: April 2, 2001.

Office of Temporary and Disability Assistance, Division of Disability Determinations, Region VII, Building #16, 2nd Floor, Glendale Technology Park Endicott, New York 13760. Controlling date: April 2, 2001.

Office of Temporary and Disability Assistance, Office of Disability Determinations—Region IX, Ellicott Square Building, Room 650, 295 Main Street, Buffalo, New York 14203–2412. Controlling date: April 2, 2001.

Dated: December 18, 2000.

Glenna K. Donnelly,

Assistant Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 00–32833 Filed 12–22–00; 8:45 am]

BILLING CODE 4191–50–P

DEPARTMENT OF STATE

[Public Notice 3529]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gerome & Goupil: Art and Enterprise''

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 et seq.), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended by Delegation of Authority No. 236–3 of August 28, 2000 (65 FR 53795), I hereby determine that the objects to be included in the exhibit, ''Gerome & Goupil: Art and Enterprise,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the Dahesh Museum in New York, New York from on or about February 6, 2001, to on or about May 5, 2001, and at The Frick Art and Historical Center, Pittsburgh, Pennsylvania from June 7, 2001, to on or about August 12, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is SA–44, Room 700, United States Department of State, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–32871 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3527]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Global Guggenheim: Selections From the Extended Collection''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibit, ''The Global Guggenheim: Selections from the Extended Collection,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, New York, from on or about February 6 to on or about April 22, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Julianne C. Simpson, Attorney-Adviser, Office of the Legal Adviser, 202/619–6529, and the address is SA–44, Room 700, United States Department of State, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs.

[FR Doc. 00–32869 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3528]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Rediscovering Caesarea Philippi, the Ancient City of Pan (Also referred to as the Banias Exhibition''

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, et seq.), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Rediscovering Caesarea Philippi, the Ancient City of Pan (also referred to as the Banias Exhibition),'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Frederick R. Weisman Museum of Art at Pepperdine University, in Malibu, CA from on or about February 10, 2001 to on or about May 5, 2001 is in the national interest. The action of the United States in this matter and the immunity based on the application of the provisions of the law involved does not imply any view of the United States concerning the ownership of these exhibition objects. Further, it is not based upon and does not represent any change in the position of the United States regarding land occupied by Israel since 1967. See letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 Dept. State Bulletin 11 (October 1978); Statement of September 1, 1982 of President Ronald Reagan, reprinted in 82 Dept. of State Bulletin 23 (September 1982). Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 15, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–32870 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3496]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 10(a)(2) (1996), the Secretary of State announces a meeting of the Arms Control and Nonproliferation Advisory Board (ACNAB) to take place January 4–5, 2001, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 10(d) (1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that this Board meeting will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The Board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

For more information concerning the meetings, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Advisory Board, at (202) 647–1192.

Dated: December 14, 2000.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board.

[FR Doc. 00–32865 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice No. 3497]

Shipping Coordinating Committee; Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on January 16, 2001, in Room 4618 of the United States Coast Guard Headquarters Building, 2100 Second Street SW, Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the thirty-second session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO from January 22 to 26, 2001.

The primary matters to be considered include:

1. Training and certification of maritime pilots;
2. Unlawful practices associated with certificates of competency (i.e., forged certificates);
3. Standard Marine Communication Phrases (SMCP);
4. Training in the use of Electronic Chart Display and Information Systems (ECDIS);
5. Guidance for training in ballast water management;
6. Guidance for ships operating in ice-covered waters;
7. Validation of an IMO model course on assessment of competence; and
8. Guidance associated with the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW–F Convention, as adopted by the 1995 conference; not yet ratified or in force).

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, U.S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street SW, Washington, DC 20593–0001 or by calling; (202) 267–0229.

Dated: December 19, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–32866 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–70–P

DEPARTMENT OF STATE

[Public Notice No. 3498]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 AM on Tuesday, January 23, 2001 in Room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Sixth Session of the Subcommittee on Bulk Liquids and Gases of the International

Maritime Organization (IMO) which will be held on February 5–9, 2001, at the IMO Headquarters in London.

The agenda items of particular interest are:

—Revision of Maritime Safety Committee (MSC) Circular 677.
—Matters related to the probabilistic methodology for oil outflow analysis.
—Review of Annexes I and II of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78).
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments.
—Amendments to requirements on electrical installations in the IMO Chemical Codes.
—Application of MARPOL requirements to floating production, storage and offloading units and floating storage units.
—Requirements for the protection of personnel involved in the transportation of cargoes containing toxic substances in all types of tankers.
—Oil tagging systems.
—Evaluation of IMO Greenhouse gas emissions study.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander R.F. Corbin, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 19, 2000.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–32867 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3499]

Shipping Coordinating Committee, Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:00 a.m. on Tuesday, February 13, 2001, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 9th Session of the Flag State Implementation Sub-Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for February 19–23, 2001, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

—Responsibilities of Governments and measures to encourage flag State compliance;
—Self-assessment of flag State performance;
—Implications arising when a vessel loses the right to fly the flag of a State;
—Regional cooperation on port State control;
—Reporting procedures on port State control detentions and analysis and evaluation of reports;
—Mandatory reports under MARPOL 73/78;
—Introduction of the Harmonized System of Survey and Certification (HSSC) into MARPOL Annex VI on prevention of air pollution;
—Casualty statistics and investigations;
—Revision of the SOLAS expression ''ships constructed'';
—Review of resolutions A.744(18) and A.746(18);
—Technical assistance;
—Use of the Spanish language in SOLAS certificates, manuals and other documents;
—Illegal, unregulated and unreported (IUU) fishing and related matters.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Lieutenant Commander Linda Fagan, Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Room 1116, Washington, DC 20593–0001 or by calling (202) 267–0972.

Dated: December 19, 2000.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–32868 Filed 12–22–00; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–214]

WTO Consultations Regarding U.S. Safeguard Measures on Line Pipe and Wire Rod

AGENCY: Office of the United States Trade Representative.

ACTION: Notice, request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on December 1, 2000, the European Communities (EC) requested WTO consultations with the United States regarding Sections 201 and 202 of the Trade Act of 1974, section 311 of the NAFTA Implementation Act, and the U.S. safeguard measures on imports of line pipe and wire rod. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 15, 2001 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122 Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C., 20508, Attn: EC Line Pipe and Wire Rod Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: David J. Ross, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comments, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the European Commission

The EC claims that sections 201 and 202 of the Trade Act of 1974 (19 U.S.C. 2251 and 2252) contain provisions relating to the determination of a causal link between increased imports and injury or threat thereof which prevent the United States from respecting Articles 4 and 5 of the WTO Agreement on Safeguards (Safeguards Agreement). It also claims that section 311 of the NAFTA Implementation Act (19 U.S.C. 3371) contains provisions concerning imports from Canada an Mexico which do not respect what it characterizes as

the ''requirement of parallelism'' between the imported products subject to a safeguard investigation and the imported products subject to a safeguard measure, contrary to Articles 2, 4 and 5 of the Safeguards Agreement. The EC claims that these provisions are also inconsistent with the Most-Favoured-Nation principle of Article I of the GATT 1994.

In addition, the EC challenges certain aspects of the U.S. safeguard investigations and imposition of measures on imports of line pipe and wire rod. The EC claims that the U.S. measures are inconsistent with the following provisions of the Safeguards Agreement and the GATT 1994:

• ''Article 2 SA, because, *inter alia*, they are based on deficient determination on the like or directly competitive products, absence of 'imports in such increased quantities' and/or 'under such conditions', lack of serious injury or threat thereof, lack of causality and non-respect of the requirement of parallelism between the scope of the imported products subject to the investigation and the scope of the imported products subject to the application of the measures;

• Article 3(1) and 3(2) SA, because, *inter alia*, they do not adequately set forth the findings and reasoned conclusions on all pertinent issues of fact and law, including the justification for the actual measure imposed, as well as abusive recourse to confidentiality in relation to disclosure of information;

• Articles 4(1) and 4(2) SA, because, *inter alia*, they are not justified by 'imports in such increased quantities' and/or 'under such conditions', lack of serious injury or threat thereof, lack of causality and non-respect of the requirement of parallelism between the scope of the imported products subject to the investigation and the scope of the imported products subject to the application of the measures;

• Article 5(1) SA, since, *inter alia*, they grant relief beyond 'the extent necessary to prevent or remedy serious injury and to facilitate adjustment';

• Article 8(1) SA, because of, *inter alia*, non-respect of the requirements regarding the level of concessions and other obligations and the trade compensation;

• Articles 12(2), 12(3) and 12(11) SA, because of, *inter alia*, non-respect of the obligation to provide the Committee on Safeguards with all pertinent information, non-respect of the obligation to provide adequate opportunity for prior consultations with a view to reaching an understanding on ways to achieve the objective set out in Article 8(1) SA, and abusive recourse to confidentiality in relation to disclosure of information;

• Article I:1 of GATT 1994 since, *inter alia*, the safeguard measure discriminates between products originating in the EC and products originating in other WTO countries; and

• Article XIX:1 of GATT 1994, because, *inter alia*, they fail to show, prior to the application of the measures, that the increases in imports and the conditions of importation of the products covered by each of the two above-mentioned measures were the result of 'unforeseen developments' and of the effect of the USA obligations under GATT 1994.''

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy, and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–214, EC Line Pipe and Wire Rod Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–32822 Filed 12–22–00; 8:45 am]

BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Jackson County-Reynolds Airport; Jackson, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of four parcels of land; one 3.70 acre parcel designated as Right-of-Way and three other parcels of land designated as Parcel A (1.16 acres), Parcel B (0.46 acres), and Parcel C (0.01 acres) together totaling approximately 1.63 acres for a roadway easement. Current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to dispose of the property.

The land was acquired under FAA Project No. 9–20–046–0804–26. Approval does not constitute a commitment by the FAA to financially assist in the sale of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. Together this proposal is for approximately 5.33 acres in total.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the

Federal Register 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land will be sold in fee (Parcel Right-of-Way) to allow for a new roadway extension to be built. Parcels A, B, and C will be sold in fee as a permanent roadway easement to allow for operational enhancements for Boardman Road. Boardman Road runs approximately parallel to I–94 between Maynard Road and Airport Road, which will be extended with the sale of the stated parcels. This proposed new extension will have the effect of reducing vehicle traffic along the portion of Airport Road that transverses through the Runway Safety Area (RSA) of Runway 24, in turn increasing safety for the airport. The proceeds from the sale of the land will be used for airport improvements and operation expenses at Jackson County-Reynolds Airport.

DATES: Comments must be received on or before January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Migut, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7278. Documents reflecting this FAA action may be reviewed at this same location or at Jackson County-Reynolds Airport, Jackson, Michigan.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property: Right-of-Way Parcel. All that part of parcel of land located in the North one-half of the Southeast one-quarter of Section 29, T.2S., R.1W., Blackman Township, Jackson County, Michigan, being described as follows: A parcel of land 66.00 feet in width, beginning on the Westerly right of way line of Maynard Road and continuing Westerly to the Easterly right of way line of Airport Road with the following more particularly described centerline: Commencing at a point on the Westerly right of way line of Maynard Road, which point is located 260.00 feet Southerly on the East line of Section 29 and 33.00 feet Westerly of the East one-quarter corner of said Section 29, and the true POINT OF BEGINNING; Thence South 89 Decrees 30 Minutes 24 Seconds West, a distance of 331.77 feet to a point; Thence around a curve to the right through a central angle of 02 Degrees 41 Minutes 20 Seconds, an arc distance of 230.94 feet, a radius of 4921.26 feet and a chord bearing of North 89 Degrees 08 Minutes 56 Seconds West with a distance of 230.93 feet to a point; Thence North 87 Degrees 48 Minutes 16 Seconds West, a distance of 790.19 feet to a point; Thence around a curve to the left through a central angle of 30 Degrees 04 Minutes 54 Seconds, an arc distance of 1179.92 feet, a radius of 2247.38 feet and a chord bearing of South 77 Degrees 09 Minutes 17 Seconds West with a distance of 1166.42 feet to a point; Thence South 62 Degrees 06 Minutes 50 Seconds West, to a point on the Easterly right of way line of Airport Road and the POINT OF ENDING. Excepting that portion lying within the M.D.O.T. Highway right of way for the U.S. 12 by-pass (Interstate 94). Containing 3.70 acres, more or less.

Parcel A—A 20.00 foot wide easement beginning on the Westerly right of way line of Maynard Road and continuing Westerly to the Easterly right of way line of Airport Road, more particularly described as follows: a parcel of land 20.00 feet in width, who's Northerly line is 33.00 feet South of the following described in centerline of Boardman Road; Commencing at a point on the Westerly right of way line of Maynard Road which point is located 260.00 feet Southerly on the East line of Section 29 and 33.00 feet Westerly of the East one-quarter corner of said Section 29, and the true POINT OF BEGINNING; Thence South 89 Degrees 30 Minutes 24 Seconds West, a distance of 331.77 feet to a point; Thence around a curve to the right through a central angle of 02 Degrees 41 Minute 20 Seconds, an arc distance of 230.94 feet, a radius of 4921.26 feet and a chord bearing of North 89 Degrees 08 Minutes 56 Seconds West with a distance of 230.93 feet to a point; Thence North 87 Degrees 48 Minutes 16 Seconds West, a distance of 790.19 feet to a point; Thence around a curve to the left through a central angle of 30 Degrees 04 Minutes 54 Seconds, an arc distance of 1179.92 feet, a radius of 2247.38 feet and a chord bearing of South 77 Degrees 09 Minutes 17 Seconds West with a distance of 1166.42 feet to a point; Thence South 62 Degrees 06 Minutes 50 Seconds West, to a point on the Easterly right of way line of Airport Road and the POINT OF ENDING. Containing 1.16 acres, more or less.

Parcel B—A 20.00 foot wide easement beginning on the Westerly right of way line of Maynard Road and continuing Westerly to the Easterly right of way line of Airport Road, more particularly described as follows: A parcel of land 20.00 feet in width, who's Southerly line is 33.00 feet North of the following described centerline of Boardman Road; Commencing at a point on the Westerly right of way line of Maynard Road which point is located 260.00 feet Southerly on the East line of Section 29 and 33.00 feet Westerly of the East one-quarter corner of said Section 29, and the true POINT OF BEGINNING; Thence South 89 Degrees 3 Minutes 24 Seconds West, a distance of 331.77 feet to a point; Thence around a curve to the right through a central angle of 02 Degrees 41 Minutes 20 Seconds, an arc distance of 230.94 feet, a radius of 4921.26 feet and a chord bearing of North 89 Degrees 08 Minutes 56 Seconds West with a distance of 230.93 feet to a point; Thence North 87 Degrees 48 Minutes 16 Seconds West, a distance of 790.19 feet to a point; Thence around a curve to the left through a central angle of 30 Degrees 04 Minutes 54 Seconds, an arc distance of 1179.92 feet, a radius of 2247.38 feet and a chord bearing of South 77 Degrees 09 Minutes 17 Seconds West with a distance of 1166.42 feet to a point; Thence South 62 Degrees 06 Minutes 50 Seconds West, to a point on the Easterly right of way line of Airport Road and the POINT OF ENDING. Excepting that portion lying within the M.D.O.T. highway right of way for U.S. 12 by-pass (Interstate 94). Containing 0.46 acres, more or less.

Parcel C—An easement described as follows: Commencing at a point on the Westerly right of way line of Maynard Road which is located 293.00 feet Southerly on the East line of Section 29 and 33.00 feet Westerly of the East one-quarter Corner of said Section 29, and the true POINT OF BEGINNING; Thence South 89 Degrees 30 Minutes 24 Seconds West, a distance of 20.00 feet to a point; Thence Southeasterly to a point on the Westerly right of way line of Maynard Road 20.00 feet Southerly of the place of beginning of this description; Thence Northerly 20.00 feet, to the true POINT OF BEGINNING of this description. Containing 0.01 acres, more or less.

Issued in Belleville, Michigan, November 24, 2000.

Irene Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 00–32522 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Livingston County Airport, Howell, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use. The four parcels of land designated as Permanent Easement and Right of Way (2.02 acres), Temporary Work Space (5.22 acres), Additional Temporary Work Space (16.80 acres), and Access Road (0.66 acres) together totaling approximately 24.7 acres is for the installation of a pipeline. General current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to dispose of the property. Parcel 2 was acquired on 7/15/63, under FAA Project No. 9–20–014–6501, and Parcel 8 was acquired on 4/21/87, under FAA Project No. 3–26–0047–0388.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land designated ''Permanent Easement and Right of Way'' will be sold in fee as a permanent easement to allow for the installation of an underground pipeline. The proposed land designated as Temporary Work Space, Additional Temporary Work Space, and Access Road will be a long-term lease through the development of an indefinite easement to allow for storage and installation of underground pipeline. The proceeds from the sale of the land will be used for airport improvements and operational expenses at Livingston County Airport.

DATES: Comments must be received on or before January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Gary Migut, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7278. Documents reflecting this FAA action may be reviewed at this same location or at Livingston County Airport, 3480 W. Grand River, Howell, Michigan 48843.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property:

Permanent Easement and Right of Way

Description of a thirty (30) feet wide permanent easement and right of way, located in section 21, township 3 North, range 4 east of Livingston County, Michigan, and being upon, over, through and across a portion of that certain tract of land conveyed to the County of Livingston as described by the instrument recorded in Liber 1220, page 95 and Liber 428, page 30 of the Office of The Register of Deeds of Livingston County, Michigan, (referred hereinafter to as the ''above referenced tract of land''), said thirty (30) feet wide permanent easement and right of way being located 15 feet Northwesterly and northerly of an 15 feet Southeasterly and Southerly of the herein described baseline, said baseline being more particularly described as follows:

Commencing at a monument with a 2-inch aluminum cap found marking the west one quarter (¼) corner of said Section 21; thence South 00° 58′ West, along the west line of said section 21, a distance of 1524.82 feet to the most westerly, southwest corner of the above referenced tract of land; thence South 58° 20′ 21″ East, along the south line of the above referenced tract of land, a distance of 24.64 feet to a point 25 feet southeasterly of, at right angles to, an existing Lakehead Pipeline Company pipeline and being the point of beginning of the herein described baseline; thence North 34° 05′ 40″ East, along a line 25 feet southeasterly of a parallel with the said existing pipeline, a distance of 540.22 feet to an angle point of the herein described baseline; thence North 44° 07′ 42″ East, a distance of 38.34 feet to an angle point of the herein described baseline; thence North 56° 08′ 18″ East, a distance of 38.69 feet to an angle point of the herein described baseline; thence North 65° 55′ 10″ East, a distance of 540.32 feet to an angle point of the herein described baseline; thence North 78° 31′ 40″ East, a distance of 39.06 feet to an angle point of the herein described baseline; thence South 88° 37′ 59″ East, a distance of 883.73 feet to an angle point of the herein described baseline; thence North 80° 14′ 12″ East, a distance of 429.39 feet to a point, 25 feet southerly of, at right angles to the said existing pipeline, and an angle point of the herein described baseline; thence South 89° 27′ 26″ East, along a line 25 feet southerly of an parallel with the said baseline, a distance of 286.74 feet to an angle point of the herein described baseline; thence South 88° 21′ 57″ East, along a line 25 feet southerly of an parallel with the said existing pipeline, a distance of 141.88 feet of a point in the east line of the above referenced tract of land and being the point of termination of the herein described baseline, from which the most easterly northeast corner of the above referenced tract of land bears, North 00° 56′ 52″ East, a distance of 50.71 feet, said baseline having a total length of 2938.37 feet or 178.08 rods, said Permanent Easement and Right of Way containing 2.02 acres, more or less.

Temporary Work Space

Being a fifty (50) feet wide strip of land, adjoined to and parallel with the southeasterly and southerly sides of the above described thirty (30) feet wide Permanent Easement and Right of Way, save and except a portion thereof, said portion beginning at a point 203 feet northeasterly of the northeasterly right of way line of Grand River road and extending, a distance of 141 feet in a northeasterly direction, said 141 feet portion shall be reduced to a width of thirty-one (31) feet and a thirty (30) feet wide strip of land, adjoined to and parallel with the northwesterly and northerly sides of the said Permanent Easement and Right of Way, extending or shortening, the side lines of the Temporary Work Spaces, at the beginning and termination of the said Permanent Easement and Right of Way lines, to intersect with the property lines of the above referenced tract of land and/or the northeasterly right of line of Grand River Road and/or the east right way line of Township Road and containing a total of 5.22 acres, more or less. That the portion of the following described land which lies within the lands described in Liber 1220, page 95 and in Liber 428, page 30. Commencing at the point of beginning of the herein described access road, thence Northerly along the centerline of said access road a distance of twenty-five (25) feet, thence Easterly, parallel with the Northerly line of the Northerly most work space described herein to the East property line of the lands described herein, thence Southerly along said East line a distance of twenty-five (25) feet, thence Westerly along the Southerly line of the Northerly most work space described herein to the point of beginning.

Additional Temporary Work Space

Being three (3) tracts of land as herein described, (1) being a forty (40) feet wide strip of land, adjoined to and

parallel with southeasterly side of the above described fifty (50) feet wide Temporary Work Space and extending a distance of 101 feet, from a point 106 feet northeasterly of the said northeasterly right of way line of Grand River Road, (2) a fifty (50) feet wide strip of land, adjoined to and parallel with the southerly side of the above described fifty (50) feet wide Temporary Work Space and extending 150 feet westerly from the westerly line of the airplane taxiway, (3) an irregular shaped tract of land described as follows; beginning at the intersection of the northwesterly side of the above described thirty (30) feet wide Temporary Work Space and the east right of way line of Township Road, thence in a northerly direction, along the said east right of way line to the north line of the above referenced tract of land, thence, in an easterly direction, along the said north line, a distance of 1173.91 feet to the west side of an existing road, thence in a southerly direction, parallel with the said west side to a point, 50 feet northerly or an existing parking lot, thence 624 feet in a westerly direction, along a line parallel with the north side of the said parking lot, to a point 50 feet west of the said parking lot, thence 365 feet in a southerly direction, along a line parallel with the west side of said parking lot, to a point 50 feet south of an existing building, thence 115 feet in an easterly direction, along a line parallel with the said existing building, to a point, 20 feet northerly of, at right angles to, an existing Lakehead Pipeline Company pipeline, thence in a southwesterly direction, 20 feet northerly of and parallel with the said existing pipeline, a distance of 436 feet, to a point, 100 feet northerly of, at right angles to, the northerly side of the above described thirty (30) feet wide Temporary Work Space, thence in an easterly direction, parallel with the said northerly side of the above described thirty (30) feet wide Temporary Work Space to a point in the west side of the said existing taxiway, thence in a southerly direction, at right angles to the said northerly side of the above described thirty (30) feet wide Temporary Work Space, to the northerly side of the above described Permanent Easement and Right of Way, thence in a westerly and southwesterly direction, along the said northerly side of the above described Permanent Easement and Right of Way to the point of beginning of the herein described irregular shaped tract of land, save and except that portion which lies within the right of way of a private drive from Township Road, and containing a total of 16.80 acres, more or less.

Access Road

Being a twenty five (25) feet wide access road which lies twelve and one half (12½) feet either side of the herein described centerline, said centerline being described as follows: Beginning at a point in northerly line of the said above thirty (30) feet wide Temporary Work Space, said point lies 953 feet westerly, along the northern side of the above described 30 feet wide Temporary Work Space, from the east line of the above referenced tract of land as described in Liber 428, Page 30, thence northerly 546 feet, westerly of and parallel with the said most northerly west line to a point 121 feet southerly of the north line of the above referenced tract of land; thence westerly along a line, 121 feet southerly of and parallel with the said northerly line, to the east end of the first irregular shaped Temporary Work Space described above and containing 0.66 acre, more or less.

Issued in Belleville, Michigan, December 1, 2000.

Irene R. Porter,

Manager, Detroit Airports District Office Great Lakes Region.

[FR Doc. 00–32523 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; W.K. Kellogg Airport, Battle Creek, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use. The proposal consists of three parcels of land designated as Parcel No. 50 (.436 acres), Parcel No. 51 (.379 acres), and Parcel No. 52 (.245 acres) together totalling approximately 1.06 acres for a permanent roadway easement. Current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to dispose of the property. The land was acquired under FAA Project No. 9–20–040–6003. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land will be sold in fee as a permanent roadway easement to provide improvements for traffic circulation around the airport—specifically for the right-of-way for additional turn lanes and roadway drainage. The proceeds from the sale of the land will be used for airport improvements and operational expenses at W. K. Kellogg Airport.

DATES: Comments must be received on or before January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Gary Migut, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7278. Documents reflecting this FAA action may be reviewed at this same location or at W. K. Kellogg Airport, 2712 W. Territorial Road, Battle Creek, Michigan 49015.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property:

Parcel No. 50

Lands located in the City of Battle Creek, County of Calhoun described as:

That part of the following Tract ''A'' lying Northeasterly of a line 35.000m (114.83 feet) Southwesterly of (as measured radially and parallel to) a line described as: Commencing at the Northwest corner of Section 10, Town 2 South, Range 8 West, City of Springfield, Calhoun County, Michigan; thence South 00°59′48″ East, 57.8m (189.70 feet) along the West line of said Section 10 to the point of intersection of said West line of Section 10 and the right of way reference line of Highway I–94BL (Dickman Road); thence South 73°14′50″ East, 36.387m (119.38 feet) along said right of way reference line to the point of curvature of a 873.231m (2864.93 foot) radius curve to the left, also being the point of beginning of this description; thence Southeasterly along the arc of curve 256.849m (842.68 feet), (chord bearing South 81°40′25″ East, chord distance 255.923m (839.64 feet))

to the point of tangency and the point of ending.

Also: That part of the following described Tract ''A'' lying Northeasterly of a line 25.00m (82.02 feet) Southwesterly of (as measured at radially and parallel to) a line described as: Commencing at the Northwest corner of Section 10, Town 2 South, Range 8 West, City of Springfield, Calhoun County, Michigan; thence South 00°59′48″ East, 57.82m (189.70 feet) along the West Section line of said Section 10 to the point of intersection of said West Section line and the survey centerline of Highway I–94BL (Dickman Road); thence South 73°14′50″ East on said survey centerline, 62.859m (206.23 feet) to the point of curvature of a 873.231m (2864.93 foot) radius curve to the left; thence Southeasterly along the arc of said curve 163.037m (534.90 feet), [chord bearing South 78°35′46″ East, chord distance 162.803m (534.13 feet)] to the point of intersection of said I–94BL survey centerline and the construction centerline of Helmer Road (South Leg); thence South 01°01′30″ West, 23.002m (75.47 feet) to the point of curvature (point of tangency on plans) of a 163.982m (538.00 foot) radius curve to the left, also being the point of beginning of this description; thence Southerly along said arc of curve 86.067m (282.37 feet), [chord bearing South 14°00′40″ East, chord distance 85.082m (279.14 feet)] to a point of compound curvature; thence North 75°50′52″ East, 30.000m (98.43 feet) to the point of ending.

The lands described above in easement contain 2491.24 square meters (26,815 square feet), more or less.

Tract ''A'': Beginning at the West ¼ post of Section 10, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan; thence N. 00 Deg. 07′ 39″ E., 2383.94 feet along the West line of said Section 10 to the Southerly right-of-way line of Dickman Road West (150 feet wide) and a point distant S. 00 Deg. 07′ 39″ W., 268.46 feet from the Northwest corner of said Section 10; thence S. 72 Deg. 07′ 23″ E., 99.56 feet along said Southerly right-of-way; thence continuing along said Southerly right-of-way; thence continuing along said Southerly right-of-way of Dickman Road West 595.58 feet along the arc of a curve to the left with a radius of 3894.83 feet, the chord of which bears S. 76 Deg. 30′ 14″ E., 595.00 feet to the West line of Helmer Road; thence Southerly along the Westerly line of Helmer Road (80 feet wide) the following 6 courses: S. 1 Deg. 04′ 31″ W., 22.65 feet; thence 303.97 feet along the arc of a curve to the left with a radius of 578.00 feet, the chord of which bears S. 13 Deg. 57′ 40″ E., 299.50 feet; thence 234.33 feet along the arc of a curve to the right with a radius of 455.01 feet; the chord of which bears S. 14 Deg. 14′ 37″ E.; 231.75 feet; thence S. 00 Deg. 30′ 36″ W., 668.79 feet; thence 592.12 feet along the arc of a curve to the right with a radius of 2185.43 feet, the chord of which bears S. 08 Deg. 16′ 18″ W., 590.30 feet; thence S. 16 Deg. 02′ 00″ W., 451.51 feet to the East and West ¼ line of said Section 10; thence N. 88 Deg. 58′ 00″ W., 592.10 feet along said East and West ¼ line of Section 10, to the place of beginning. EXCEPT that portion of land described as: Beginning at a point on the West Section line of Section 10, T2S, R8W, Battle Creek Township, Calhoun County, Michigan, which is 187.86 feet South of the Northwest section corner of said Section 10, which is the point of beginning of this description; thence South 73 deg. 14′ 50″ East a distance of 300 feet; thence South 68 deg. 11′ 10″ West a distance of 305.42 feet; thence North along said West section line a distance of 200 feet to the point of beginning. (Contains 0.66 acres of land, m/l) As recorded in Liber 792, pages 235, Calhoun County Register of Deeds.

Parcel N. 51

Lands located in the City of Springfield, County of Calhoun described as:

That part of the following described Tract ''A'' lying Easterly of a line 30.00m (98.43 feet) Westerly of (as measured at right angles and parallel to) a line described as: Beginning at the Northeast corner of Section 9, Town 2 South, Range 8 West, City of Springfield, Calhoun County, Michigan; thence South 00°59′48″ East, 60.00m (196.85 feet) along the East line of (also the construction centerline of Helmer Road (North Leg)) said Section 9 to the point of ending. ALSO that part of Tract ''A'' lying Easterly of a line 22.00m (72.18 feet) Westerly of (as measured at right angles and parallel to) a line described as: Beginning at the Southeast corner of Section 4, Town 2 South, Range 8 West, City of Springfield, Calhoun County, Michigan; thence North 00°38′33″ West, 150.00m (492.13 feet) along the East line of (also the construction centerline of Helmer Road (North Leg)) said Section 4 to the point of ending.

The lands described above in easement contain 2769.26 square meters (29,808 square feet) more or less, of which 1533.31 square meters (16,504 square feet), more or less, is subject to an existing right of way.

Tract ''A'': Beginning at the intersection of the South boundary of abandoned railroad right-of-way with the East line of Section 4, Town 2 South, Range 8 West, distant 352 feet North of the Southeast corner of said Section; thence South to Section corner; thence West on the South line of said Section 900 feet; thence North parallel with East line of said Section 152 feet, more or less, to the South boundary of said abandoned railroad right-of-way; thence Easterly along said abandoned railroad right-of-way parallel with the centerline of road-bed and distant 33 feet Southerly therefrom to the place of beginning.

Exception Therefrom all that part of the South 30 rods of the East ½ of the Southeast ¼ Section 4, Town 2 South, Range 8 West, that lies Southerly of a line 75 feet Northerly of and parallel to the centerline of U.S. 12–A as surveyed.

Also all that part of the North 1/16 of the East 32 acres of the Northeast ¼ of Section 9, T2S, R8W, Battle Creek Township, Calhoun County, Michigan, which lies Northerly of a line 75 feet Northerly of (measured at right angles and parallel to) the construction centerline of Highway US–12A;

Excepting Therefrom the East 33 feet.

The construction centerline of Highway US–12A is described as: Beginning at a point on the East line of Section 9, T2S, T8W, Battle Creek Township, Calhoun County, Michigan, which is 187.86 feet South of the Northeast corner of said Section 9; thence North 73 deg. 14′50″ West a distance of 287.43 feet to a point on a curvature of 3,274.39 foot radius curve to the left, chord bearing North 81 deg. 48′40″ West; thence along the arc of said curve a distance of 978.73 feet to the point of tangency of said curve; thence South 89 deg. 37′30″ West a distance of 100 feet to point of ending.

Subject to use as a Clear Approach Zone for the Northeast end of the Northeast-Southwest runway to the Municipal Airport; and when and if premises cease to used for the purpose for which purchased, it will cause good and sufficient reason for reconveyance to Michigan State Highway Department. (Billboard provision.)

Parcel No. 52

Lands located in the City of Springfield, County of Calhoun described as:

That part of the following described Tract ''A'' lying Westerly of a line 20.00m (65.62 feet) Easterly of (as measured radially and parallel to) a line described as: Commencing at the Northwest corner of Section 10, Town 2 south, Range 8 West, City of Springfield, Calhoun County, Michigan; thence South 00°59′48″ East, 57.82m (189.70

feet) along the West Section line of said Section 10 to the intersection of said West Section line and the survey centerline of I–94BL (Dickman Road); thence South 73°14′50″ East on said survey centerline, 62.859m (206.23 feet) to the point of curvature of a 873.231m (2864.93 foot) radius curve to the left; thence Southeasterly along the arc of said curve 163.037m (534.90 feet), (chord bearing South 78°35′46″ East, chord distance 162.803m (534.13 feet)) to the intersection of said I–94BL survey centerline and construction centerline Helmer Road (South Leg); thence South 01°01′30″ West, 23.002m (75.47 feet) to a point of curvature (point of tangency on plans) of a 163.982m (538.00 foot) radius curve to the left, also being the point of beginning of his description; thence Southerly along said arc of curve 86.067m (282.37 feet), (chord bearing South 14°00′40″ East, chord distance 85.082m (279.14 feet)) to a point of compound curvature; thence southerly along the arc of a 150.879m (495.01 foot) radius curve to the right, 77.700m (254.92 feet), (chord bearing South 14°17′37″ East, chord distance 76.844m (252.11 feet)) to the point of tangency (point of curvature on plans) and the point of ending.

The lands described above in easement contain 1559.45 square meters (16,876 square feet) more or less, of which 993.28 square meters (10,692 square feet) more or less, are subject to an existing right of way easement.

Tract ''A'': The West ½ of Lot No. 8, all of Lots No. 9 through 18, inclusive, and the West ½ of Lot 19, of Block 12 of EDGEWOOD, according to the Plat thereof recorded in Liber 7 of Plats, on page 17, in the Office of the Register of Deeds for Calhoun County, Michigan.

Issued in Belleville, Michigan, December 1, 2000.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 00–32521 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 01–09–C–00–PHL to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 25, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles J. Isdell, Jr., Acting Director of Aviation of the City of Philadelphia at the following address: Philadelphia International Airport, Division of Aviation, Terminal E, Philadelphia, PA 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Roxane Wren, Program Specialist, Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011, 717–730–2830. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 15, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Philadelphia was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 15, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–09–C–00–PHL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2011.

Proposed charge expiration date: October 1, 2011.

Total estimated PFC revenue: $22,250,000.00.

Brief description of proposed project(s):

—Firefighting Training Facility

—Terminal D Expansion

—Moving Sidewalks between Terminals C and D

Class of classes of air carriers which the public agency has requested not be required to collect PFCs:

Air Taxi/Commercial Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Philadelphia.

Issued in Camp Hill, PA on November 29, 2000.

Sharon, A. Daboin,

Manager, Harrisburg ADO, Eastern Region.

[FR Doc. 00–32731 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on October 12, 2000 [65 FR 60714]. Comments were due on or before December 11, 2000. No comments were received.

DATES: Comments must be submitted on or before January 25, 2001.

FOR FURTHER INFORMATION CONTACT: William J. Aird, Office of Ports and Domestic Shipping, Mar–830, Maritime Administration, 400 Seventh Street, SW, Room 7201, Washington, DC 20590,

telephone number 202–366–1901 or fax–202–366–6988. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title of Collection: ''Port Facility Conveyance Information''.

OMB Control Number: 2133–0524.

Type of Request: Extension of a currently approved information collection.

Affected Public: Eligible port entities.

Form(s): None.

Abstract: Public Law 103–160 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program. The collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment/reuse plan; (2) the redevelopment/reuse plan is viable and is in the best interest of the public; and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Annual Estimated Burden Hours: 1,280 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention: MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

By Order of the Maritime Administrator.
Dated: December 18, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32850 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–8544]

Application of Foreign Underwriters to Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from Assicurazioni Generali SpA., an Italian based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Comments regarding this information collection should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the internet at http://dmses.dot.gov/submit. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: December 18, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32851 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2000–8543]

Application of Foreign Underwriters to Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from IF Property and Casualty Insurance LTD., a Swedish based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7 (b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Comments regarding this information collection should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the internet at http://dmses.dot.gov/submit. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, expect Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: December 18, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32852 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–8558]

ARCTIC STORM, SEA STORM, ARCTIC FJORD and NEAHKAHNIE—Applicability of Ownership and Control Requirements for Fishery Endorsement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a petition requesting MARAD to issue a determination that the ownership and control requirements of the American Fisheries Act of 1998 and 46 CFR Part 356 are in conflict with an international investment agreement.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is soliciting public comments on a petition from the owners and managers of the vessels ARCTIC STORM—Official Number 903511, SEA STORM—Official Number 628959, ARCTIC FJORD—Official Number 940866, and NEAHKAHNIE—Official Number 599534, (hereinafter the ''Vessels''). The petition requests that MARAD issue a decision that the American Fisheries Act of 1998 (''AFA''), Title II, Division C, Public Law 105–277, and our regulations at 46 CFR Part 356 are in conflict with the Treaty of Friendship Commerce and Navigation Between the United States and Korea. The petition is submitted pursuant to 46 CFR 356.53 and 213(g) of AFA, which provides that the requirements of the AFA and the implementing regulations will not apply to the owners or mortgagees of a U.S.-

flag vessel documented with a fishery endorsement to the extent that the provisions of the AFA conflict with an existing international agreement relating to foreign investment to which the United States is a party. This notice sets forth the provisions of the international agreement that the Petitioner alleges are in conflict with the AFA and 46 CFR Part 356 and the arguments submitted by the Petitioner in support of its request. If MARAD determines that the AFA and MARAD's implementing regulations conflict with the bilateral investment treaty, the requirements of 46 CFR Part 356 will not apply to the extent of the inconsistency. Accordingly, interested parties are invited to submit their views on this petition and whether there is a conflict between the international agreement and the requirements of both the AFA and 46 CFR Part 356. In addition to receiving the views of interested parties, MARAD will consult with other Departments and Agencies within the Federal Government that have responsibility or expertise related to the interpretation of or application of international investment agreements.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 25, 2001.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dms.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal Holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366–5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 Seventh St., S.W., Washington, D.C., 20590–0001 or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA, Title II, Division C, Public Law 105–277, was enacted in 1998 to give U.S. interests a priority in the harvest of U.S.-fishery resources by increasing the requirements for U.S. Citizen ownership, control and financing of U.S.-flag vessels documented with a fishery endorsement. MARAD was charged with promulgating implementing regulations for fishing vessels of 100 feet or greater in registered length while the Coast Guard retains responsibility for vessels under 100 feet.

Section 202 of the AFA, raises, with some exceptions, the U.S.-Citizen ownership and control standards for U.S.-flag vessels that are documented with a fishery endorsement and operating in U.S.-waters. The ownership and control standard was increased from the controlling interest standard (greater than 50%) of section 2(b) of Shipping Act, 1916, as amended (1916 Act), to the standard contained in section 2(c) of the 1916 Act which requires that 75 percent of the ownership and control in a vessel owning entity be vested in U.S. Citizens. In addition, section 202 of the AFA establishes new requirements to hold a preferred mortgage on a vessel with a fishery endorsement. State or federally chartered financial institutions must now comply with the controlling interest standard of section 2(b) of the 1916 Act in order to hold a preferred mortgage on a vessel with a fishery endorsement. Entities other than state or federally chartered financial institutions must either meet the 75% ownership and control requirements of section 2(c) of the 1916 Act or utilize an approved U.S.-Citizen Trustee that meets the 75% ownership and control requirements to hold the preferred mortgage for the benefit of the non-citizen lender.

Section 213(g) of the AFA provides that if the new ownership and control provisions are determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party, such provisions of the AFA shall not apply to the owner or mortgagee on October 1, 2001, with respect to the particular vessel and to the extent of the inconsistency. MARAD's regulations at 46 CFR 356.53 set forth a process wherein owners or mortgagees may petition MARAD, with respect to a specific vessel, for a determination that the implementing regulations are in conflict with an international investment agreement. Petitions must be noticed in the **Federal Register** with a request for comments. The Chief Counsel of MARAD, in consultation with other Departments and Agencies within the Federal Government that have responsibility or expertise related to the interpretation of or application of international investment agreements, will review the petitions and, absent extenuating circumstances, render a decision within 120 days of the receipt of a fully completed petition.

The Petitioners

Arctic Storm, Inc.(''Arctic Storm, Inc.'') and Sea Storm Fisheries, Inc. (''Sea Storm, Inc.''), both Washington State corporations, Sea Storm LP (''Sea Storm LP''), a Washington State limited partnership, and Oyang Corporation (''Oyang''), a Korean corporation, (collectively referred to as ''Petitioner'' or ''Petitioners'') have filed a petition with MARAD pursuant to 46 CFR 356.53 for a determination that a conflict exists between the Treaty of Friendship, Commerce and Navigation Between the United States of America and the Republic of Korea, signed at Seoul, November 28, 1956 (the ''FCN Treaty'' or the ''Treaty''), 8 UST 2217; TIAS 3947 UST; 302 UNTS 28, and both the AFA and 46 CFR Part 356.

Petitioner states that Oyang, a company duly established and existing under the laws of the Republic of Korea, owns 50% of the joint venture company, Arctic Storm, Inc. The remaining 50% interest in Arctic Storm, Inc. is owned by Arctic Storm Partnership, a Washington State partnership owned entirely by citizens of the United States. Oyang is involved in the ownership or management of the four vessels identified in this petition in the following manner, mainly through Arctic Storm, Inc.:

(1) ARCTIC STORM is owned and managed by Arctic Storm, Inc.;

(2) SEA STORM is owned by Sea Storm, Inc., which is a wholly owned subsidiary of Arctic Storm, Inc. The fishing rights of the SEA STORM are owned by Sea Storm LP, a partnership in which Oyang owns a 49% interest and of which balance is owned by U.S. citizens. Oyang acquired its interest in Sea Storm, Inc. prior to April 1991;

(3) ARCTIC FJORD and NEAHKAHNIE are managed by Arctic Storm, Inc.

Requested Action

The Petitioners have requested a consolidated filing for the Vessels. MARAD's regulations require at 46 CFR 356.53(c) that a separate petition be filed for each vessel for which the owner or Mortgagee is requesting an exemption unless the Chief Counsel authorizes a consolidated filing. The Chief Counsel hereby authorizes the consolidated filing by Petitioners relating to the four Vessels.

The Petitioners seek a determination from MARAD that:

(1) Arctic Storm, Inc., Sea Storm Fisheries, Inc. and Sea Storm, LP are exempt from the requirements of 46 U.S.C. 12102(c) and may maintain their respective ownership agreements with Oyang with respect to the ARCTIC STORM and the SEA STORM; and

(2) the existing management contracts of Arctic Storm, Inc. for the ARCTIC FJORD and the NEAHKAHNIE are protected under the American Fisheries Act.

Petitioner's Description of the Conflict Between the FCN Treaty and Both 46 CFR Part 356 and the AFA

MARAD's regulations at 46 CFR 356.53(b)(3) require Petitioners to submit a detailed description of how the provisions of the international investment agreement or treaty and the implementing regulations are in conflict. The entire text of the FCN Treaty is available on MARAD's internet site at *http://www.marad.dot.gov.* The description submitted by the Petitioner of the conflict between the FCN Treaty and both the AFA and MARAD's implementing regulations forms the basis on which the Petitioners request that the Chief Counsel issue a ruling that 46 CFR Part 356 does not apply to Petitioners with respect to the Vessels. The description from the petition is as follows:

I. Summary of Argument

''The ownership and control provisions of the American Fisheries Act (''AFA'') are directly inconsistent with the Korea Treaty, an existing international agreement relating to foreign investments to which the United States is a party. The issue is relevant to the petitioners (namely, Arctic Storm, Inc., Sea Storm Fisheries, Inc., and Sea Storm LP) and Oyang, a Korean corporation, because the petitioners and Oyang have ownership interests in the entities that own two U.S. flag fishing vessels and their fishing rights, and that manage two other U.S. flag fishing vessels, all of which would be directly impaired by the AFA.

''Specifically, the AFA's unambiguous, retroactive discrimination against fishing companies with foreign ownership interests, for the benefit of those U.S. companies with a super-majority U.S. citizen ownership as required by the Act, is directly at odds with the Korea Treaty.

''The explicit purpose of the Korea Treaty is to encourage international investment between the United States and the Republic of Korea. The Treaty requires that rights legally acquired by Korean investors in U.S. enterprises cannot be impaired. The Korea Treaty also explicitly accords Korean investors national treatment, that is, treatment by the U.S. government as if such investors were U.S. nationals, with respect to their investments in the United States. Perhaps most plainly, the Korea Treaty explicitly forbids interference with Korean investors' rights to control and manage enterprises which they have established or acquired.

''Under Section 213(g) of the Act, the irreconcilable conflict between the investment protection provisions of the Korea Treaty and the AFA's retroactive impairment of Oyang's investment rights requires Marad to grant this petition to exempt the petitioners and Oyang with respect to their ownership and management interests in the ARCTIC STORM, the SEA STORM, the ARCTIC FJORD and the NEAHKAHNIE from application of the U.S. citizen ownership and control requirements of the AFA and the corresponding requirements of 46 CFR part 356.

II. The U.S. Treaties of Friendship, Commerce and Navigation Are a Class of International Agreements Protecting Bilateral Investment

''The Korea Treaty was one of a series of post-World War II treaties designed to create open-door investment between the U.S. and nearly twenty other countries. Unlike previous agreements, these Friendship, Commerce and Navigation treaties dealt explicitly with corporate investment between countries.

''The primary purpose of the FCN treaties in the post-war period was to provide a stable environment for private international investment.[1] The FCN treaties sought ''national treatment,''[2] and were intended as an ''open door'' for foreign investment.[3] After the war, the United States ''took the lead in developing [a liberal] international investment regime, and began to negotiate a series of Friendship, Commerce and Navigation treaties, a major purpose of which was to protect U.S. investment abroad.''[4]

''Federal courts have recognized that the FCN treaties are ''the medium through which the U.S. and other nations could provide for the rights of each country's citizens, their property and their interests, in the territories of the other.'' *Spiess* v. *C. Itoh and Co. (Am.) Inc.*, 643 F.2d 353, 361 (5th Cir. 1981), vacated on other grounds, 457 U.S. 1128 (1982), quoting Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 Am.J.Comp. L. 229 (1956). The purpose of the FCN treaties was ''to assure [non-U.S. nationals] the right to conduct business on an equal basis without suffering discrimination based on their alienage.'' *Sumitomo Shoji America* v. *Avagliano*, 457 U.S. 176, 187–88 (1982). The treaties were the means by which nationals of each country could ''manage their investment in the host country.'' *Lemnitzer* v. *Philippine Airlines*, 783 F. Supp. 1238 (N.D. Cal. 1991), quoting *Spiess, supra* at 361.

''These FCN treaties ''define the treatment each country owes the nationals of the other; their rights to engage in business and other activities within the boundaries of the former; and the respect due them, their property and their enterprises.[5] Foreign investment issues were a centerpiece of the Treaties' purpose:

[The FCN treaties] preoccupation with [national treatment issues] has been especially responsive to the contemporary need for a code of private foreign investment; and their adaptability for use as a vehicle in the forwarding of an investment aim follows

[1] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805 (1958). Herman Walker, Jr., the chief commentator on the Friendship, Commerce and Navigation (''FCN'') treaties, served, at the time of the drafting of the Treaty as Adviser on Commercial Treaties at the State Department and was responsible for formulation of the postwar form of the FCN Treaty, negotiating several of the treaties for the United States. See *Sumitomo Shoji America, Inc.* v *Avagliano et al.*, 457 U.S. 176, 182 (1982).

[2] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 817 (1958).

[3] ''National Treatment'' is defined by Article XXII of the Korea Treaty as ''treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such parties.'' *National treatment is to be accorded automatically and without condition of reciprocity* (*Sullivan Report* at page 64; See, infra at p. 5 fn. 19.) Harold F. Linder, Deputy Assistant Secretary of State for Economic Affairs, testified before the Senate during hearings on ratification of the Korea Treaty (among others) and corrected U.S. Senator Sparkman at this hearing on his misapprehension that ''national treatment'' meant treatment of U.S. nationals in a foreign nation in the way foreign nationals were treated in the United States, clarifying that it meant, instead, treatment of foreign nationals in the U.S. exactly as U.S. citizens are treated. Hearing, Subcommittee on Commercial Treaties and Consular Conventions, at p. 7, 82''d Cong. (May 9, 1952).

[4] Vandevelde, *Sustainable Liberalism and the International Investments*, 19 Mich. J. Int'l L. 373 (1998).

[5] *Wickes* v. *Olympic Airways*, 745 F.2d 363 (6th Cir. 1984), quoting Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805, 806 (1958).

from their historical concern with establishment matters.[6]

''The FCN treaties reached after World War II had:

''a new consideration * * * which lent special impetus to the program following World War ll, was the need for encouraging and protecting foreign investment, responsively to the increasing investment interests of American business abroad and to the position the United States has now reached as principal reservoir of investment capital in a world which has become acutely ''economic development'' conscious.'' [7]

''The FCN Treaties, including the Korea Treaty, are self executing treaties, that is, they are binding domestic law of their own accord, without the need for implementing legislation. See *e.g. Zenith Radio Corp.* v. *Matsushita Electric Industrial Co. Ltd.*, 494 F. Supp. 1263, 1266 (E.D. Pa. 1980). Such treaties are the supreme law of the land, and even federal statutes ''ought never to be construed to violate the law of nations if any other possible construction remains.'' *McCulloch* v. *Sociedad National de Marineros de Honduras*, 372 U.S. 10, 21 (1963). Only when Congress clearly intends to depart from the obligations of a treaty will inconsistent federal legislation govern. *Id. See also Sumitomo Shoji America, Inc.* v. *Avagliano et al., 457 U.S. 176 (1982).* Not only did Congress not intend to depart from the treaty obligations with enactment of the AFA, Section 213(g) is clear evidence that Congress expressly and unequivocally intended to recognize those obligations and to protect them, notwithstanding other provisions of AFA to the contrary.

III. The Korea Treaty Protects Korean Investment in U.S. Companies and the AFA is Clearly Inconsistent With the Korea Treaty

The Korea Treaty foresaw specifically the kind of investment and control restrictions that were included in the American Fisheries Act. The Treaty was intended to promote free investment between the United States and Korea and to restrict the kind of limitations contemplated by the AFA. Several provisions of the Treaty are precisely germane to the issue at hand and are inconsistent with the AFA.[8]

A. Proclamation: Desire for International Investment

''The first provision of the Korea Treaty, entitled ''A Proclamation,'' contains broad language relevant to an understanding of the subsequent Treaty Articles relating to bilateral investment. In particular, the Proclamation states:

''The United States of America and Korea, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of encouraging closer economic and cultural relations between their peoples, and *being cognizant of the contributions which may be made toward these ends by arrangements encouraging* mutually *beneficial* investments, promoting mutually advantageous commercial *intercourse, and otherwise establishing mutual rights and privileges*, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon *the principles of national and of most-favored-nation treatment unconditionally accorded * * *''* (emphasis added).

''Emphasizing the importance of international investment, the Proclamation provides a useful context for interpreting the investment protection provisions of the Treaty.[9] In entering into the Treaty, the United States recognized, and accepted as consideration, the advantages provided by foreign investment in this country and protection of U.S. investments abroad. The national treatment benefits of the Korean Treaty are ''to be accorded automatically and without condition of reciprocity.''

B. Article VII: Protection for Controlling Companies

1. Paragraph 1: Ownership and Control of Enterprises

''Paragraph 1 of Article VII of the Korea Treaty states:

''Nationals and companies of either party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activities for gain (business activities) within the territories of [the United States] directly or by agent or through the medium of any form of lawful juridical entity. * * * Accordingly, such nationals and companies *shall be permitted* within such territories: * * * (b) to organize companies under the general company laws of such other Party, and *to acquire majority interests in companies of [such other Party]; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which the control, whether in the form of individual proprietorships, companies or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party.*'' (emphasis added).

''The expressed purposes of the FCN treaties, and this provision in particular, evidence a central goal of encouraging capital investment between treaty signatories by protecting potential investors from the fear that government action would retroactively impair equity ownership rights in that investment. It is only in this context of mutually understood and guaranteed investment rights that an open invitation to foreign capital to develop the U.S. fishing fleet could be, and was, successful.

''This provision is at the heart of the conflict between the Korea Treaty and the AFA. Denying foreign investors the ability to own, control and manage their existing equity interest in U.S. companies is the most basic element of the AFA. There cannot possibly be any clearer statement of the preclusion of such activity as it relates to Korean investors than is set forth in this provision.[10]

''The clear conflict between Article VII of the Korea Treaty and the AFA's order of retroactive divestment could already be seen from the stated purpose of the legislation that was eventually enacted as the AFA:

''*To prevent foreign ownership and control of United States flag vessels* employed in the fisheries in the navigable waters and

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[6] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805, 806 (1958).

[7] *Wickes* v. *Olympic Airways*, 745 F.2d 363 (6th Cir. 1984), quoting Walker, *The Post-War Commercial Treaty Program of the United States*, 73 Pol. Sci. Q. 57, 59 (1957); *See also*, Waldek, Note, Proposals for Limiting Foreign Investment Risk Under the Exon-Florio Amendment, 42 Hastings L.J. 1175, 1235 (1991).

[8] The conflict between the AFA and certain international treaties has been recognized by one of the principal draftsmen of the Act. In assessing the potential outcome of the interpretation of the AFA's ownership provisions, Senator Slade Gorton (R–WA), one of the chief sponsors of the final legislation, was quoted in the press shortly after the Act passed questioning the validity of the new ownership provisions in relation to these investment treaties: ''Another provision [of the American Fisheries Act] requires vessels operating in this fishery to have at least 75 percent U.S. ownership three years after the law goes into effect. But [Senator] Gorton said that this *Americanization feature ''may very well be found invalid'' under U.S. trade agreements if challenged by foreign ownership interests. Marine Digest and Transportation News* at p. 29 (November 1998) (emphasis added).

[9] One of the sources for the analysis contained in this memorandum is ''The Sullivan Report'' which is an Article-by-Article annotated discussion of the standard draft Treaty of Friendship, Commerce and Navigation, based on the record of negotiation, State Department messages providing instructions or reporting on negotiating sessions, and internal memoranda dealing with issues raised in the course of negotiations. The Sullivan Report was completed in November, 1973 (hereinafter cited as the ''*Sullivan Report*''). The *Sullivan Report* states that the standard FCN Treaty Preamble (designated ''Proclamation'' in the Korea Treaty'') ''has legal effect, for the courts to rely upon it at as guide to interpretation concerning the applicability of the operative articles.'' *Sullivan Report* at 62.

[10] Paragraph 3 of Article VII also permits signatory Parties to prescribe ''special formalities'' with respect to the establishment of alien controlled enterprises under Paragraph 1, ''but such formalities may not impair the substance of the rights set forth in said paragraph.''

exclusive economic zone of the United States * * *'' (emphasis added).[11]

Ownership and Control of Investments

''The AFA would force the Korean investor in Arctic Storm Inc.[12] to sell its interest and to relinquish control over its remaining investments in the enterprise.

''Forced divestiture of a legally acquired interest in a U.S. company is clearly inconsistent with the protections required by Article VII, above. Article VII conspicuously anticipates and precludes precisely this situation. Article VII also requires that enterprises controlled by Korean nationals shall be accorded ''national treatment.''[13] Such an obligation can hardly be met by requiring the transfer of ownership and control interests of a company from Korean investors to U.S. nationals.[14]

''Additionally, under the Act, if Korean nationals seek to retain control over a U.S. corporation owning a fishing vessel, the assets of that company (*i.e.* the fishery endorsements permitting vessels to fish) will be rendered valueless on October 1, 2001. Bankrupting corporations because of their Korean investors hardly constitutes ''national treatment.''

''Similarly, Article VII guarantees to Korean investors the ability to control their investments. Thus, the AFA's prohibition on any form of ''control'' of a business—defined by the AFA as the right to ''direct the business,'' limit the actions of or replace a manager in the business, or direct the operation or manning of a vessel—being held by a non-U.S. citizen are also plainly inconsistent with Article VII.[15]

''The U.S. State Department has repeatedly recognized these interpretations of Article VII in formulating its foreign policy positions.[16] Similarly, the history of the negotiations between the U.S. State Department and the Korean Foreign Ministry over the Korea Treaty provides ample support for the importance both signatory nations placed upon the provision guaranteeing ownership and control of majority shares in one another's companies. State Department negotiators insisted upon inclusion of this provision, over the Korean Foreign Ministry's opposition. The issue was discussed in depth over the course of two years, and in the end, the U.S. position prevailed.''[17]

2. Paragraph 2: Prohibition on Retroactive Limitations

Paragraph 2 of Article V11 states:

''Each Party reserves the right to limit the extent to which aliens may establish, acquire interests in, or carry on enterprises engaged within its territories in * * * banking involving depository or fiduciary functions, or the exploitation of land or other natural resources. However, new limitations imposed by either Party upon the extent to which aliens are accorded national treatment, with respect to carrying on such activities within its territories, *shall not be applied as against enterprises which are engaged in such activities therein at the time such new limitations are adopted and which are owned or controlled by nationals and companies of the other Party.*'' (emphasis added).

''As if the provisions of Paragraph 1 were not sufficient, Paragraph 2 of Article VII requires that even where a signatory Party is permitted to impose investment related limitations in certain industries, including exploitation of natural resources[18] and ''fiduciary functions,'' *such limitations may not be imposed retroactively.* Once again, the Treaty anticipates the current situation and ensures that even more sensitive industries are protected against *post hoc* limitations. This difference was recognized contemporaneously with the Treaty.

''For while practical treaty negotiating objectives must concede the notion of selectivity and differential control on entry of investments, its historical protective role would be lost if it began admitting the legitimacy of discriminating against

[11] S. 1221, 105th Cong. (1997).

[12] As stated earlier, Arctic Storm Inc. owns the fishing vessel ARCTIC STORM and, through a wholly owned subsidiary, the fishing vessel SEA STORM. There is no question that Arctic Storm Inc. engages in commercial activities directly or through related entities: the sale of fish harvested by these fishing vessels, and the fish processing undertaken aboard the vessel ARCTIC STORM. Processing is described as covering all ''manipulation'' of a product short of manufacturing. *Sullivan Report* at 133. Finally, Arctic Storm, Inc. is directly engaged in financial activities: *e.g.*, the investment of funds in the U.S. fishing industry. See *Sullivan Report* at 133: The line of demarcation was never explicitly drawn between the terms ''commercial'' and ''financial.'' Finally, the word ''industrial'' was used so as to provide the *broadest possible coverage*, limited only by [explicit treaty reservations].

[13] In this context, it is important to note that the ''national treatment'' standard is considered ''first class treatment,'' and ''the hallmark of the [FCN] Treaty program is the advanced degree to which it espouses the rule of national treatment; that which the citizens of the country enjoy * * *'' Walker, *Modern Treaties of Friendship, Commerce and Navigation*, supra at 811. See also, *Exhibit C* to the petition: Statement of the Honorable Walter Dowling, Ambassador of the United States to the Republic of Korea on the Occasion of the Signing of the [Korea Treaty]: ''The Treaty contains 25 articles and a protocol which cover in some detail a wide range of subject matter. In brief, each of the two countries: agree to accord within its territories to citizens and corporations of the other, *treatment no less favorable than it accords to its own citizens and corporations with respect to carrying on commercial and industrial activities.*'' (emphasis added). See also Jones Study at 57 (''protection is afforded to any privilege granted * * * prior to a change in national treatment * * * at a minimum these foreign enterprises are guaranteed the maintenance of their existing operations'').

[14] See, Sullivan Study at 149: ''rights which have been extended in the past shall be respected and exempted from the application of new restrictions.''

[15] Article II of the Korea Treaty adds additional support to Article VII's requirement that Korean investors be permitted to hold control over enterprises in which they have invested. Article II states:

''Nationals of either Party shall be permitted to enter the territories of the other Party and to remain therein: * * * for the purpose of developing and *directing the operations of an enterprise in which they have invested*, or in which they are actively in the process of investing, *a substantial amount of capital* * * *'' (emphasis added).

[16] In 1971, the State Department opposed legislation in Guam requiring that 50% of the voting stock of corporations doing business in Guam be owned by U.S. citizens. The State Department took the position that such legislation was inconsistent with Article VII of the Korea FCN Treaty, which establishes a right to national treatment of non-U.S. companies and nationals engaged in business activity. The State Department's position on this and other FCN issues are reviewed in the ''Jones Study,'' prepared by Ronny E. Jones for the U.S. State Department, and is a compilation of post-World War II State Department positions on FCN Treaties through 1981 (hereinafter cited as the ''*Jones Study*''). See *e.g.* State Department position re: Letter to A. Papa (U.S. Attorney General's office) from F.R. Brown (Legislative Counsel of 11h Legislature of Guam), Sept. 27, 1971, *Jones Study* at 76. See also, State Department position concluding under the French FCN Treaty that control and national treatment provisions ''bar new discriminatory limitations from being applied to established or authorized operations and rights of a protected foreign company'' (differentiating from permissible prospective limitations on ownership), *Jones Study* at 54; State Department position opposing Korean government's restricting foreign majority ownership of companies in certain industries, October, 1972, *Jones Study* at 86; State Department position opposing Thai government's restrictions on majority ownership of companies in some industries, 1972, *Jones Study* at 104–106.

[17] Korea was concerned that the FCN Treaty with the United States would become a model for future treaties with other nations, including Japan and China. Korea argued that provisions permitting majority foreign ownership would allow domination of Korean industries by China and Japan. Nevertheless, in the end, the U.S. position prevailed. See e.g. *Exhibit A* to the petition: Explanation of Reasons for the Changes as Proposed by the Korean Draft for the U.S. Draft of the [Korea Treaty]; Telegram from American Embassy in Seoul to Department of State; January 8, 1955; Telegram from American Embassy in Seoul to Department of State; February 18, 1955; Department of State Instruction to American Embassy in Seoul, April 5, 1955; Telegram from American Embassy in Seoul to Department of State, June 3, 1955.

[18] It is important to note, however, that ''the exploitation of land or other natural resources'' does not include fish processing. The Department of State represented to the House Merchant Marine and Fisheries Committee that ''[n]either of the Article VII exceptions to national treatment relate to vessels engaged in the canning and packing of fish.'' Similarly, in 1966, during discussions over the identical language in the U.S. Japan FCN Treaty, the State Department cabled the U.S. Embassy in Tokyo that national treatment covered fish processing enterprises at sea. Korea Treaty Negotiating History, July 21, 1966 (p. 1).

investments legally present in the territory.'' [19]

Similarly, while:

''either Party may prohibit or limit alien entry into an excepted field of activity, but if nevertheless, entry has been in fact permitted, the enterprise in question is protected against later discrimination. (emphasis added).[20]

''Internal Commerce Department memoranda during the negotiations further substantiate the understanding by the United States and Korea that investments would be secure from discrimination ''once they are established.'' [21]

''The State Department's *Sullivan Report* sets forth the extent to which Paragraph 2 protects existing companies in a newly restricted industry. Such a company ''enjoy[s] what may be considered normal business growth in terms of acquiring new customers and increasing the dollar volume of its business, but cannot claim expanded privileges.'' [22] Thus, the Treaty makes crystal clear the intention of both the United States and Korea to protect their respective investors from retroactive divestiture of assets and loss of control over investments and mortgage property.

3. Paragraph 4: Most Favored Nation Status

Paragraph 4 of Article VII requires most-favored-nation treatment with respect to ''any of the matters in [Article VII].'' Most-favored-nation treatment is defined by Article XXII of the Korea Treaty as ''treatment accorded * * * upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country. Thus, it is important to note that *if nationals of any other country are afforded protection under Section 213(g) of the Act, failure to provide the same protection to Korean nationals would also be inconsistent with Article VII.*

C. Article VI, Paragraph 3: Impairment of Interest in Supplied Capital Prohibited

''Paragraph 3 of Article VI of the Korea Treaty prohibits signatory Parties from taking:

''*unreasonable or discriminatory''* [23] *measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established, in their capital, or in the skills, arts or technology which they have supplied * * *''* (emphasis added).

''This Article was included:

''to provide in general that expropriations and sequestrations, should they occur, shall be implemented in a non-discriminatory manner (so as, for example, to preclude an unequal selection of enterprises for nationalization). Moreover, to account for the possibility of injurious governmental harassments short of expropriation or sequestration, there is included a general injunction against ''unreasonable or discriminatory'' impairments of vested interests.'' [24]

''The *explicit* purpose and effect of the AFA is to discriminate against foreign nationals and companies. The Act's ownership provisions require Korean investors to sell their equity and turn over management and control of the remainder of their investments, (which were entered into in large measure because of the technical expertise they possess in the fishing industry), entirely to their U.S. partners. On their face, these provisions directly ''impair the legally acquired interests'' of Korean investors both ''in the enterprises which they have established,'' and ''in their capital * * * which they have supplied.''

''Terminating control over assets to a limited class of persons is *inherently* an unreasonable and discriminatory measure impairing the legally acquired rights of Korean investors in their enterprises and the *capital they have supplied.* Historically, limitations on the ability to participate in certain businesses has been a hallmark of discrimination against minority groups in times of intolerance.[25]

''The ownership provisions are particularly unreasonable and discriminatory when understood in the context of an explicit invitation by the U.S. Congress and the U.S. fishing industry to foreign, in this case Korean, investors, to invest in the U.S. flag fishing fleet.[26] In effect, the Act retroactively practices a ''bait and switch'' operation upon Korean investors: invite their participation, use their capital to build a U.S. fleet, and then take away their ability to control their own investments by statute.[27]

''The impact of such discriminatory treatment is self-evident. For example, the imposition of intrusive and discriminatory restrictions on transactions between U.S. fishing vessel owners and non-citizen lenders, fish processors and fish buyers places Korean-owned fish processors and other fish buyers at a significant competitive disadvantage. For one thing, their wholly U.S.-owned competitors remain free to obtain a reliable supply of fish by entering into exclusive sales contracts arrangements and the like with the owners of U.S. fishing vessels on terms which Korean-owned fish buyers would be prohibited from using.

''Thus, there is an irreconcilable conflict between the Treaty provision prohibiting measures impairing the legally acquired interests of Korean investors ''in [the] capital * * * which they have supplied'' and the provisions of the AFA prohibiting them from involvement in corporate affairs.[28]

[19] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, supra at 820.

[20] Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 American Journal of Comparative Law 229 (1956).

[21] *See Exhibit B* to the petition: Commerce Department Memoranda re: Position Regarding the FCN Treaty Negotiation With Korea, Aug. 15, 1955. (referring specifically to Korea's acceptance of the U.S. position that U.S. investments in Korea must be secure from discrimination once established).

[22] *Sullivan Report* at p. 150.

[23] The term ''discriminatory'' as used in this context would comprehend denials of either national or most-favored-nation treatment, or both * * * *the intent is to protect against retroactive impairment of vested rights if the acquisition of such rights was lawful* * * *''* (emphasis added). *Sullivan Report* at 115.

[24] Walker, *Treaties for the Encouragement and Protection of Foreign Investment* Present United States Practice. 5 American Journal of Comparative Law 229 (1956).

[25] Rather than merely imposing, for example, a tax or levy on companies with Korean investment, the Act simply requires that Korean investors get out of the business altogether, preventing them from exercising any corporate oversight over the small investment they are permitted to retain.

[26] U.S.-Korea Agreement Concerning Fisheries Off the Coast of the United States, 34 UST 3617 (1982), (''Korean GIFA''), which expired in 1995, is relevant to this analysis. The Korean GIFA operative at the time Oyang invested in the ARCTIC STORM required Korea ''to cooperate with and assist the United States in the development of the United States fishing industry,'' and ''to enter into ''joint ventures and other arrangements * * *'' Thus, it is clear that the U.S. in fact sought to *encourage* Korean investment, rendering more inequitable the effort under the AFA to force relinquishment of that investment.

[27] See Appendix 5: *Why They Invested: U.S. Encouragement of Foreign Investment in the U.S. Fishing Fleet.*

[28] Article IX of the Korea Treaty explicitly applies the protections afforded by the rest of the Treaty, and in particular those protections secured by Articles V, VI and VII of the Treaty, to the purchase, ownership and *disposition* of property. Paragraph 2 *of* Article IX sets out the only conditions under which nationals and companies of either party may be required to dispose of property they have acquired. Article IX permits such limitations on ''movable property'' *so long as such the limitations conform to Article VII and all other provisions of the Korea Treaty.* As set forth above and below, the AFA's retroactive equity divestment requirements do not conform with Article VII and the other provisions of the Korea Treaty. Therefore, under Article IX of the Korea Treaty, it is clear that ownership of interest in movable property may not be subject to forced retroactive divestiture.

D. Article I: Equitable Treatment

''Article I of the Korea Treaty states:

''Each Party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of nationals and companies of the other Party.'' (emphasis added).

''This Article was intended to provide a ''fail safe'' mechanism in the Treaty to ensure that fair and equitable treatment be afforded to nationals of both countries.[29] The forced divestiture of investments and/or sale of assets cannot be viewed as equitable treatment under any reasonable reading of Article 1.

E. Article XIX: Vessels Flying the U.S. Flag Are Deemed U.S. Vessels for Purposes of Access to U.S. Fisheries

''Paragraph 3 of Article XIX of the Korea Treaty states:

''* * * *each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.''* (emphasis added).

''This provision allows the United States and Korea each to reserve exclusive rights and privileges to ''*its own vessels*'' operating in the fisheries of their respective countries. The national identity of a vessel is determined by the country in which the vessel is documented, *i.e.* by the flag that it flies. The national identity of a vessel is not determined by the nationality of the investors in the owning entity.[30] The U.S. took advantage of this permission in the 1976 Magnuson-Stevens Act when it provided priority access to the fisheries in the U.S. Exclusive Economic Zone to *vessels of the United States, i.e.*, vessels documented under the U.S. flag.[31]

''Both the ARCTIC STORM and the SEA STORM are vessels documented under the laws of the United States. Half of the ultimate ownership of both owning corporations is held by foreign investors. The purpose of this provision in the Treaty was to allow the United States and Korea the opportunity to restrict fisheries to vessels each country controlled through the flag of the vessel,[32] not to restrict the availability of investment capital in the owning entity.

''This issue is further clarified by Paragraph 2 of the very same Article, which states explicitly:

''Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.'' (emphasis added).

''Since the Treaty, the State Department has reaffirmed that the Article XIX exemption only applies to the activities of fishing vessels, not investment in those vessels. Specifically, the State Department has stated that Article XIX is limited to the ''catching or landing of fish.'' [33] The Sullivan Report confirms that Article XIX ''relates to the treatment of vessels and to the treatment of their cargo. It is not concerned with the treatment of the enterprises which own the vessels and the cargoes.'' (emphasis added) [34]

''Thus, Article XIX does not permit the United States to reserve rights or privileges over investment to Americans in U.S. flag vessels. On the contrary, it guarantees U.S. flag vessels having Korean investors who control their own investment equal access to U.S. fisheries.

F. Article VI: Taking of Property and Just Compensation

Paragraphs 4 and 5 of Article VI of the Korea Treaty state:

''Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, *nor shall it be taken without the prompt payment of lost compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof* * * *

Nationals and companies of either party shall in no case be accorded, within the territories of the other Party, *less than national treatment* [35] and most favored nation treatment with respect to the matters set forth in [the above paragraph].'' (emphasis added).

''There is no practical difference between forcing a sale of property to the U.S. government and forcing such a sale to American nationals.[36] Thus, to the extent that a forced sale of property (1) diminishes the value of the asset for the company by virtue of the AFA's passage; or (2) results in a below-market sale of assets, the AFA violates Article Vl,[37] as it makes no provision for compensation of Korean investors.[38] [39]

(1) Ownership of Stock is a Property Interest

''It is settled law that ownership of stock constitutes a specific interest in

[29] This Article ''provides a basis for making representation against actions detrimental to [a signatory's] interests that may not be covered by any specific legal rule in the treaty, as, for example, a measure that is superficially nondiscriminatory but is so framed as to harm only some [signatory's] interest * * * the construction leading to a just or equitable result is to be preferred.'' *Sullivan Report* at 67. See also, Webster's New Universal Unabridged Dictionary, Barnes and Noble Books, 1996, ''Equitable: 1. Characterized by equity or fairness; just and right; fair; reasonable: equitable treatment of all citizens''; Black's Law Dictionary, 7th ed. West Publishing, 1999, ''Equitable: just; conformable to principles of justice and right.''

[30] In order to be documented under the U.S. flag, for example, a vessel must be owned by a U.S. citizen corporation, partnership or other entity. There is no limitation on the citizenship of the stockholders or other investors for the basic documentation of the vessel. Should the vessel be used in specific trades, such as coastwise or fisheries, there may be a limitation on the citizenship of the stockholders or investors. It is significant to note that *at the time the Korea Treaty was signed there was no such limitation on the citizenship of who could invest in entities owning U.S. flag fishing vessels. See* The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, Pub. L. 100–239, 101 Stat 1778 (1988).

[31] To be eligible for U.S. vessel documentation, a vessel must be owned by a U.S. citizen entity. A corporation qualifies as a U.S. citizen if it is incorporated under the laws of the United States, and the Chief Executive Officer, the Chairman of the Board and the directors meet individual citizenship requirements. As with most U.S. companies, there is *no limitation* on the citizenship of the *stockholders* of the corporation. The citizenship of the stockholders of a corporation that owns a vessel becomes relevant only if the vessel seeks to qualify for operation in certain trades or participate in certain government programs. 46 U.S.C. Chapter 121; Merchant Marine Act, 1936, 46 App. U.S.C. 1101, et seq. In 1976 when the MagnusonStevens Act was first enacted, there was no citizenship limitation on the investors in an entity owning a vessel with a fishery endorsement.

[32] The fact that the vessel is documented under the laws of the United States gives the United States jurisdiction over the vessel in significant ways, including the manning of the vessel, payment of federal and other taxes, compliance with environmental laws, including those relating to the management of the fishery resources.

[33] See *Jones Study* at pp. 80–81.

[34] *Sullivan Report* at p. 284.

[35] ''National Treatment'' is defined by Article XXII of the Treaty as ''treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such parties.''

[36] ''The rule of just compensation covers partial takings. In such cases, the compensation should be a full approximation of the amount by which the taking impaired the value of the property.'' *Sullivan Report* at 117.

[37] At the very least, Paragraph 3 of Article VI requires application of a standard similar to that under the Fifth Amendment to the United States Constitution. Paragraph 5 of Article VI requires that Korean citizens ''shall in no case be accorded * * * less than national treatment * * * with respect to the matters set forth'' in paragraph 3. No federal court would permit the government to force a sale of assets by a U.S. citizen, thus denying that citizen any use of that property in the future, without requiring just compensation. The Korean Protocol 2 appended to the Korea Treaty requires that the provision of Article VI for payment of just compensation shall extend to interests held directly or indirectly by nationals and companies of either party.

[38] ''The intent of this requirement [that provision is made for the determination and payment of compensation] is to afford protection against *ex post facto* proceedings that could work to the disadvantage of the person whose property is taken.'' *Sullivan Report* at 119.

the corporation's property. 11 W. Fletcher, Cyclopedia of the Law of Private Corporations § 5100 (1971 ed.). As set forth above, the AFA requires that Korean nationals sell their property to Americans.

''Such a forced sale represents a taking of property requiring just compensation. In direct violation of the Treaty, the Act makes no provision whatsoever for the ''determination and payment'' * * * ''represent [ing] the full equivalent of the property taken.'' While requiring that Korean investors sell their property, the Act fails to give any form of guarantee that they will receive the ''full equivalent'' worth of the property taken.[40]

''This precise language of Article VI is present in a number of Friendship Commerce and Navigation Treaties or similar treaties to which the U.S. is a party. The language has been repeatedly held by U.S. courts to require payment of just compensation when property belonging to nationals of signatory nation has been negatively impacted by government action. See *e.g. Kalamazoo Spice Extraction Co.* v. *The Provisional Military Government of Socialist Ethiopia,* 729 F.2d 422 (6th Cir. 1984); *American International Group, Inc.* v. *Islamic Republic of Iran,* 493 F. Supp. 522 (D.D.C. 1980).

(2) ''Taking of Property'' Under the Treaty Should Be Defined More Broadly Than Under the U.S. Constitution

''It is important to note that unlike the Fifth Amendment to the United States Constitution which contains only limited and undefined language on just compensation[41] the Treaty states explicitly and in detail the form and timing of compensation for Korean investors whose property has been divested.[42] The precision with which the Treaty delineates these issues indicates the strength of the signatory nation's resolve to ensure just compensation in the case of legislation having an adverse and discriminatory impact on their nationals in the other country. In the context of the Treaty, therefore, it is likely that a court would apply a broader definition of the phrase 'taking of property,' than in interpretation of that term in cases relating to the Fifth Amendment.

''Secondly, the purposes and policies involved in a treaty negotiation between countries are different from those involved in the Fifth Amendment to the U.S. Constitution. It is well established that the Fifth Amendment ensures that Americans whose property was seized by the government be paid for it. Specifically, the purpose of the takings clause is to preclude the government from ''forcing some people alone to bear public burdens that, in all fairness and justice, should be borne by the public as a whole.[43]

''In the case of the Treaty, the Korean government was engaged in an arms length negotiation with the United States and gave up certain rights with respect to U.S. investors in Korea in return for gaining rights for its nationals investing in U.S. companies. The goal of the Treaty was to foster a stable business climate. Hence, in interpreting the meaning of a ''takings'' under Article VI of the Korea Treaty, a broader standard should be applied.

IV. Conclusion: The Inconsistencies Between the Korea Treaty and the AFA Entitle the Petitioners and Oyang to be Exempt From the Act's Ownership and Control Requirements With Respect to the Vessels Pursuant to the Terms of Section 213(g) of the Act

''The Korean Treaty clearly contemplates, and just as clearly prohibits, the kind of investment and related restrictions that are imposed on vessel owners under the AFA. Should the United States or the Republic of Korea have wished to exclude the fishing industry from the breadth of the investment protections granted by the Korean Treaty, they could easily have done so.[44] They did not.

''At no time, does the Korea Treaty permit the United States to force Korean companies operating in the national fisheries to give up ownership or control of existing assets. Article VII's prohibition on retroactive limitations—specifically in the context of ''exploitation of natural resources''—could not be more clear.

''The primary author of the FCN Treaty stated its purposes as follows:

The intergovernmental regulation of these rights, by the establishment of reciprocally binding rules of law, requires a certain community of ideals regarding the respect for private property, the dignity of the individual, and the degree to which the foreigner should be allowed to participate in the economic life of the country. It also requires mutual forbearance, and an interest in undertaking formal long term commitments towards the foreigner, binding as against internal legislative and administrative freedom. The outward limits of any treaty to which the United States subscribes are accordingly set by the extent of the rights it is willing to accord in face of its own state and federal legislation.[45]

''It is also important to note that Article XXIV, paragraph 1 of the Korea Treaty states: ''Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.'' The Korean Government has indicated strong interest in this issue; consultation with the co-signatory of the Korea Treaty is implicitly mandated by the AFA in determining the appropriate interpretation of the Korea Treaty and its conflict with the AFA.

''Marad should therefore grant the accompanying petition pursuant to Section 213(g) of the American Fisheries Act and 46 CFR 356.53 promulgated thereunder, and rule that:

''(1) Arctic Storm, Inc., Sea Storm Fisheries, Inc. and Sea Storm, LP are exempt from the requirements of 46 U.S.C. 12102(c) and may maintain their respective ownership agreements with Oyang with respect to the ARCTIC STORM and the SEA STORM; and''

(2) The existing management contracts of Arctic Storm, Inc. for the ARCTIC FJORD and the NEAHKAHNIE are protected under the American Fisheries Act.[46]''

[40] ''This is an especially valuable right in a day when nationalizations, often entailing great loss to private owners, has tended to become not uncommon.'' Walker, Modern Treaties of Friendship, Commerce and Navigation, supra at 823.

[41] ''nor shall private property be taken for public use, without just compensation.'' U.S. Const. Amend. V.

[42] Nevertheless, it is important to note that the protections of the Fifth Amendment have been extended to ''alien friends'' whose property is taken by the U.S. government. *Russian Fleet* v. *United States*, 282 U.S. 481 (1931).

[43] *Armstrong* v. *United States,* 364 U.S. 40, 49 (1960).

[44] For example, Paragraph 6 of Article XIX likewise reserves exclusive rights and privileges to each signatory's own vessels with respect to national fisheries.

[45] Walker, *Modern Treaties of Friendship, Commerce and Navigation, supra* at 824.

[46] The National Marine Fisheries Service has issued an opinion permitting the vessels SEA STORM and the NEAHKAHNIE to lease their harvest quota shares under the co-op arrangement to the ARCTIC STORM and the ARCTIC FJORD. Both the SEA STORM and NEAHKAHNIE are explicitly named in the AFA as catcher vessels delivering to catcher/processors eligible to participate in a fishery cooperative. Section 208(b). The AFA also directs Marad to minimize disruptions ''to the commercial fishing industry * * * and to the opportunity to form fishery cooperatives.'' Section 203(b). Thus, it is clear that Congress intended that such existing contractual relationships—between named catcher vessels and catcher processors otherwise permitted in the fishery—should not be disrupted. An inconsistency finding under Section 213(g) with respect to Arctic Storm, Inc., Sea Storm Fisheries, Inc., Sea Storm, L.P, and Oyang, therefore permits the continuation of the existing contractual arrangements between the SEA STORM and the NEAHKHANIE and the catcher processors with which they contract.''

This concludes the analysis submitted by Petitioner for consideration.

By Order of the Maritime Administrator.

Dated: December 19, 2000.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 00–32853 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 25]

Notice of Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice announces that the Research and Special Programs Administration (RSPA) is publishing this notice seeking public comments on a proposed renewal of an information collection for *Incorporation by Reference of Industry Standard on Leak Detection.* This information collection requires that hazardous pipeline operators who have leak detection systems must maintain records of these systems.

DATES: Comments on this notice must be received February 26, 2001.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, DC 20590, (202) 366–6205 or by electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Incorporation by Reference of Industry Standard on Leak detection.

OMB Number: 2137–0598.

Type of Request: Extension of an existing information collection.

Abstract: Pipeline safety regulations do not require hazardous liquid pipeline operators to have computer-based leak detection systems. However, if these operators choose to voluntarily acquire such software-based leak detection systems they must adhere to the American Petroleum Institute API 1130 in operating, maintaining and testing their existing software-based leak detection systems. The testing information of these systems must be maintained by hazardous liquid pipeline operators.

Respondents: Hazardous liquid pipeline operators that use computational monitoring systems (CPM's) for leak detection.

Estimate of Burden: 2 hours per operator.

Estimated Number of Responses per Respondent: 1.

Estimated Total Burden: 100 hours.

Estimated Number of Respondents: 50.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 from 9:00 a.m. to 5:00 p.m., Monday through Friday except Federal holidays. They also can be viewed over the Internet at http://dms.dot.gov.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 19, 2000.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 00–32855 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2001–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2001 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2001 RCAF (Unadjusted) is 1.085. The first quarter 2001 RCAF (Adjusted) is 0.597. The first quarter 2001 RCAF–5 is 0.574.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DA● TO● DA OFFICE SOLUTIONS, Room 405, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 19, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–32837 Filed 12–22–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33974]

Tulsa-Sapulpa Union Railway Company, L.L.C.—Acquisition and Operation Exemption—Union Pacific Railroad Company

Tulsa-Sapulpa Union Railway Company, L.L.C., a limited liability company and Class III rail carrier, has filed a verified notice of exemption

under 49 CFR 1150.41 to lease and operate a line of railroad owned by Union Pacific Railroad Company. The line, known as the Jenks Industrial Lead and also referred to as the Midland Valley Branch, runs south and southeasterly between Tulsa, OK, milepost 149.29, and Jenks, OK, milepost 136.40, a distance of approximately 12.68 miles.

The parties report that they intend to close the transaction on the later of the effective date of the exemption or January 1, 2001. The earliest the transaction can be consummated is December 21, 2000 (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33974, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Byron D. Olson, Esq., Felhaber, Larson, Fenlon & Vogt, P.A., 601 Second Avenue South, Suite 4200, Minneapolis, MN 55402.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 19, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–32838 Filed 12–22–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Amendment of system of records notice ''veteran's spouse or dependent civilian health and medical care records–VA''.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently known as ''Veteran's Spouse or Dependent Civilian Health and Medical Care Records–VA (54VA136)'' as set forth in the **Federal Register** 88 FR 14242 (6/24/88). VA is amending the system by revising the paragraphs for System Name; System Location; Categories of individuals covered by the system; Categories of records in the system; Routine uses or records maintained in the system, including categories of users and the purposes of such uses; Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system; the location of the records and revising routine use statements; Safeguards; System manager(s) and address; Notification procedure; Record access procedures; Record source categories. VA is republishing the system notice in its entirety at this time.

DATES: Comments on the amendment of this system of records must be received no later than January 25, 2001. If no public comment is received, the new system will become effective January 25, 2001.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: VHA Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: The name and number of the system is changed from ''Veteran's Spouse or Dependent Civilian Health and Medical Care Records–VA'' (54VA136) to ''Health Administration Center Civilian Health and Medical program Records–VA'' (54VA17) to reflect organizational changes. The system location has been amended to reflect the current address of the Health Administration Center in this system. The Authority Section has been amended to reflect the current legal authority to maintain these records. Wording has been revised in this system to reflect that Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) has been renamed by the Department of Defense as TRICARE. The categories of individuals covered by the system has been amended to include the health care providers who treat CHAMPVA beneficiaries. The categories of records in the system has been amended to include other health insurance information collected and the type of medical services provided in order to process claims for payment.

Title 38, United States Code, section 1713 requires VA to administer health care benefits for the dependents of certain veterans. This program is known as the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). VHA established the CHAMPVA Center in 1988 as the organization responsible for management of the CHAMPVA program. The CHAMPVA Center was recently renamed the Health Administration Center (HAC). The HAC administers all activities of the CHAMPVA program, including claims processing and an automated call center. In the process of daily activities, HAC is required to obtain and disclose certain information to make determinations of eligibility, issue authorization for medical services and provide payment and benefit data. This information is disclosed to health care providers, trading partners and contractors, CHAMPVA sponsors, beneficiaries and their representatives.

The following terms used in this System of Records are defined as follows:

- Trading Partners and Contractors—A trading partner or contractor is a third party organization that submits claims to CHAMPVA for payment consideration under either a formal Memorandum of Understanding or contractual agreement with HAC.
- CHAMPVA Sponsors, Beneficiaries and their Representatives—A CHAMPVA sponsor is the veteran whose dependents are eligible for CHAMPVA benefits. A CHAMPVA beneficiary refers to the eligible children and spouse of a CHAMPVA sponsor. A representative is an individual designated by a CHAMPVA beneficiary to act in their behalf or in the case of a minor, his or her parent or guardian.

Several routine use disclosures have been amended, as described below, to enable efficient administration of the program and granting of medical benefits to eligible beneficiaries.

- Routine use one (1) has been revised and amended to enable disclosure of claimant information in this system of records to health care providers, trading partners, contractors, and CHAMPVA beneficiaries contacting the HAC. Generally, the purpose of these contacts is to verify eligibility for benefits, obtain benefit information, obtain benefit assistance, resolve claim issues, verify payment for services, obtain authorization for medical

services, and obtain financial and billing information for accounting purposes.

• Routine use 23 has been added to enable the exchange of certain information in this system of records to validate CHAMPVA beneficiary social security numbers and Medicare eligibility. Medicare information is required by Statute to determine beneficiary eligibility for CHAMPVA benefit. In order to obtain Medicare information, the beneficiary's social security number must be valid.

• Federal regulation (38 CFR part 17, §§ 17.270 through 17.278) requires health care providers who deliver medical services to CHAMPVA beneficiaries to accept the CHAMPVA determined allowable reimbursement rate as payment in full for rendered services. Since implementation of this regulation on October 9, 1998, some health care providers have elected not to provide medical services to CHAMPVA beneficiaries. Thus, routine use 24 has been added to enable VA to disclose the name and address of health care providers who provide medical services to CHAMPVA beneficiaries.

• Routine uses 11 and 12 have been revised to eliminate disclosure of information in this system as a result of Federal, State and municipal subpoenas.

The paragraph ''Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records'' has been amended to reflect that some paper documents and those received electronically are maintained electronically. The wording in the paragraph ''Safeguards'' has been revised to reflect current practices. The paragraph ''Retention and Disposal'' has been amended to reflect that those paper documents that are scanned onto optical disk for electronic storage are destroyed after scanning.

The purpose of this system of records is to establish and monitor eligibility and process medical claims for payment for certain beneficiaries of eligible veterans. Information submitted by health care providers that is included in this System of Records is used to process claims and may be used as a provider referral source to CHAMPVA beneficiaries.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 522a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: December 12, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

54VA17

SYSTEM NAME:

Health Administration Center Civilian Health and Medical Program Records–VA.

SYSTEM LOCATION:

Records are maintained at the Health Administration Center, 300 South Jackson Street, Denver, Colorado 80209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who seek health care under Title 38, United States Code, section 1713, including:

a. The spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability;

b. The surviving spouse or child of a veteran who died as a result of a service-connected disability or who at the time of death had a total disability, permanent in nature, resulting from a service-connected disability;

c. The surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct; and who are not eligible for medical care under TRICARE or Medicare.

2. The veteran sponsor of the spouse or child.

3. Health care providers treating individuals who receive care under Title 38, United States Code, section 1713.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system include medical benefit application and eligibility information concerning the spouse and/or dependent(s) and the veteran sponsor, other health insurance information correspondence concerning individuals and documents pertaining to claims for medical services, information related to claims processing and third party liability recovery actions taken by VA and/or TRICARE. The record may include the name, address and other identifying information concerning health care providers, services provided, amounts claimed and paid for health care services, medical records, and treatment and payment dates. Additional information may include veteran, spouse and/or dependent identifying information (e.g., name, address, social security number, VA claims file number, date of birth), and military service information concerning the veteran sponsor (e.g., dates, branch and character of service, medical information).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 5, section 501(a) and 501(b), and Chapter 17, section 1713.

PURPOSE:

Records may be used for purposes of establishing and monitoring eligibility to receive CHAMPVA benefits; and process medical claims for payment for eligible beneficiaries of certain veterans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Eligibility and claim information from this system of records may be disclosed as a useful purpose in response to an inquiry made by the claimant, claimant's guardian, health care provider or trading partner or contractor. Purposes of these disclosures are to assist the provider or claimant in obtaining reimbursement for claimed medical services, facilitate billing processes, to verify beneficiary eligibility for requested services and to provide payment information regarding claimed services. Eligibility or entitlement information disclosed may include the name, CHAMPVA authorization number (social security number), effective dates of eligibility, the reasons for any period of ineligibility and other health insurance information of the named individual. Claim information disclosed may include payment information such as payment identification number, date of payment, date of service, amount billed, amount paid, name and address of payee or reasons for non-payment.

2. Transfer of statistical and other data to Federal, State, and local government agencies and national health organizations to assist in the development of programs that will be beneficial to health care recipients, to protect their rights under the law, and to assure that they are receiving all health benefits to which they are entitled.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such

violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. A record from this system of records may be disclosed to a Federal agency, in the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system of records may be disclosed as a ''routine use'' to a Federal, State or local agency maintaining civil, criminal or other relevant information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefit.

6. Relevant information from this system of records, including the nature and amount of a financial obligation, may be disclosed as a routine use, in order to assist VA in the collection of unpaid financial obligations owed to the VA, to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

8. Disclosure may be made to National Archives and Records Administration (NARA), General Services Administration (GSA) in records management inspections conducted under authority of 44 United States Code.

9. Any relevant information in this system of records may be disclosed to attorneys, insurance companies, employers, and to courts, boards, or commissions; such disclosures may be made only to the extent necessary to aid VA in preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

10. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order for the foregoing parties to prosecute or defend litigation involving or pertaining to the United States.

11. Any information in this system of records may be disclosed to a Federal grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for VA to respond to and comply with the issuance of a Federal court order.

12. Any information in this system of records may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a State or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for VA to respond to and comply with issuance of a State court order; provided that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

13. Any information concerning the claimant's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures may be to assist VA in collection of costs of services provided individuals not entitled to such services and to initiate legal actions for prosecuting individuals who willfully or fraudulently obtain Title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

14. Any relevant information from this system of records may be disclosed to TRICARE, Department of Defense and the Defense Eligibility Enrollment Reporting System (DEERS) to the extent necessary to determine eligibility for CHAMPVA or TRICARE benefits, to develop and process CHAMPVA or TRICARE claims, and to develop cost recovery actions for claims involving individuals not eligible for the services or claims involving potential third party liability.

15. The name and address of a veteran or dependent, and other information as is reasonably necessary to identify such individual, may be disclosed to a consumer reporting agency for the purpose of locating the individual or obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, provided that the requirements of 38 U.S.C. 5701(g)(2) have been met.

16. the name and address of a veteran or dependent, and other information as is reasonably necessary to identify such individual, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the individual's indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the requirements of 38 U.S.C. 5701(g)(4) have been met.

17. In response to an inquiry about a named individual from a member of the general public, disclosure of information may be made from this system of records to report the amount of VA monetary benefits being received by the individual. This disclosure is consistent with 38 U.S.C. 5701(c)(1).

18. The name and address of a veteran or dependent may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

19. Any information in this system of records relevant to a claim of a veteran or dependent, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information and military service and active duty separation information may be disclosed at the request of the claimant to accredited service organizations, VA-approved claim agents and attorneys acting under a declaration of representation so that these individuals can aid claimants in the preparation, presentation and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent or an attorney.

20. Any information in this system including medical information, the basis and nature of claim, the amount of benefits and personal information may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a claimant only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

21. The individual's name, address, social security number and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR Part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

22.The name of a veteran or dependent, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of Title 38, U.S.C. benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

23. The name, date of birth and social security number of a veteran, spouse or dependent, and other identifying information as is reasonably necessary may be disclosed to Social Security Administration and Health Care Financing Administration, Department of Health and Human Services, for the purpose of validating social security numbers and Medicare information.

24. The name and address of any health care provider in this system of records who has received payment for claimed services in behalf of a CHAMPVA beneficiary may be disclosed in response to an inquiry from a member of the general public.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically, in paper folders, magnetic discs, and magnetic tape. Paper documents may be scanned/digitized and stored for viewing electronically.

RETRIEVABILITY:

Paper records are retrieved by name or VA claims file number or social security number of the veteran sponsor. Computer records are retrieved by name or social security number of the veteran sponsor, spouse, and/or dependent, or VA claims file number of the veteran sponsor.

SAFEGUARDS:

Working spaces and record storage areas at HAC are secured during all business and non-business hours. All entrance doors require an electronic passcard for entry. The HAC Security Officer issues electronic passcards. HAC staff control visitor entry by door release and escort. The building is equipped with an intrusion alarm system monitored by HAC security staff during business hours and by a security service vendor during non-business hours. Records are stored in an electronic controlled storage filing area. Records in work areas are stored in locked file cabinets or locked rooms. Access to record storage areas is restricted to VA employees on a ''need-to-know'' basis. Access to the computer room is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas or are otherwise protected. Authorized VA employees may access information in the computer system by a series of individually unique passwords/codes.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Paper records that are scanned/digitized for viewing electronically are destroyed after they have been scanned onto optical disks.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer (17), Department of Veterans Affairs, Veterans Health Administration, VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

OFFICIAL MAINTAINING THE SYSTEM:

Director, Department of Veterans Affairs, Health Administration Center, PO Box 65020, Denver, CO 80206–9020.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to Director, VA Health Administration Center, PO Box 65020, Denver, Colorado 80206–9020, or apply in person to the Director, VA Health Administration Center, 300 South Jackson Street, Denver, Colorado 80209. Inquiries should include the veteran sponsor's full name and social security and VA claims file numbers, and the spouse or department's name, social security number and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name in this system may write or visit the Director, VA Health Administration Center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The veteran sponsor, spouse and/or dependent, military service departments, private medical facilities and health care professionals, electronic trading partners, contractors, Department of Defense (DoD), TRICARE, DoD Defense Eligibility Enrollment Reporting System (DEERS), other Federal agencies, VA regional offices, Veterans Benefits Administration automated record systems.

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Federal Register

Tuesday,
December 26, 2000

Part II

Postal Service

Changes in Domestic Mail Rates; Notices

Postal Service

Changes in Domestic Rates, Fees, and Mail Classifications

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to domestic rates, fees, and the Domestic Mail Classification Schedule.

SUMMARY: This notice sets forth the changes to domestic rates, fees, and the Domestic Mail Classification Schedule to be implemented as a result of the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2000–1 (December 4, 2000).

EFFECTIVE DATE: January 7, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., (202) 268–2989.

SUPPLEMENTARY INFORMATION: On January 12, 2000, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a Request for a Recommended Decision on Proposed Changes in Rates of Postage and Fees for Postal Services (Request). The PRC designated the filing as Docket No. R2000–1. On November 13, 2000, pursuant to its authority under 39 U.S.C. 3624, the PRC issued its Recommended Decision on the Postal Service's Request to the Governors of the Postal Service.

Pursuant to 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendations on December 4, 2000. In one decision, the Governors rejected the PRC's recommendations regarding Courtesy Envelope Mail, Information-Based Inidicia Program Mail, a flat-rate envelope for Priority Mail, and maximum weight figures for Standard Mail letters and breakpoint figures for Standard Mail. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Selected Mail Classification Matters, Docket No. R2000–1 (December 4, 2000). In the second decision, the Governors acted on the remainder of the PRC's recommendations. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2000–1 (December 4, 2000). The Governors allowed under protest all of the remaining classification, fee, and rate changes. The Governors requested reconsideration of a number of issues, including revenue requirement, First-Class Mail costs, Bound Printed Matter rates, and nonprofit Standard Mail rates. The attachments to the Governors' Decision, setting forth the classification, fee, and rate changes ordered into effect by the Governors, are set forth below.

In accordance with the Decision of the Governors and Resolution No. 00–16 of the Baord of Governors, the Postal Service hereby gives notice that the classification, fee, and rate changes set forth below will become effective at 12:01 a.m. on January 7, 2001. Implementing regulations also become effective at that time, as noted in a separate notice in the **Federal Register**.

Attachment A to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R20001–1

(December 4, 2000).

EXPRESS MAIL SCHEDULES 121, 122 AND 123

[Dollars]

Weight not exceeding (pounds)	Schedule 121 same day airport service	Schedule 122 custom designed	Schedule 123 next day and second day PO to PO	Schedule 123 next day and schedule day PO to addressee
½		9.25	9.40	12.25
1		13.75	13.90	16.00
2		13.75	13.90	16.00
3		16.65	16.80	18.85
4		19.45	19.60	21.70
5		22.25	22.40	24.50
6		25.05	25.20	27.30
7		27.75	27.90	30.00
8		28.95	29.10	31.20
9		30.20	30.35	32.45
10		31.40	31.55	33.65
11		32.90	33.05	35.15
12		35.30	35.45	37.55
13		36.55	36.70	39.25
14		37.95	38.10	40.20
15		39.15	39.30	41.40
16		40.50	40.65	42.75
17		41.85	42.00	44.10
18		43.10	43.25	45.35
19		44.40	44.55	46.65
20		45.75	45.90	48.00
21		47.00	47.20	49.25
22		48.30	48.45	50.55
23		49.65	49.85	51.90
24		50.90	51.05	53.15
25		52.20	52.40	54.45
26		53.50	53.65	55.75
27		54.85	55.00	57.05
28		56.10	56.25	58.35
29		57.45	57.60	59.65
30		58.75	58.90	61.00
31		60.05	60.20	62.25

EXPRESS MAIL SCHEDULES 121, 122 AND 123—Continued

[Dollars]

Weight not exceeding (pounds)	Schedule 121 same day airport service	Schedule 122 custom designed	Schedule 123 next day and second day PO to PO	Schedule 123 next day and schedule day PO to addressee
32		61.35	61.50	63.60
33		62.65	62.80	64.85
34		63.95	64.10	66.20
35		65.25	65.40	67.45
36		66.55	66.70	68.80
37		67.80	67.95	70.30
38		69.35	69.30	71.90
39		70.95	70.60	73.50
40		72.55	72.00	75.10
41		74.15	73.60	76.70
42		75.75	75.20	78.35
43		77.35	76.80	79.90
44		78.95	78.40	81.50
45		80.55	80.00	82.90
46		81.85	81.55	84.15
47		83.25	83.20	85.60
48		84.60	84.75	86.90
49		85.90	86.05	88.20
50		87.20	87.35	89.50
51		88.60	88.80	90.95
52		89.90	90.05	92.20
53		91.30	91.45	93.60
54		92.60	92.75	94.90
55		93.90	94.10	96.25
56		95.35	95.50	97.65
57		96.60	96.75	98.90
58		97.95	98.10	100.30
59		99.45	99.60	101.75
60		101.00	101.15	103.30
61		102.70	102.85	105.00
62		104.25	104.40	106.60
63		105.85	106.00	108.15
64		107.50	107.70	109.85
65		109.10	109.25	111.40
66		110.80	110.95	113.10
67		112.35	112.50	114.65
68		114.05	114.20	116.35
69		115.60	115.75	117.90
70		117.20	117.35	119.50

Schedules 121, 122 and 123 Notes:
[1] The applicable 2-pound rate is charged for matter sent in a 'flat rate' envelope provided by the Postal Service.
[2] Add $10.25 for each pickup stop.
[3] Add $10.25 for each Custom Designed delivery stop.

FIRST-CLASS MAIL RATE SCHEDULE 221—LETTERS AND SEALED PARCELS

	Rate (cents)
Regular:	
Single Piece: First Ounce	34.0
Presort [1]	32.0
Qualified Business Reply Mail	31.0
Additional Ounce[2]	21.0
Nonstandard Surcharge:	
Single Piece	11.0
Presort	5.0
Automation-Presort: [1]	
Letters[3]	
Basic Presort [4]	27.8
3-Digit Presort [5]	26.7
5-Digit Presort [6]	25.3
Carrier Route Presort [7]	24.3
Flats: [8]	
Basic Presort [9]	31.0
3-Digit Presort [10]	29.5
5-Digit Presort [11]	27.5

FIRST-CLASS MAIL RATE SCHEDULE 221—LETTERS AND SEALED PARCELS—Continued

	Rate (cents)
Additional Ounce[2]	21.0
Nonstandard Surcharge	5.0

Schedule 221 Notes:
[1] A mailing fee of $125.00 must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate. For presorted mailings weighing more than 2 ounces, subtract 4.6 cents per piece.
[2] Rate applies through 13 ounces. Heavier pieces are subject to Priority Mail rates.
[3] Rates apply to bulk-entered mailings of at least 500 letter-size pieces, which must be delivery point barcoded and meet other preparation requirements specified by the Postal Service and, for the Basic Presort rate, documents provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981.
[4] Rate applies to letter-size Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.
[5] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations specified by the Postal Service.
[6] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations specified by the Postal Service.
[7] Rate applies to letter-size Automation-Presort category mail presorted to carrier routes specified by the Postal Service.
[8] Rates apply to bulk-entered mailings of at least 500 flat-size pieces, each of which must be delivery point barcoded or bear a ZIP+4 barcode, and must meet other preparation requirements specified by the Postal Service, and, for the Basic Presort rate, to documents provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981.
[9] Rate applies to flat-size Automation-Presort category mail not mailed at the 3-Digit or 5-Digit rate.
[10] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations specified by the Postal Service.
[11] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations specified by the Postal Service.

FIRST-CLASS MAIL RATE SCHEDULE 222—CARDS

	Rate (cents)
Regular:	
Single Piece	20.0
Presort[1]	18.0
Qualified Business Reply Mail	17.0
Automation-Presort[1], [2]	
Basic Presort[3]	16.4
3-Digit Presort[4]	15.8
5-Digit Presort[5]	15.1
Carrier Route Presort[6]	14.0

Schedule 222 Notes:
[1] A mailing fee of $125.00 must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate.
[2] Rates apply to bulk-entered mailings of at least 500 pieces, which must be barcoded and meet other preparation requirements specified by the Postal Service and, for the Basic Presort rate, to documents provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981.
[3] Rate applies to Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.
[4] Rate applies to Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.
[5] Rate applies to Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.
[6] Rate applies to Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

FIRST-CLASS MAIL SCHEDULE 223—PRIORITY MAIL SUBCLASS

[Dollars]

Weight not exceeding (pounds)	Zones L,1,2,3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	3.50	3.50	3.50	3.50	3.50	3.50
2	3.95	3.95	3.95	3.95	3.95	3.95
3	5.15	5.15	5.15	5.15	5.15	5.15
4	6.35	6.35	6.35	6.35	6.35	6.35
5	7.55	7.55	7.55	7.55	7.55	7.55
6	7.90	8.10	8.15	8.25	9.50	10.35
7	8.25	8.65	8.75	8.95	10.45	11.65
8	8.50	9.20	9.35	9.65	11.40	12.95
9	8.65	9.75	9.95	10.35	12.35	14.25
10	8.75	10.30	10.55	11.05	13.30	15.55
11	9.00	10.85	11.15	11.75	14.25	16.85
12	9.25	11.40	11.75	12.45	15.20	18.15
13	9.60	11.95	12.35	13.15	16.15	19.45
14	9.95	12.50	12.95	13.85	17.10	20.75
15	10.30	13.05	13.55	14.55	18.05	22.05
16	10.65	13.60	14.15	15.25	19.00	23.35

FIRST-CLASS MAIL SCHEDULE 223—PRIORITY MAIL SUBCLASS—Continued

[Dollars]

Weight not exceeding (pounds)	Zones L,1,2,3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
17	11.00	14.15	14.75	15.95	19.95	24.65
18	11.35	14.70	15.35	16.65	20.90	25.95
19	11.70	15.25	15.95	17.35	21.85	27.25
20	12.05	15.80	16.55	18.05	22.80	28.55
21	12.40	16.35	17.15	18.75	23.75	29.85
22	12.75	16.90	17.75	19.45	24.70	31.15
23	13.10	17.45	18.35	20.15	25.65	32.45
24	13.45	18.00	18.95	20.85	26.60	33.75
25	13.80	18.55	19.55	21.55	27.55	35.05
26	14.15	19.10	20.15	22.25	28.50	36.35
27	14.50	19.65	20.75	22.95	29.45	37.65
28	14.85	20.20	21.35	23.65	30.40	38.95
29	15.20	20.75	21.95	24.35	31.35	40.25
30	15.55	21.30	22.55	25.05	32.30	41.55
31	15.90	21.85	23.15	25.75	33.25	42.85
32	16.25	22.40	23.75	26.45	34.20	44.15
33	16.60	22.95	24.35	27.15	35.15	45.45
34	16.95	23.50	24.95	27.85	36.10	46.75
35	17.30	24.05	25.55	28.55	37.05	48.05
36	17.65	24.60	26.15	29.25	38.00	49.35
37	18.00	25.15	26.75	29.95	38.95	50.65
38	18.35	25.70	27.35	30.65	39.90	51.95
39	18.70	26.25	27.95	31.35	40.85	53.25
40	19.05	26.80	28.55	32.05	41.80	54.55
41	19.40	27.35	29.15	32.75	42.75	55.85
42	19.75	27.90	29.75	33.45	43.70	57.15
43	20.10	28.45	30.35	34.15	44.65	58.45
44	20.45	29.00	30.95	34.85	45.60	59.75
45	20.80	29.55	31.55	35.55	46.55	61.05
46	21.15	30.10	32.15	36.25	47.50	62.35
47	21.50	30.65	32.75	36.95	48.45	63.65
48	21.85	31.20	33.35	37.65	49.40	64.95
49	22.20	31.75	33.95	38.35	50.35	66.25
50	22.55	32.30	34.55	39.05	51.30	67.55
51	22.90	32.85	35.15	39.75	52.25	68.85
52	23.25	33.40	35.75	40.45	53.20	70.15
53	23.60	33.95	36.35	41.15	54.15	71.45
54	23.95	34.50	36.95	41.85	55.10	72.75
55	24.30	35.05	37.55	42.55	56.05	74.05
56	24.65	35.60	38.15	43.25	57.00	75.35
57	25.00	36.15	38.75	43.95	57.95	76.65
58	25.35	36.70	39.35	44.65	58.90	77.95
59	25.70	37.25	39.95	45.35	59.85	79.25
60	26.05	37.80	40.55	46.05	60.80	80.55
61	26.40	38.35	41.15	46.75	61.75	81.85
62	26.75	38.90	41.75	47.45	62.70	83.15
63	27.10	39.45	42.35	48.15	63.65	84.45
64	27.45	40.00	42.95	48.85	64.60	85.75
65	27.80	40.55	43.55	49.55	65.55	87.05
66	28.15	41.10	44.15	50.25	66.50	88.35
67	28.50	41.65	44.75	50.95	67.45	89.65
68	28.85	42.20	45.35	51.65	68.40	90.95
69	29.20	42.75	45.95	52.35	69.35	92.25
70	29.55	43.30	46.55	53.05	70.30	93.55

Schedule 223 Notes:

[1] The 2-pound rate is charged for matter sent in a ''flat rate'' envelope provided by the Postal Service.

[2] Add $10.25 for each pickup stop.

[3] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

STANDARD MAIL RATE SCHEDULE 321A—REGULAR SUBCLASS PRESORT CATEGORIES [1]

	Rate (cents)
Letter Size	
Piece Rate	
Basic	25.0
3/5-Digit	23.0
Destination Entry Discount per Piece	

STANDARD MAIL RATE SCHEDULE 321A—REGULAR SUBCLASS PRESORT CATEGORIES [1]—Continued

	Rate (cents)
BMC	1.9
SCF	2.4
Non-Letter Size [2]	
Piece Rate:	
Minimum per Piece: [3]	
Basic	31.9
3/5-Digit	26.3
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
Pound Rate [3]	66.8
Plus per Piece Rate:	
Basic	18.1
3/5-Digit	12.5
Destination Entry Discount per Pound:	
BMC	9.3
SCF	11.4

Schedule 321A Notes:
[1] A fee of $125.00 must be paid each 12-month period for each bulk mailing permit.
[2] Residual shape pieces are subject to a surcharge of $0.18 per piece. For parcel barcode discount, deduct $0.03 per piece.
[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 321B—REGULAR SUBCLASS PRESORT CATEGORIES [1]

	Rate (cents)
Letter Size: [2]	
Piece Rate:	
Basic Letter [3]	19.7
3-Digit Letter [4]	18.7
5-Digit Letter [5]	17.4
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
Flat Size: [6]	
Piece Rate:	
Minimum per Piece: [7]	
Basic Flat [8]	27.5
3/5-Digit Flat [9]	23.6
Destination Entry Discount per Piece	
BMC	1.9
SCF	2.4
Pound Rate [7]	66.8
Plus per piece Rate:	
Basic Flat [8]	13.7
3/5-Digit Flat [9]	9.8
Destination Entry Discount per Pound	
BMC	9.3
SCF	11.4

Schedule 321B Notes:
[1] A fee of $125.00 must be paid once each 12-month period for each bulk mailing permit.
[2] For letter-size automation pieces meeting applicable Postal Service regulations.
[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.
[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.
[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.
[6] For flat-size automation mail meeting applicable Postal Service regulations.
[7] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.
[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.
[9] Rate applies to flat-size automation mail presorted to single or multiple three-and five-digit ZIP Code destinations as specified by the Postal Service.

STANDARD MAIL RATE SCHEDULE 322—ENHANCED CARRIER ROUTE SUBCLASS [1]

	Rate (cents)
Letter Size:	
Piece Rate:	
Basic	17.6
Basic Automated Letter [2]	15.5
High Density	15.1
Saturation	14.3
Destination Entry Discount per Piece:	

STANDARD MAIL RATE SCHEDULE 322—ENHANCED CARRIER ROUTE SUBCLASS [1]—Continued

	Rate (cents)
BMC	1.9
SCF	2.4
DDU	2.9
Non-Letter Size: [3]	
Piece Rate:	
Minimum per Piece: [4]	
Basic	17.6
High Density	15.4
Saturation	14.7
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
DDU	2.9
Pound Rate[4]	63.8
Plus per Piece Rate:	
Basic	4.4
High Density	2.2
Saturation	1.5
Destination Entry Discount per Pound:	
BMC	9.3
SCF	11.4
DDU	14.0

Schedule 322 Notes:
[1] A fee of $125.00 must be paid each 12-month period for each bulk mailing permit.
[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.
[3] Residual shape pieces are subject to a surcharge of $0.15 per piece.
[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 323A—NONPROFIT SUBCLASS PRESORT CATEGORIES[1]

	Rate (cents)
Letter Size:	
Piece Rate:	
Basic	15.5
3/5-Digit	14.3
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
Non-Letter Size: [2]	
Piece Rate:	
Minimum per Piece: [3]	
Basic	21.7
3/5-Digit	16.8
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
Pound Rate [3]	55.0
Plus per Piece Rate:	
Basic	10.4
3/5-Digit	5.5
Destination Entry Discount per Pound:	
BMC	9.3
SCF	11.4

Schedule 323A Notes:
[1] A fee of $125.00 must be paid once each 12-month period for each bulk mailing permit.
[2] Residual shape pieces are subject to a surcharge of $0.18 per piece. For parcel barcode discount, deduct $0.03 per piece.
[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 323B—NONPROFIT SUBCLASS AUTOMATION CATEGORIES [1]

	Rate (cents)
Letter Size: [2]	
Piece Rate:	
Basic Letter [3]	13.0
3-Digit Letter [4]	12.0
5-Digit Letter [5]	10.5
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4

STANDARD MAIL RATE SCHEDULE 323B—NONPROFIT SUBCLASS AUTOMATION CATEGORIES [1]—Continued

	Rate (cents)
Flat Size: [6]	
Piece Rate:	
Minimum per Piece: [7]	
Basic Flat [8]	17.6
3/5-Digit Flat [9]	15.1
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
Pound Rate [7]	55.0
Plus per Piece Rate:	
Basic Flat [8]	6.3
3/5-Digit Flat [9]	3.8
Destination Entry Discount per Pound:	
BMC	9.3
SCF	11.4

Schedule 323B Notes:
[1] A fee of $125.00 must be paid once each 12-month period for each bulk mailing permit.
[2] For letter-size automation pieces meeting applicable Postal Service regulations.
[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.
[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.
[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.
[6] For flat-size automation mail meeting applicable Postal Service regulations.
[7] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.
[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.
[9] Rate applies to flat-size automation mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

STANDARD MAIL RATE SCHEDULE 324—NONPROFIT ENHANCED CARRIER ROUTE SUBCLASS [1]

	Rate (cents)
Letter Size:	
Piece Rate:	
Basic	11.6
Basic Automated Letter [2]	10.3
High Density	9.3
Saturation	8.7
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
DDU	2.9
Non-Letter Size: [3]	
Piece Rate:	
Minimum per Piece: [4]	
Basic	11.6
High Density	10.0
Saturation	9.5
Destination Entry Discount per Piece:	
BMC	1.9
SCF	2.4
DDU	2.9
Pound Rate [4]	37.0
Plus per Piece Rate:	
Basic	4.0
High Density	2.4
Saturation	1.9
Destination Entry Discount per Pound:	
BMC	9.3
SCF	11.4
DDU	14.0

Schedule 324 Notes:
[1] A fee of $125.00 must be paid each 12-month period for each bulk mailing permit.
[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.
[3] Residual shape pieces are subject to a surcharge of $0.15 per piece.
[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

PERIODICALS RATE SCHEDULE 421—OUTSIDE COUNTY SUBCLASS [1 2, 12]

	Postage rate unit	Rate [3] cents
Per Pound:		
Nonadvertising Portion	Pound	17.3
Advertising Portion: [11]		
Delivery Office [4]	Pound	14.8
SCF5	Pound	18.8
1&2	Pound	23.0
3	Pound	24.5
4	Pound	28.3
5	Pound	34.1
6	Pound	40.1
7	Pound	47.4
8	Pound	53.7
Science of Agriculture:		
Delivery Office	Pound	11.1
SCF	Pound	14.1
Zones 1&2	Pound	17.3
Per Piece:		
Less Nonadvertising Factor [6]		6.5
Required Preparation [7]	Piece	32.5
Presorted to 3-digit	Piece	27.6
Presorted to 5-digit	Piece	21.4
Presorted to Carrier Route	Piece	13.6
Discounts:		
Prepared to Delivery Office [4]	Piece	1.7
Prepared to SCF [5]	Piece	0.8
High Density [8]	Piece	2.5
Saturation [9]	Piece	4.3
Automation Discounts for Automation Compatible Mail: [10]		
From Required:		
Prebarcoded letter size	Piece	6.5
Prebarcoded flats	Piece	4.1
From 3-Digit:		
Prebarcoded letter size	Piece	5.1
Prebarcoded flats	Piece	3.4
From 5-Digit:		
Prebarcoded letter size	Piece	4.0
Prebarcoded flats	Piece	2.4

Schedule 421 Notes:

[1] The rates in this schedule also apply to Nonprofit (DMCS Section 422.2) and Classroom rate categories. These categories receive a 5 percent discount on all components of postage except advertising pounds. Moreover, the 5 percent discount does not apply to commingled nonsubscriber, nonrequestor, complimentary, and sample copies in excess of the 10 percent allowance under DMCS sections 412.34 and 413.42, or to Science of Agriculture mail.

[2] Rates do not apply to otherwise Outside County mail that qualifies for the Within County rates in Schedule 423.

[3] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.

[4] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.

[5] Applies to mail delivered within the SCF area of the originating SCF office.

[6] For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.

[7] Mail not eligible for carrier-route, 5-digit or 3-digit rates.

[8] Applicable to high density mail, deducted from carrier route presort rate.

[9] Applicable to saturation mail, deducted from carrier route presort rate.

[10] For automation compatible mail meeting applicable Postal Service regulations.

[11] Not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.

[12] For a ''Ride-Along'' item enclosed with or attached to a periodical, add $0.10 per copy (experimental).

PERIODICALS RATE SCHEDULE 423 [5]—WITHIN COUNTY

	Rate (cents)
Per Pound:	
General	14.4
Delivery Office [1]	11.3
Per Piece:	
Required Presort	10.0
Presorted to 3-digit	9.2
Presorted to 5-digit	8.3
Carrier Route Presort	4.7
Per Piece Discount:	
Delivery Office [2]	0.5
High Density (formerly 125 piece) [3]	1.5
Saturation	2.1
Automation Discounts for Automation Compatible Mail: [4]	

PERIODICALS RATE SCHEDULE 423[5]—WITHIN COUNTY—Continued

	Rate (cents)
From Required:	.....
Prebarcoded Letter size	5.1
Prebarcoded Flat size	2.7
From 3-digit:	
Prebarcoded Letter size	4.5
Prebarcoded Flat size	2.4
From 5-digit:	
Prebarcoded Letter size	3.9
Prebarcoded Flat size	2.1

Schedule 432 Notes:
[1] Applicable only to carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.
[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.
[3] Applicable to high density mail, deducted from carrier route presort rate. Mailers also may qualify for this discount on an alternative basis as provided in DMCS section 423.83.
[4] For automation compatible pieces meeting applicable Postal Service regulations.
[5] For a ''Ride-Along'' item enclosed with or attached to a periodical, add $0.10 per copy (experimental).

PACKAGE SERVICES RATE SCHEDULE 521.2A—PARCEL POST SUBCLASS INTER-BMC RATES

[Dollars]

Weight not exceeding (pounds)	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	3.34	3.39	3.44	3.45	3.45	3.45	3.45
2	3.34	3.39	3.44	3.45	3.45	3.45	3.45
3	3.81	4.13	4.56	4.61	4.66	4.71	4.76
4	3.95	4.41	5.20	5.67	5.82	5.87	5.92
5	4.09	4.65	5.65	6.84	6.99	7.04	7.09
6	4.23	4.90	6.05	7.53	7.84	8.06	8.64
7	4.36	5.11	6.43	8.18	8.85	9.28	10.44
8	4.49	5.31	6.76	8.76	9.60	10.49	12.24
9	4.59	5.50	7.11	9.29	10.30	11.71	14.05
10	4.72	5.68	7.41	9.78	11.00	12.93	15.19
11	4.81	5.86	7.71	10.24	11.70	14.10	16.07
12	4.92	6.02	7.98	10.66	12.40	15.15	16.91
13	5.01	6.16	8.24	11.07	13.10	16.08	17.72
14	5.11	6.33	8.49	11.45	13.66	16.68	18.49
15	5.19	6.47	8.73	11.80	14.11	17.26	19.24
16	5.28	6.60	8.96	12.14	14.52	17.78	19.97
17	5.37	6.72	9.18	12.44	14.92	18.29	20.67
18	5.45	6.85	9.38	12.74	15.29	18.75	21.34
19	5.54	6.97	9.58	13.03	15.65	19.21	22.00
20	5.61	7.08	9.75	13.29	15.97	19.63	22.64
21	5.68	7.21	9.93	13.56	16.30	20.03	23.26
22	5.76	7.30	10.11	13.80	16.60	20.42	23.87
23	5.83	7.43	10.29	14.02	16.89	20.78	24.46
24	5.88	7.53	10.44	14.26	17.16	21.14	25.03
25	5.96	7.62	10.61	14.46	17.43	21.45	25.59
26	6.02	7.72	10.76	14.67	17.68	21.77	26.14
27	6.10	7.81	10.90	14.86	17.91	22.07	26.68
28	6.15	7.91	11.06	15.05	18.15	22.36	27.20
29	6.21	8.00	11.19	15.22	18.37	22.63	27.71
30	6.28	8.09	11.31	15.39	18.57	22.90	28.21
31	6.34	8.16	11.45	15.55	18.78	23.16	28.70
32	6.39	8.26	11.58	15.71	18.97	23.40	29.18
33	6.44	8.34	11.70	15.87	19.15	23.64	29.65
34	6.51	8.41	11.81	16.02	19.33	23.86	30.11
35	6.56	8.49	11.94	16.15	19.50	24.07	30.57
36	6.61	8.55	12.06	16.29	19.67	24.27	31.01
37	6.67	8.63	12.16	16.43	19.83	24.49	31.45
38	6.72	8.71	12.27	16.55	19.98	24.67	31.88
39	6.78	8.78	12.37	16.66	20.13	24.85	32.30
40	6.83	8.85	12.48	16.79	20.28	25.04	32.71
41	6.89	8.93	12.57	16.91	20.42	25.21	33.11
42	6.93	8.99	12.67	17.01	20.54	25.37	33.34
43	6.97	9.05	12.77	17.12	20.68	25.52	33.54
44	7.03	9.11	12.86	17.21	20.80	25.67	33.75
45	7.07	9.18	12.95	17.32	20.92	25.82	33.94
46	7.12	9.24	13.04	17.43	21.04	25.97	34.12
47	7.18	9.31	13.12	17.51	21.16	26.11	34.31
48	7.22	9.37	13.22	17.61	21.25	26.24	34.48

PACKAGE SERVICES RATE SCHEDULE 521.2A—PARCEL POST SUBCLASS INTER-BMC RATES—Continued

[Dollars]

Weight not exceeding (pounds)	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
49	7.26	9.42	13.30	17.69	21.37	26.37	34.64
50	7.30	9.48	13.37	17.78	21.48	26.50	34.81
51	7.36	9.54	13.46	17.86	21.57	26.62	34.96
52	7.40	9.60	13.54	17.95	21.67	26.73	35.11
53	7.44	9.66	13.60	18.02	21.76	26.85	35.27
54	7.48	9.72	13.68	18.10	21.86	26.97	35.40
55	7.53	9.75	13.77	18.17	21.93	27.06	35.54
56	7.58	9.83	13.83	18.25	22.03	27.17	35.68
57	7.62	9.88	13.91	18.32	22.11	27.27	35.80
58	7.66	9.92	13.97	18.39	22.19	27.37	35.92
59	7.71	9.97	14.05	18.45	22.27	27.45	36.04
60	7.75	10.03	14.13	18.52	22.33	27.55	36.17
61	7.80	10.09	14.18	18.58	22.42	27.64	36.33
62	7.84	10.13	14.25	18.65	22.48	27.72	36.47
63	7.87	10.19	14.32	18.70	22.56	27.80	36.62
64	7.91	10.23	14.38	18.75	22.62	27.88	36.76
65	7.95	10.28	14.44	18.82	22.69	27.96	36.90
66	8.00	10.34	14.50	18.87	22.75	28.04	37.03
67	8.05	10.38	14.56	18.93	22.82	28.11	37.16
68	8.08	10.42	14.64	18.98	22.87	28.19	37.30
69	8.12	10.46	14.69	19.03	22.94	28.26	37.41
70	8.16	10.53	14.76	19.09	22.99	28.32	37.55
Oversize parcels [5]	34.75	38.94	45.10	54.87	66.41	82.14	106.00

Schedule 521.2A Notes:
[1] For Origin Bulk Mail Center Discount, deduct $0.90 per piece.
[2] For BMC Presort, deduct $0.23 per piece.
[3] For barcode discount, deduct $0.03 per piece.
[4] For nonmachinable Inter-BMC parcels, add $2.00 per piece.
[5] See DMCS section 521.61 for oversize Parcel Post.
[6] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[7] For each pickup stop, add $10.25.

PACKAGE SERVICES RATE SCHEDULE 521.2B—PARCEL POST SUBCLASS INTRA-BMC RATES

Weight not exceeding (pounds)	Local	Zones 1 and 2	Zone 3	Zone 4	Zone 5
1	2.72	2.97	2.97	2.97	2.97
2	2.72	2.97	2.97	2.97	2.97
3	2.96	3.36	3.46	3.46	3.46
4	3.18	3.52	3.78	3.79	3.93
5	3.38	3.66	4.08	4.11	4.40
6	3.48	3.79	4.38	4.40	4.83
7	3.55	3.91	4.63	4.66	5.23
8	3.64	4.05	4.87	4.91	5.61
9	3.71	4.14	5.06	5.15	5.96
10	3.79	4.27	5.31	5.38	6.29
11	3.86	4.37	5.49	5.59	6.59
12	3.93	4.48	5.65	5.80	6.90
13	4.01	4.58	5.79	5.99	7.16
14	4.07	4.67	5.88	6.18	7.43
15	4.13	4.76	6.02	6.35	7.68
16	4.21	4.83	6.16	6.52	7.91
17	4.26	4.93	6.29	6.69	8.13
18	4.31	5.00	6.41	6.84	8.36
19	4.37	5.10	6.53	6.99	8.56
20	4.44	5.17	6.65	7.14	8.75
21	4.48	5.24	6.76	7.28	8.94
22	4.54	5.32	6.86	7.42	9.12
23	4.59	5.38	6.99	7.56	9.30
24	4.64	5.45	7.08	7.67	9.46
25	4.70	5.51	7.18	7.79	9.62
26	4.74	5.59	7.27	7.89	9.78
27	4.79	5.65	7.38	7.98	9.92
28	4.83	5.70	7.47	8.07	10.06
29	4.90	5.78	7.57	8.15	10.20
30	4.95	5.83	7.65	8.23	10.35
31	4.99	5.89	7.72	8.30	10.47
32	5.04	5.96	7.81	8.38	10.59

PACKAGE SERVICES RATE SCHEDULE 521.2B—PARCEL POST SUBCLASS INTRA-BMC RATES—Continued

Weight not exceeding (pounds)	Local	Zones 1 and 2	Zone 3	Zone 4	Zone 5
33	5.09	6.01	7.90	8.45	10.73
34	5.13	6.06	7.96	8.51	10.83
35	5.17	6.12	8.05	8.58	10.94
36	5.20	6.17	8.12	8.64	11.07
37	5.25	6.23	8.18	8.70	11.17
38	5.29	6.29	8.27	8.76	11.28
39	5.34	6.34	8.34	8.81	11.37
40	5.38	6.38	8.41	8.86	11.48
41	5.43	6.44	8.49	8.91	11.57
42	5.47	6.49	8.54	8.96	11.66
43	5.51	6.53	8.62	9.10	11.76
44	5.57	6.58	8.67	9.14	11.84
45	5.60	6.63	8.73	9.19	11.93
46	5.64	6.69	8.81	9.23	12.01
47	5.68	6.74	8.86	9.27	12.09
48	5.72	6.78	8.93	9.31	12.19
49	5.76	6.83	8.99	9.35	12.26
50	5.80	6.86	9.04	9.38	12.34
51	5.84	6.92	9.09	9.42	12.41
52	5.87	6.96	9.17	9.45	12.48
53	5.91	7.00	9.22	9.48	12.55
54	5.96	7.04	9.28	9.51	12.63
55	6.00	7.08	9.32	9.54	12.69
56	6.03	7.13	9.38	9.57	12.75
57	6.06	7.18	9.44	9.61	12.83
58	6.11	7.22	9.48	9.64	12.89
59	6.15	7.26	9.54	9.66	12.95
60	6.17	7.30	9.59	9.70	13.02
61	6.23	7.36	9.61	9.76	13.08
62	6.25	7.40	9.64	9.81	13.13
63	6.30	7.43	9.66	9.87	13.19
64	6.33	7.47	9.68	9.91	13.25
65	6.37	7.52	9.70	9.96	13.30
66	6.39	7.57	9.72	10.02	13.37
67	6.44	7.61	9.74	10.07	13.41
68	6.48	7.63	9.76	10.11	13.46
69	6.52	7.67	9.78	10.16	13.52
70	6.55	7.72	9.80	10.21	13.57
Oversize parcels [3]	19.82	28.99	28.99	28.99	28.99

Schedule 521.2B Notes:
[1] For barcode discount, deduct $0.03 per piece.
[2] For nonmachinable Intra-BMC parcels, add $1.35 per piece.
[3] See DMCS section 521.61 for oversize Parcel Post.
[4] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[5] For each pickup stop, add $10.25.

PACKAGE SERVICES RATE SCHEDULE 521.2C—PARCEL POST SUBCLASS PARCEL SELECT DESTINATION BMC RATES

[Dollars]

Weight not exceeding (pounds)	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Weight not exceeding (pounds)	Zone 1 and 2	Zone 3	Zone 4	Zone 5
1	2.10	2.45	2.73	2.92	36	6.08	8.07	8.59	11.02
2	2.10	2.45	2.73	2.92	37	6.15	8.13	8.65	11.12
3	2.33	2.85	3.27	3.41	38	6.21	8.22	8.71	11.23
4	2.54	3.23	3.74	3.88	39	6.27	8.29	8.76	11.32
5	2.74	3.59	4.06	4.35	40	6.33	8.36	8.81	11.43
6	2.92	3.92	4.35	4.78	41	6.39	8.44	8.86	11.52
7	3.10	4.24	4.61	5.18	42	6.44	8.49	8.91	11.61
8	3.27	4.54	4.86	5.56	43	6.48	8.57	9.05	11.71
9	3.42	4.82	5.10	5.91	44	6.53	8.62	9.09	11.79
10	3.57	5.09	5.33	6.24	45	6.58	8.68	9.14	11.88
11	3.72	5.35	5.54	6.54	46	6.64	8.76	9.18	11.96
12	3.86	5.60	5.75	6.85	47	6.69	8.81	9.22	12.04
13	3.99	5.74	5.94	7.11	48	6.73	8.88	9.26	12.14
14	4.11	5.83	6.13	7.38	49	6.78	8.94	9.30	12.21
15	4.24	5.97	6.30	7.63	50	6.81	8.99	9.33	12.29
16	4.35	6.11	6.47	7.86	51	6.87	9.04	9.37	12.36
17	4.47	6.24	6.64	8.08	52	6.91	9.12	9.40	12.43
18	4.58	6.36	6.79	8.31	53	6.95	9.17	9.43	12.50

PACKAGE SERVICES RATE SCHEDULE 521.2C—PARCEL POST SUBCLASS PARCEL SELECT DESTINATION BMC RATES—Continued

[Dollars]

Weight not exceeding (pounds)	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Weight not exceeding (pounds)	Zone 1 and 2	Zone 3	Zone 4	Zone 5
19	4.68	6.48	6.94	8.51	54	6.99	9.23	9.46	12.58
20	4.78	6.60	7.09	8.70	55	7.03	9.27	9.49	12.64
21	4.88	6.71	7.23	8.89	56	7.08	9.33	9.52	12.70
22	4.98	6.81	7.37	9.07	57	7.13	9.39	9.56	12.78
23	5.07	6.94	7.51	9.25	58	7.17	9.43	9.59	12.84
24	5.16	7.03	7.62	9.41	59	7.21	9.49	9.61	12.90
25	5.25	7.13	7.74	9.57	60	7.25	9.54	9.65	12.97
26	5.34	7.22	7.84	9.73	61	7.31	9.56	9.71	13.03
27	5.42	7.33	7.93	9.87	62	7.35	9.59	9.76	13.08
28	5.50	7.42	8.02	10.01	63	7.38	9.61	9.82	13.14
29	5.58	7.52	8.10	10.15	64	7.42	9.63	9.86	13.20
30	5.66	7.60	8.18	10.30	65	7.47	9.65	9.91	13.25
31	5.73	7.67	8.25	10.42	66	7.52	9.67	9.97	13.32
32	5.81	7.76	8.33	10.54	67	7.56	9.69	10.02	13.36
33	5.88	7.85	8.40	10.68	68	7.58	9.71	10.06	13.41
34	5.95	7.91	8.46	10.78	69	7.62	9.73	10.11	13.47
35	6.02	8.00	8.53	10.89	70	7.67	9.75	10.16	13.52
					Oversize parcels [3]	18.65	20.61	27.84	28.94

Schedule 521.2C Notes:

[1] For barcode discount, deduct $0.03 per piece. Barcode discount is not available for DBMC mail entered at an ASF, except at the Phoenix, AZ ASF.

[2] For nonmachinable DBMC parcels, add $1.45 per piece.

[3] See DMCS section 521.61 for oversize Parcel Post.

[4] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

[5] A mailing fee of $125.00 must be paid once each 12-month period for Parcel Select.

PACKAGE SERVICES RATE SCHEDULE 521.2D—PARCEL POST SUBCLASS PARCEL SELECT—DESTINATION SCF RATES

[Dollars]

Weight not exceeding (pounds)		Weight not exceeding (pounds)	
1	1.68	36	3.71
2	1.68	37	3.75
3	1.80	38	3.78
4	1.91	39	3.82
5	2.01	40	3.85
6	2.10	41	3.88
7	2.19	42	3.92
8	2.27	43	3.95
9	2.35	44	3.98
10	2.43	45	4.01
11	2.50	46	4.04
12	2.57	47	4.07
13	2.63	48	4.10
14	2.69	49	4.13
15	2.76	50	4.16
16	2.81	51	4.19
17	2.87	52	4.22
18	2.93	53	4.24
19	2.98	54	4.27
20	3.03	55	4.30
21	3.08	56	4.32
22	3.13	57	4.35
23	3.18	58	4.38
24	3.23	59	4.40
25	3.27	60	4.43
26	3.32	61	4.45
27	3.36	62	4.48
28	3.40	63	4.50
29	3.44	64	4.52
30	3.49	65	4.55
31	3.52	66	4.57
32	3.56	67	4.59
33	3.60	68	4.62
34	3.64	69	4.64
35	3.68	70	4.66

PACKAGE SERVICES RATE SCHEDULE 521.2D—PARCEL POST SUBCLASS PARCEL SELECT—DESTINATION SCF RATES—Continued

[Dollars]

Weight not exceeding (pounds)		Weight not exceeding (pounds)	
		Oversize parcels [1]	11.61

Schedule 521.2D Notes:
[1] See DMCS section 521.61 for oversize Parcel Post.
[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[3] A mailing fee of $125.00 must be paid once each 12-month period for Parcel Select.

PACKAGE SERVICES RATE SCHEDULE 521.2E—PARCEL POST SUBCLASS PARCEL SELECT—DESTINATION DELIVERY UNIT RATES

[Dollars]

Weight not exceeding (pounds)		Weight not exceeding (pounds)	
1	1.25	36	1.91
2	1.25	37	1.92
3	1.30	38	1.93
4	1.34	39	1.94
5	1.38	40	1.95
6	1.42	41	1.96
7	1.45	42	1.97
8	1.48	43	1.98
9	1.51	44	1.99
10	1.54	45	2.00
11	1.57	46	2.01
12	1.59	47	2.02
13	1.61	48	2.03
14	1.63	49	2.04
15	1.65	50	2.05
16	1.67	51	2.06
17	1.69	52	2.07
18	1.70	53	2.08
19	1.72	54	2.09
20	1.73	55	2.10
21	1.75	56	2.11
22	1.76	57	2.12
23	1.77	58	2.13
24	1.79	59	2.14
25	1.80	60	2.15
26	1.81	61	2.16
27	1.82	62	2.17
28	1.83	63	2.18
29	1.84	64	2.19
30	1.85	65	2.20
31	1.86	66	2.21
32	1.87	67	2.22
33	1.88	68	2.23
34	1.89	69	2.24
35	1.90	70	2.25
		Oversize parcels [1]	7.53

Schedule 521.2E Notes:
[1] See DMCS section 521.61 for oversize Parcel Post.
[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[3] A mailing fee of $125.00 must be paid once year 12-month period for Parcel Select.

PACKAGE SERVICES RATE SCHEDULE 522A—BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES

[Dollars]

Weight not exceeding (pounds)	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	1.73	1.76	1.79	1.85	1.90	1.97	2.10
1.5	1.73	1.76	1.79	1.85	1.90	1.97	2.10
2	1.77	1.81	1.86	1.93	2.01	2.10	2.27
2.5	1.82	1.87	1.92	2.02	2.11	2.22	2.44
3	1.87	1.92	1.99	2.10	2.22	2.35	2.61
3.5	1.91	1.98	2.06	2.19	2.32	2.48	2.78
4	1.96	2.03	2.12	2.27	2.43	2.60	2.95

PACKAGE SERVICES RATE SCHEDULE 522A—BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES—Continued

[Dollars]

Weight not exceeding (pounds)	Zones 1 and 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
4.5	2.00	2.09	2.19	2.36	2.53	2.73	3.12
5	2.05	2.14	2.26	2.44	2.64	2.86	3.29
6	2.14	2.26	2.39	2.62	2.85	3.11	3.62
7	2.23	2.37	2.52	2.79	3.06	3.36	3.96
8	2.32	2.48	2.66	2.96	3.27	3.62	4.30
9	2.41	2.59	2.79	3.13	3.48	3.87	4.64
10	2.51	2.70	2.92	3.30	3.68	4.12	4.98
11	2.60	2.81	3.06	3.47	3.89	4.38	5.32
12	2.69	2.92	3.19	3.64	4.10	4.63	5.66
13	2.78	3.03	3.32	3.81	4.31	4.88	6.00
14	2.87	3.14	3.46	3.98	4.52	5.14	6.34
15	2.96	3.25	3.59	4.15	4.73	5.39	6.68

Schedule 5422A Notes:
[1] For barcode discount, deduct $0.03 per piece.

PACKAGE SERVICES RATE SCHEDULE 522B—BOUND PRINTED MATTER SUBCLASS BASIC PRESORT AND CARRIER ROUTE PRESORT RATES

[Dollars]

Zone	Per piece		Per pound
	Basic[1]	Carrier route[2]	
1 and 2	0.91	0.81	0.07
3	0.91	0.81	0.09
4	0.91	0.81	0.11
5	0.91	0.81	0.15
6	0.91	0.81	0.19
7	0.91	0.81	0.23
8	0.91	0.81	0.32

Schedule 522B Notes:
[1] For barcode discount, deduct $0.03 per piece.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as specified by the Postal Service.

PACKAGE SERVICES RATE SCHEDULE 522C—BOUND PRINTED MATTER SUBCLASS DESTINATION ENTRY BASIC PRESORT

[Dollars]

	DBMC Zone 1 and 2	DBMC Zone 3	DBMC Zone 4	DBMC Zone 5	DSCF	DDU
Per piece rate	0.78	0.78	0.78	0.78	0.63	0.57
Per pound rate	0.06	0.09	0.11	0.15	0.05	0.03

Schedule 522C Notes:
[1] For barcode discount, deduct $0.03 per piece. Barcode discount is not available for DDU and DSCF rates and DBMC mail entered at an ASF (except Phoenix, Arizona ASF).
[2] A mailing fee of $125.00 must be paid once each 12-month period to mail at any destination entry Bound Printed Matter rate.

PACKAGE SERVICES RATE SCHEDULE 522D—BOUND PRINTED MATTER SUBCLASS DESTINATION ENTRY BASIC PRESORT

[Dollars]

	DBMC Zone 1 and 2	DBMC Zone 3	DBMC Zone 4	DBMC Zone 5	DSCF	DDU
Per Piece Rate	0.68	0.68	0.68	0.68	0.53	0.47
Per Pound Rate	0.06	0.09	0.11	0.15	0.05	0.03

Schedule 522D Notes:
[1] A mailling fee of $125.00 must be paid once each 12-month period to mail at any destination entry Bound Printed Matter rate.

PACKAGE SERVICES RATE SCHEDULE 523—MEDIA MAIL SUBCLASS

	Rates (dollars)
First Pound Not prescorted[4]	1.30

PACKAGE SERVICES RATE SCHEDULE 523—MEDIA MAIL SUBCLASS—Continued

	Rates (dollars)
Level A Presort (5-digits)[1 2]	0.70
Level B Presort (BMC)[1 3 4]	1.00
Each additional pound through 7 pounds	0.45
Each additional pound over 7 pounds	0.03

Schedule 523 Notes:
[1] A mailing fee of $125.00 must be paid once each 12-month period for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.
[4] For barcode discount, deduct $0.03 per piece.

PACKAGE SERVICES RATE SCHEDULE 524—LIBRARY MAIL SUBCLASS

	Rates (dollars)
First Pound Not prescorted[4]	1.24
Level A Presort (5-digits)[1 2]	0.67
Level B Presort (BMC)[1 3 4]	0.95
Each additional pound through 7 pounds	0.43
Each additional pound over 7 pounds	0.29

Schedule 524:
[1] A mailing fee of $125.00 must be paid once each 12-month period for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.
[4] For barcode discount, deduct $0.03 per piece.

FEE SCHEDULE 911—ADDRESS CORRECTIONS

Description	Fee
Per manual correction	$0.60
Per automated correction	0.20

FEE SCHEDULE 912

Description	Fee
Zip Coding of Mailing Lists	
Per thousand addresses	$73.00
Correction of Mailing Lists	
Per submitted address	0.25
Minimum charge per list corrected	7.50
Address Changes for Election Boards and Registration Commissions	
Per change of address	0.23
Sequencing of Address Cards	
Per correction	0.25

Schedule 912 Notes:
When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

FEE SCHEDULE 921—POST OFFICE BOXES AND CALLER SERVICE

I. Post Office Boxes Semi-annual Box Fees.[1]

	Fee group						
Box size[2]	B2	C3	C4	C5	D6	D7	E
1	$30.00	$27.50	$22.50	$19.00	$10.00	$8.50	$0.00
2	45.00	40.00	32.50	27.50	16.00	13.00	0.00
3	85.00	75.00	60.00	50.00	25.00	22.50	0.00
4	170.00	150.00	125.00	87.50	50.00	40.00	0.00
5	300.00	250.00	212.50	150.00	90.00	65.00	0.00

[1] A customer ineligible for carrier delivery may obtain a post office box at Group E fees, subject to administrative decisions regarding customer's proximity to post office.
[2] Box Size 1 = under 296 cubic inches; 2 = 296–499 cubic inches; 3 = 500–999 cubic inches; 4 = 1000–1999 cubic inches; 5 = 2000 cubic inches and over.

II. Key Duplication and Lock Charges

Description	Fee
Key duplication or replacement	$4.00
Post office box lock replacement	10.00

III. Semi-annual Caller Service Fee—$375.00

IV. Annual Call Number Reservation Fee

(All applicable Fee Groups) $30.00

FEE SCHEDULE 931—BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account:	
Per piece:	
Qualified (without optional Quarterly fee)	$0.05
Qualified (with optional Quarterly fee)	$0.01
Nonletter-size, using weight averaging	$0.01
Other	$0.10
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	$0.35
Monthly Fees for customers using weight averaging for nonletter-size business reply	$600.00
Optional Qualified BRM Quarterly Fee	$1,800.00
Accounting fee for advance deposit account (*see* Fee Schedule 1000)	
Permit fee (with or without advance deposit account) (*see* Fee Schedule 1000)	

FEE SCHEDULE 932—MERCHANDISE RETURN

Description	Fee
Accounting fee for advance deposit account (*see* Fee Schedule 1000)	
Permit fee (*see* Fee Schedule 1000)	

FEE SCHEDULE 933—ON-SITE METER SERVICE

Description	Fee
Meter Service (per employee)	$31.00
Meters reset and/or examined (per meter)	$4.00
Checking meter in or out of service (per meter)	$4.00[1]

Schedule 933 Notes:
[1] Fee does not apply to Secured Postage meters.

Fee Schedule 934 [Reserved]

FEE SCHEDULE 935—BULK PARCEL RETURN SERVICE

Description	Fee
Per Returned Piece	$1.62
Accounting fee for advance deposit account (*see* Fee Schedule 1000)	
Permit fee (*see* Fee Schedule 1000)	

FEE SCHEDULE 936—SHIPPER PAID FORWARDING

Description	Fee
Accounting fee for advance deposit account (*see* Fee Schedule 1000)	

FEE SCHEDULE 941—CERTIFIED MAIL

Description	Fee (in addition to postage)
Per piece	$1.90

FEE SCHEDULE 942—REGISTERED MAIL

Declared value of article [1]	Fee (in addition to postage)	Handling charge $0.00
0.00	7.75	None.
0.01 to 100	7.50	None.
100.01 to 500	8.25	None.
500.01 to 1,000	9.00	None.
1,000.01 to 2,000	9.75	None.
2,000.01 to 3,000	10.50	None.
3,000.01 to 4,000	11.25	None.
4,000.01 to 5,000	12.00	None.
5,000.01 to 6,000	12.75	None.
6,000.01 to 7,000	13.50	None.
7,000.01 to 8,000	14.25	None.
8,000.01 to 9,000	15.00	None.
9,000.01 to 10,000	15.75	None.
10,000.01 to 11,000	16.50	None.
11,000.01 to 12,000	17.25	None.
12,000.01 to 13,000	18.00	None.
13,000.01 to 14,000	18.75	None.
14,000.01 to 15,000	19.50	None.
15,000.01 to 16,000	20.25	None.
16,000.01 to 17,000	21.00	None.
17,000.01 to 18,000	21.75	None.
18,000.01 to 19,000	22.50	None.
19,000.01 to 20,000	23.25	None.
20,000.01 to 21,000	24.00	None.
21,000.01 to 22,000	24.75	None.
22,000.01 to 23,000	25.50	None.
23,000.01 to 24,000	26.25	None.
24,000.01 to 25,000	27.00	None.
25,000.01 to $1 million	27.00	plus 75 cents for each $1,000 (or fraction thereof) over $25,000.
Over $1 million to $15 million	758.25	plus 75 cents for each $1,000 (or fraction thereof) over $1 million.
Over $15 million	11258.25	plus amount determined by the Postal Service based on weight, space and value.

Schedule 942 Notes:
Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.

FEE SCHEDULE 943—INSURANCE

Coverage	Fee (in addition to postage)
Express Mail Insurance	
Document Reconstruction:	
$0.01 to $500	No charge.
Merchandise:	
$0.01 to $500	No charge.
$500.01 to $5000	$1.00 for each $100 (or fraction thereof) over $500 in value.
General Insurance	
$0.01 to $50	$1.10
$50.01 to $100	$2.00
$100.01 to $5000	$2.00 plus $1.00 for each $100 (or fraction thereof) over $100 in coverage.

Schedule 943 Notes:
[1] For bulk insurance coverage between $0.01 to $50.00, deduct $0.60 per piece. For bulk insurance coverage between $50.01 to $5,000.00, deduct $0.80 per piece.

FEE SCHEDULE 944—COLLECT ON DELIVERY

Description	Fee (in addition to postage)
Amount to be collected, or Insurance Coverage Desired:	
$0.01 to $50	$4.50
50.01 to 100	5.50
100.01 to 200	6.50
200.01 to 300	7.50
300.01 to 400	8.50
400.01 to 500	9.50
500.01 to 600	10.50
600.01 to 700	11.50
700.01 to 800	12.50
800.01 to 900	13.50
900.01 to 1000	14.50
Notice of nondelivery of COD	3.00
Alteration of COD charges or designation of new addressee	3.00
Registered COD	4.00

FEE SCHEDULE 945—RETURN RECEIPTS

Description	Fee (in addition to postage)
Receipt requested at time of mailing:[1]	
Items other than merchandise	$1.50
Merchandise (without another special service)	2.35
Receipt requested after mailing[2]	3.50

Schedule 945 Notes:

[1] This receipt shows the signature of the person to whom the mailpiece was delivered, the date of delivery and the delivery address, if such address is different from the address on the mailpiece.

[2] This receipt shows to whom the mailpiece was delivered and the date of delivery.

FEE SCHEDULE 946—RESTRICTED DELIVERY

Description	Fee (in addition to postage)
Per Piece	$3.20

FEE SCHEDULE 947—CERTIFICATE OF MAILING

Description	Fee (in addition to postage)
Individual Pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece)	$0.75
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.25
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	0.75
Bulk Pieces:	
Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (one certificate for total number)	3.50
Each additional 1,000 pieces or fraction	0.40
Duplicate copy	0.75

FEE SCHEDULE 948—DELIVERY CONFIRMATION

Description	Fee (in addition to postage)
Used in Conjunction with Priority Mail:	
Electronic	$0.00
Manual	0.40
Used in Conjunction with Parcel Post, Bound Printed Matter, Library Mail, and Media Mail:	
Electronic	0.12

FEE SCHEDULE 948—DELIVERY CONFIRMATION—Continued

Description	Fee (in addition to postage)
Manual	0.50
Used in Conjunction with Regular and Nonprofit Standard Mail:	
Electronic	0.12

FEE SCHEDULE 949—SIGNATURE CONFIRMATION

Description	Fee (in addition to postage)
Used in Conjunction with Priority Mail:	
Electronic	$1.25
Manual	1.75
Used in Conjunction with Parcel Post, Bound Printed Matter, Library Mail, and Media Mail:	
Electronic	1.25
Manual	1.75

FEE SCHEDULE 951—PARCEL AIR LIFT

Description	Fee (in addition to Parcel Post postage)
Up to 2 pounds	$0.40
Over 2 up to 3 pounds	0.75
Over 3 up to 4 pounds	1.15
Over 4 pounds	1.55

FEE SCHEDULE 952—SPECIAL HANDLING

Description	Fee (in addition to postage)
Not more than 10 pounds	$5.40
More than 10 pounds	7.50

FEE SCHEDULE 961—STAMPED ENVELOPES

Description	Fee (in addition to postage)
Single Sale: #6–3/4 size and #10 size:	
Basic	$0.08
Special	0.09
Household (50): #6–3/4 size through #10 size:	
Basic	3.50
Special	4.50
Bulk (500): #6–3/4 size:	
Plain Basic	12.00
Printed Basic	17.00
Bulk (500): #6–3/4 size through #10 size	
Plain Basic [1 2]	14.00
Printed Basic	20.00
Plain Special	19.00
Printed Special	25.00

Schedule 961 Notes:

''Basic'' envelopes include ''regular'' (no window), ''window'' (single window), ''pre-cancelled regular'', and ''pre-cancelled window'' styles. ''Special'' envelopes include all envelopes with patched in indicia. ''Printed'' envelopes are available with multi-color printing.

[1] Available in ''double window'' style.

[2] Available in ''savings bond'' style.

FEE SCHEDULE 962—STAMPED CARDS

Description	Fee (in addition to postage)
Stamped Card	$0.02
Double Stamped Card	0.04

FEE SCHEDULE 971—MONEY ORDERS

Description	Fee	
Domestic	$0.01 to $700	$0.75
APO-FPO	$0.01 to $700	$0.25
Inquiry Fee, which includes the issuance of copy of a paid money order		$2.75

FEE SCHEDULE 981—MAILING ONLINE

Description	Fee
Fees are calculated by multiplying times the sum of printer contractual costs for the particular mailing and 0.5 cents per impression for other Postal Service costs.	1.52 1.52x(P+0.5xI) P = Printer Contractual Costs I = Number of Impressions
Certification of a system as functionally equivalent to Mailing Online (*see* Fee Schedule 1000)	

This provision expires the later of:

a. three years after the implementation date specified by the Postal Service Board of Governors, or

b. if, by the expiration date specified in (a), a proposal to make Mailing Online permanent is pending before the Postal Rate Commission, the later of:

1. three months after the Commission takes action on such proposal under section 3624 of Title 39, or

2. —if applicable—on the implementation date for a permanent Mailing Online.

FEE SCHEDULE 1000

Description	Fee[1]
First-Class Presorted Mailing	$125.00
Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route Standard Mail Bulk Mailing	125.00
Periodicals:	
A. Original Entry	350.00
B. Additional Entry	50.00
C. Re-entry	40.00
D. Registration for News Agents	40.00
Parcel Select	125.00
Bound Printed Matter: Destination BMC, SCF, and DDU	125.00
Media Mail Presorted Mailing	125.00
Library Mail Presorted Mailing	125.00
Authorization to Use Permit Imprint	125.00
Special Services:	
Bulk Parcel Return Service:	
A. Permit	125.00
B. Accounting Fee (advance deposit account)	375.00
Business Reply Mail:	
A. Permit (with or without advance deposit account)	125.00
B. Accounting Fee (advance deposit account)	375.00
Mailing Online:[2]	
A. Certification of a system as functionally equivalent to Mailing Online	125.00
Merchandise Return:	
A. Permit	125.00
B. Accounting Fee (advance deposit account)	375.00
Shipper Paid Forwarding:	
A. Accounting Fee (advance deposit account)	375.00

Schedule 1000 Notes:

[1] Fees must be paid once each 12-month period.

[2] This provision expires the later of:

a. Three years after the Mailing Online implementation date specified by the Postal Service Board of Governors, or

b. If, by the expiration date specified in (a), a proposal to make Mailing Online permanent is pending before the Postal Rate Commission, the later of:

1. Three months after the Commission takes action on such proposal under section 3624 of Title 39, or
2.—if applicable—on the implemenation date for a permanent Mailing Online.

Attachment B to the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2000–1

December 4, 2000.

Changes to the Domestic Mail Classification Schedule Amend the Domestic Mail Classification Schedule By Inserting Italicized Text and Deleting Bracketed Text as Follows:

Expedited Mail Classification Schedule

110 Definition

Expedited Mail is mail matter entered as Express Mail under the provisions of this Schedule. Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail. Insurance is either included in Express Mail postage or is available for an additional charge, depending on the value and nature of the item sent by Express Mail.

120 DESCRIPTION OF SERVICES

121 Same Day Airport Service

Same Day Airport service is available between designated airport mail facilities.

122 Custom Designed Service

122.1 General

Custom Designed service is available between designated postal facilities or other designated locations for mailable matter tendered under a service agreement between the Postal Service and the mailer. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. 403(c).

122.2 Service Agreement.

A service agreement shall set forth the following:

a. The scheduled place for each shipment tendered for service to each specific destination;

b. Scheduled place for claim, or delivery, at destination for each scheduled shipment;

c. Scheduled time of day for tender at origin and for claim or delivery at destination.

122.3 Pickup and Delivery.

Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as specified by the Postal Service.

122.4 Commencement of Service Agreement.

Service provided pursuant to a service agreement shall commence not more than 10 days after the signed service agreement is tendered to the Postal Service.

122.5 Termination of Service Agreement

122.51 Termination by Postal Service.

Express Mail service provided pursuant to a service agreement may be terminated by the Postal Service upon 10 days prior written notice to the mailer if:

a. Service cannot be provided for reasons beyond the control of the Postal Service or because of changes in Postal Service facilities or operations, or

b. The mailer fails to adhere to the terms of the service agreement or this schedule.

122.52 Termination by Mailers.

The mailer may terminate a service agreement, for any reason, by notice to the Postal Service.

123 Next Day Service and Second Day Service

123.1 Availability of Services.

Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for second day delivery.

123.2 Pickup Service.

Pickup service is available for Next Day and Second Day Services under terms and conditions as specified by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

130 PHYSICAL LIMITATIONS

Express Mail may not exceed 70 pounds or 108 inches in length and girth combined.

140 POSTAGE AND PREPARATION

Except as provided in Rate Schedules 121, 122 and 123, postage on Express Mail is charged on each piece. For shipments tendered in Express Mail pouches under a service agreement, each pouch is a piece.

150 DEPOSIT AND DELIVERY

151 Deposit

Express Mail must be deposited at places designated by the Postal Service.

152 Receipt

A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Express Mail by the Postal Service. This receipt serves as evidence of mailing.

153 Service

Express Mail service provides a high speed, high reliability service. Same Day Airport Express Mail will be dispatched on the next available transportation to the destination airport mail facility. Custom Designed Express Mail will be available for claim or delivery as specified in the service agreement.

154 Forwarding and Return

When Express Mail is returned, or forwarded, as specified by the Postal Service, there will be no additional charge.

160 ANCILLARY SERVICES

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Schedule
a. Address correction	911
b. Return receipts	945
c. COD	944
d. Express Mail Insurance	943
e. Mailing Online	981

170 RATES AND FEES

The rates for Express Mail are set forth in the following rate schedules:

	Schedule
a. Same Day Airport	121
b. Custom Designed	122
c. Next Day Post Office-to-Post Office	123
d. Second Day Post Office-to-Post Office	123
e. Next Day Post Office-to-Addressee	123
f. Second Day Post Office-to-Addressee	123

180 REFUNS

181 Procedure

Claims for refunds of postage must be filed within the period of time and under terms and conditions specified by the Postal Service.

182 Availability

182.1 Same Day Airport.

The Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified, unless the delay is caused by:

a. Strikes or work stoppage;

b. Delay or cancellation of flights; or

c. Governmental action beyond the control of Postal Service or air carriers.

182.2 Custom Designed.

Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, unless the item was delayed by strike or work stoppage.

182.3 Next Day.

Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) specified by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) specified by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

182.4 Second Day.

Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) specified by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) specified by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

FIRST-CLASS MAIL CLASSIFICATION SCHEDULE

2107 DEFINITION

Any matter eligible for mailing may, at the option of the mailer, be mailed as First-Class Mail. The following must be mailed as First-Class Mail, unless mailed as Express Mail or exempt under title 39, United States Code, or except as authorized under sections 344.12, 344.23 and 443:

a. Mail sealed against postal inspection as set forth in section 5000;

b. Matter wholly or partially in handwriting or typewriting except as specifically permitted by sections 312, 313, [323, 344.22,]*520, 544.2*, and 446;

c. Matter having the character of actual and personal correspondence except as specifically permitted by sections 312, 313, [323, 344.22,]*520, 544.2*, and 446; and

d. Bills and statements of account.

220 DESCRIPTION OF SUBCLASSES

221 Letters and Sealed Parcels Subclass

221.1 General.

The Letters and Sealed Parcels subclass consists of First-Class Mail weighing 13 ounces or less that is not mailed under section 222 or 223.

221.2 Regular Rate Categories.

The regular rate categories consist of Letters and Sealed Parcels subclass mail not mailed under section 221.3.

221.21 Single-Piece Rate Category.

The single-piece rate category applies to regular rate Letters and Sealed Parcels subclass mail not mailed under section 221.22 or 221.24.

221.22 Presort Rate Category.

The presort rate category applies to Letters and Sealed Parcels subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; and

c. Meets the addressing and other preparation requirements specified by the Postal Service.

221.23 Reserved

221.24 Qualified Business Reply Mail Rate Category.

The qualified business reply mail rate category applies to Letters and Sealed Parcels subclass mail that:

a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the letter machinability and other preparation requirements specified by the Postal Service.

221.25 *Reserved*

221.26 Nonstandard Size Surcharge.

Regular rate category Letters and Sealed Parcels subclass mail is subject to a surcharge if it is nonstandard size mail, as defined in section 232.

221.27 Presort Discount for Pieces Weighing More Than Two Ounces.

Presort rate category Letters and Sealed Parcels subclass mail is eligible for an additional presort discount on each piece weighing more than two ounces.

221.3 Automation Rate Categories—Letters and Flats.

221.31 General.

The automation rate categories consist of Letters and Sealed Parcels subclass mail weighing 13 ounces or less that:

a. Is prepared in a mailing of at least 500 pieces, or is provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

221.32 Letter Categories

221.[32]*321* [Basic Rate Category.]*Basic Rate Category*

The basic rate category applies to letter-size automation rate category mail not mailed under section 221.[33]*322,* 221.[34]*323,* or 221.[35]*324.*

221.[33]*322* [Three-Digit Rate Category.]*Three-Digit Rate Category*

The three-digit rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

221.[34]*323* [Five-Digit Rate Category.]*Five-Digit Rate Category*

The five-digit rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

221.[35]*324* [Carrier Route Rate Category.]*Carrier Route Rate Category*

The carrier route rate category applies to letter-size automation rate category mail presorted to carrier routes. It is available only for those carrier routes specified by the Postal Service.

221.33 Flats Categories

221.[36]*331* [Basic Flats Rate Category.]*Basic Flats Rate Category.*

The basic flats rate category applies to flat-size automation rate category mail not mailed under section 221.[37]*332 or 221.333.*

221.[37]*332* [Three-and Five-Digit Flats Rate Category.]*Three-Digit Flats Rate Category.*

The three-[and five-]digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple three-[and five-]digit ZIP Code destinations as specified by the Postal Service.

221.333 Five-Digit Flats Rate Category.

The five-digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

221.[38]*334* [Nonstandard Size Surcharge.]*Nonstandard Size Surcharge.*

Flat-size automation rate category pieces are subject to a surcharge if they are nonstandard size mail, as defined in section 232.

221.[39]*34* Presort Discount for Pieces Weighing More Than Two Ounces.

Presorted automation rate category mail is eligible for an additional presort

discount on each piece weighing more than two ounces.

222 Cards Subclass

222.1 Definition.

222.11 Cards.

The Cards subclass consists of Stamped Cards, defined in section 962.1[1], and postcards. A postcard is a privately printed mailing card for the transmission of messages. To be eligible to be mailed as a First-Class postcard, a card must be of uniform thickness and must not exceed any of the following dimensions:

a. 6 inches in length;

b. 4¼ inches in width;

c. 0.016 inch in thickness.

222.12 Double Cards.

Double Stamped Cards or double postcards may be mailed as Stamped Cards or postcards. Double Stamped Cards are defined in section 962.1[2]. A double postcard consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postcard.

222.2 Restriction.

A mailpiece with any of the following characteristics is not mailable as a Stamped Card or postcard unless it is prepared as specified by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing in the address portion of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

222.3 Regular Rate Categories.

222.31 Single-Piece Rate Category.

The single-piece rate category applies to regular rate Cards subclass mail not mailed under section 222.32 or 222.34.

222.32 Presort Rate Category.

The presort rate category applies to Cards subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; and

c. Meets the addressing and other preparation requirements specified by the Postal Service.

222.33 Reserved

222.34 Qualified Business Reply Mail Rate Category.

The qualified business reply mail rate category applies to Cards subclass mail that:

a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the card machinability and other preparation requirements specified by the Postal Service.

222.4 Automation Rate Categories.

222.41 General.

The automation rate categories consist of Cards subclass mail that:

a. Is prepared in a mailing of at least 500 pieces, or is provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

222.42 Basic Rate Category.

The basic rate category applies to automation rate category cards not mailed under section 222.43, 222.44, or 222.45.

222.43 Three-Digit Rate Category.

The three-digit rate category applies to automation rate category cards presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

222.44 Five-Digit Rate Category.

The five-digit rate category applies to automation rate category cards presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

222.45 Carrier Route Rate Category.

The carrier route rate category applies to automation rate category cards presorted to carrier routes. It is available only for those carrier routes specified by the Postal Service.

223 Priority Mail Subclass

223.1 General.

The Priority Mail subclass consists of:

a. First-Class Mail weighing more than 13 ounces; and

b. Any mailable matter which, at the option of the mailer, is mailed for expeditious mailing and transportation.

223.2 Single-Piece Priority Mail Rate Category.

The single-piece priority mail rate category applies to Priority Mail subclass mail[not mailed under section 223.4].

223.3 Reserved

223.4 Reserved

223.5 Flat Rate Envelope.

Priority Mail subclass mail sent in a ''flat rate'' envelope provided by the Postal Service is charged the two-pound rate.

223.6 Pickup Service.

Pickup service is available for Priority Mail subclass mail under terms and conditions specified by the Postal Service.

223.7 Bulky Parcels.

Priority Mail subclass mail weighing less than 15 pounds, and measuring over 84 inches in length and girth combined, is charged a minimum rate equal to that for a 15-pound parcel for the zone to which the piece is addressed.

230 PHYSICAL LIMITATIONS

231 Size and Weight

First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined. Additional size and weight limitations apply to individual First-Class Mail subclasses.

232 Nonstandard Size Mail

Letters and Sealed Parcels subclass mail weighing one ounce or less is nonstandard size if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive; or

b. It exceeds any of the following dimensions:

11.5 inches in length;
6.125 inches in width; or
0.25 inch in thickness

240 POSTAGE AND PREPARATION

Postage on First-Class Mail must be paid as set forth in section 3000. Postage is computed separately on each piece of mail. Pieces not within the same postage rate increment may be mailed at other than a single-piece rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed. All mail mailed at other than a single-piece rate must have postage paid in a manner not requiring cancellation.

250 DEPOSIT AND DELIVERY

251 Deposit

First-Class Mail must be deposited at places and times designated by the Postal Service.

252 Service

First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

253 Forwarding and Return

First-Class Mail that is undeliverable-as-addressed is forwarded or returned to the sender without additional charge.

260 ANCILLARY SERVICES

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Schedule
a Address [c]*C*orrection	911
b Business [r]*R*eply [m]*M*ail	931
c Certificates of [m]*M*ailing	947
d Certified [m]*M*ail	941
e COD	944
f Insurance	943
g Registered [m]*M*ail	942
h Return [r]Receipt (limited to merchandise sent by Priority Mail)	945
i Merchandise [r]*R*eturn	932
j Delivery [c]*C*onfirmation (limited to Priority Mail)	948
k Reserved.	
l Mailing Online	981

270 RATES AND FEES

271 *First-Class Mail.*

The rates and fees for First-Class Mail are set forth in the following rate schedules:

	Schedule
a Letters and Sealed Parcels	221
b Cards	222
c Priority Mail	223

272 Keys and Identification Devices.

Keys, identification cards, identification tags, or similar identification devices that:

a. weigh no more than 2 pounds;

b. are mailed without cover; and

c. bear, contain, or have securely attached the name and address information, as specified by the Postal Service, of a person, organization, or concern, with instructions to return to the address and a statement guaranteeing the payment of postage due on delivery; are subject to the following rates and fees:

i. the applicable single-piece rates in schedules 221 or 223;

ii. the fee set forth in fee schedule 931 for payment of postage due charges if an active business reply mail advance deposit account is not used, and

iii. if applicable, the surcharge for nonstandard size mail, as defined in section 232.

280 AUTHORIZATIONS AND LICENSES

The *mailing* fee set forth in [S]*s*chedule 1000 must be paid once each year at each office of mailing [by any person who mails] *or office of verification, as specified by the Postal Service, by or for mailers of* other than single-piece First-Class Mail [or courtesy envelope mail]. Payment of the fee allows the mailer to mail at any First-Class rate.

STANDARD MAIL CLASSIFICATION SCHEDULE

310 Definition

311 General

Any mailable matter *weighing less than 16 ounces* may be mailed as Standard Mail except:

a. Matter required to be mailed as First-Class Mail;

b. Copies of a publication that is entered as Periodicals class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)

312 Printed Matter

Printed matter, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual or personal correspondence, may be mailed as Standard Mail. Printed matter does not lose its character as Standard Mail when the date and name of the addressee and of the sender are written thereon. For the purposes of the Standard Mail Classification Schedule, ''printed'' does not include reproduction by handwriting or typewriting.

313 Written Additions

Standard Mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

a. Marks, numbers, name, or letters descriptive of contents;

b. ''Please Do Not Open Until Christmas,'' or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in printed matter;

g. Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;

h. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;

i. An invoice.

320 DESCRIPTION OF SUBCLASSES

[321 Subclasses Limited to Mail Weighing Less than 16 Ounces]

[321.1 Reserved]

321[.2] Regular Subclass

321.[2]1 General.

The Regular subclass consists of Standard Mail [weighing less than 16 ounces] that is not mailed under sections *322, 323, or 324.* [321.3, 321.4, 321.5 or 323.]

321.[2]2 Presort Rate Categories

321.[2]21 General.

The presort rate categories apply to Regular subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; and

c. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

321.[2]22 Basic Rate Categories.

The basic rate categories apply to presort rate category mail not mailed under section *321.23* [321.223].

321.[2]23 Three- and Five-Digit Rate Categories.

The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

321.[2]3 Automation Rate Categories.

321.[2]31 General.

The automation rate categories apply to Regular subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces, or is provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service;

d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

321.[2]32 Basic Barcoded Rate Category.

The basic barcoded rate category applies to letter-size automation rate

category mail not mailed under section 321.[2]33 or 321.[2]34.

321.[2]33 Three-Digit Barcoded Rate Category.

The three-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

321.[2]34 Five-Digit Barcoded Rate Category.

The five-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

321.[2]35 Basic Barcoded Flats Rate Category.

The basic barcoded flats rate category applies to flat-size automation rate category mail not mailed under section 321.[2]36.

321.[2]36 Three- and Five-Digit Barcoded Flats Rate Category.

The three- and five-digit barcoded flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

321.[2]4 Destination Entry Discounts.

The destination entry discounts apply to Regular subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), or sectional center facility (SCF), at which it is entered, as defined by the Postal Service.

321.[2]5 Residual Shape Surcharge.

Regular subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

321.6 Barcode Discount.

The barcode discount applies to Regular Subclass mail that is subject to the residual shape surcharge in 321.5, is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

32*2*[1.3] Enhanced Carrier Route Subclass.

32*2.1*[1.31] Definition.

The Enhanced Carrier Route subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section *321, 323, or 324* [321.2, 321.4, 321.5 or 323], and that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is prepared, marked, and presented as specified by the Postal Service;

c. Is presorted to carrier routes as specified by the Postal Service;

d. Is sequenced as specified by the Postal Service; and

e. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

32*2*.[1.3]2 Basic Rate Category.

The basic rate category applies to Enhanced Carrier Route subclass mail not mailed under section [321.33, 321.34 or 321.35] *322.3, 322.4 or 322.5.*

32*2*.[1.3]3 Basic Pre-Barcoded Rate Category.

The basic pre-barcoded rate category applies to letter-size Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including ''correction'' digits), as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

32*2*.[1.3]4 High Density Rate Category.

The high density rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements specified by the Postal Service.

32*2*.[1.3]5 Saturation Rate Category.

The saturation rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements specified by the Postal Service.

32*2*.[1.3]6 Destination Entry Discounts.

Destination entry discounts apply to Enhanced Carrier Route subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

32*2*.[1.3]7 Residual Shape Surcharge.

Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

32*3*[1.4] Nonprofit Subclass

32*3*.[1.4]1 General.

The Nonprofit subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section *321, 322, or 324* [321.2, 321.3, 321.5 or 323], and that is mailed by authorized nonprofit organizations or associations of the following types:

a. Religious, as defined in section 1009,

b. Educational, as defined in section 1009,

c. Scientific, as defined in section 1009,

d. Philanthropic, as defined in section 1009,

e. Agricultural, as defined in section 1009,

f. Labor, as defined in section 1009,

g. Veterans', as defined in section 1009,

h. Fraternal, as defined in section 1009,

i. Qualified political committees,

j. State or local voting registration officials when making a mailing required or authorized by the National Voter Registration Act of 1993.

32*3*.[1.4]11 Qualified Political Committees.

The term ''qualified political committee'' means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee:

a. The term ''national committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

b. The term ''State committee'' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

32*3*.[1.4]12 Limitation on Authorization.

An organization authorized to mail at the nonprofit Standard rates for qualified nonprofit organizations may mail only its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at nonprofit Standard rates to any other person, organization or association.

32*3*.[1.4]2 Presort Rate Categories

32*3*.[1.4]21 General.

The presort rate categories apply to Nonprofit subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; and

c. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

32*3*.[1.4]22 Basic Rate Categories.

The basic rate categories apply to presort rate category mail not mailed under section 32*2*.[1.4]23.

32*3*.[1.4]23 Three- and Five-Digit Rate Categories.

The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple

three- and five-digit ZIP Code destinations as specified by the Postal Service.

32*3*.[1.4]3 Automation Rate Categories

32*3*.[1.4]31 General.

The automation rate categories apply to Nonprofit subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces, or is provided for entry as mail using Mailing Online or a functionally equivalent service, pursuant to section 981;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Bears a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service;

d. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

32*3*.[1.4]32 Basic Barcoded Rate Category.

The basic barcoded rate category applies to letter-size automation rate category mail not mailed under section 32*3*.[1.4]33 or 32*3*.[1.4]34.

32*3*.[1.4]33 Three-Digit Barcoded Rate Category.

The three-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

32*3*.[1.4]34 Five-Digit Barcoded Rate Category.

The five-digit barcoded rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

32*3*.[1.4]35 Basic Barcoded Flats Rate Category.

The basic barcoded flats rate category applies to flat-size automation rate category mail not mailed under section 32*3*.[1.4]36.

32*3*.[1.4]36 Three- and Five-Digit Barcoded Flats Rate Category.

The three- and five-digit barcoded flats rate category applies to flat-size automation rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

32*3*.[1.4]4 Destination Entry Discounts.

Destination entry discounts apply to Nonprofit subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility) or sectional center facility (SCF) at which it is entered, as defined by the Postal Service.

32*3*.[1.4]5 Residual Shape Surcharge.

Nonprofit subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

323.6 Barcode Discount.

The barcode discount applies to Nonprofit subclass mail that is subject to the residual shape surcharge in 323.5, is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service and meets all other preparation and machinability requirements of the Postal Service.

32*4*[1.5] Nonprofit Enhanced Carrier Route Subclass

32*4*.[1.5]1 Definition.

The Nonprofit Enhanced Carrier Route subclass consists of Standard Mail [weighing less than 16 ounces] that is not mailed under section *321, 322, or 323* [321.2, 321.3, 321.4 or 323], that is mailed by authorized nonprofit organizations or associations (as defined in section 32*3*[1.41]) under the terms and limitations stated in section 32*3*.[1.4]12, and that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is prepared, marked, and presented as specified by the Postal Service;

c. Is presorted to carrier routes as specified by the Postal Service;

d. Is sequenced as specified by the Postal Service; and

e. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service.

324.[1.5]2 Basic Rate Category.

The basic rate category applies to Nonprofit Enhanced Carrier Route subclass mail not mailed under section *324.3, 324.4, or 324.5*.[321.53, 321.54 or 321.55.]

32*4*.[1.5]3 Basic Pre-Barcoded Rate Category.

The basic pre-barcoded rate category applies to letter-size Nonprofit Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including ''correction'' digits), as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

32*4*.[1.5]4 High Density Rate Category.

The high density rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements specified by the Postal Service.

32*4*.[1.5]5 Saturation Rate Category.

The saturation rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements specified by the Postal Service.

32*4*.[1.5]6 Destination Entry Discounts.

Destination entry discounts apply to Nonprofit Enhanced Carrier Route subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

32*4*.[1.5]7 Residual Shape Surcharge.

Nonprofit Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

330 Physical Limitations

331 Size

[Except as provided in section 322.161,] Standard Mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual [Standard Mail subclasses.] *rate categories.* The maximum size for mail [presorted to carrier route] in the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness, *except that merchandise samples mailed with detached address cards, prepared as specified by the Postal Service, may exceed those dimensions.* [For merchandise samples mailed with detached address cards, the carrier route maximum dimensions apply to the detached address cards and not to the samples.]

332 Weight

Standard Mail may not weigh more than *16 ounces.* [70 pounds. Additional weight limitations apply to individual Standard Mail subclasses.]

340 Postage and Preparation

341 Postage

Postage must be paid as set forth in section 3000. When the postage [computed at a Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route Standard rate] is higher than the rate prescribed in any of the *Package Services* [Standard] subclasses [listed in 322] for which the piece also qualifies [(or would qualify, except for weight)], the piece is eligible for the applicable lower rate. All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

342 Preparation

All pieces in a Standard mailing must be separately addressed. All pieces in a Standard mailing must be identified as specified by the Postal Service, and must contain the ZIP Code of the addressee when specified by the Postal Service. All Standard mailings must be prepared and presented as specified by the Postal Service. Two or more Standard mailings may be commingled and mailed only when specific methods approved by the Postal Service for determining and verifying postage are followed.

343 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed.

344 Attachments and Enclosures

344.1 [Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses (section 321)]

[344.11] General.

First-Class Mail may be attached to or enclosed in Standard *Mail containing* books, catalogs, and merchandise [entered under section 321]. The piece must be marked as specified by the Postal Service. Except as provided in section 344. [1]2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class rate for which it qualifies.

344.[1]2 Incidental First-Class Attachments and Enclosures.

First-Class Mail, as defined in subsections b through d of section 210, may be attached to or enclosed with Standard *Mail* [merchandise entered under section 321, including] *containing merchandise, including books,* but excluding merchandise samples, with postage paid on the combined piece at the applicable Standard rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

[344.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses (sections 322 and 323)]

[344.21 General.

First-Class Mail or Standard Mail from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route) may be attached to or enclosed in Standard Mail mailed under sections 322 and 323. The piece must be marked as specified by the Postal Service. Except as provided in sections 344.22 and 344.23, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class or section 321 Standard rate for which it qualifies (unless the rate applicable to the host piece is higher), or, if a combined piece with a section 321 Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.]

[344.22 Specifically Authorized Attachments and Enclosures.

Standard Mail mailed under sections 322 and 323 may contain enclosures and attachments as specified by the Postal Service and as described in subsections a and e of section 323.11, with postage paid on the combined piece at the Standard rate applicable to the host piece.]

[344.23 Incidental First-Class Attachments and Enclosures.

First-Class Mail that meets one or more of the definitions in subsections b through d of section 210, may be attached to or enclosed with Standard Mail mailed under section 322 or 323, with postage paid on the combined piece at the Standard rate applicable to the host piece, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.]

350 DEPOSIT AND DELIVERY

351 Deposit

Standard Mail must be deposited at places and times designated by the Postal Service.

352 Service

Standard Mail may receive deferred service.

353 Forwarding and Return

[353.1 Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses (section 321)]

Undeliverable-as-addressed Standard Mail [mailed under section 321] will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and Standard *Mail* pieces will be returned as specified by the Postal Service. Except as provided in section 935, the applicable First-Class Mail rate is charged for each piece receiving return only service. Except as provided in section 936, charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. Except as provided in sections 935 and 936, the charge for those returned pieces is the appropriate First-Class Mail rate for the piece plus that rate multiplied by a factor equal to the number of [section 321] Standard *Mail* pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

[353.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses (sections 322 and 323)]

[Undeliverable-as-addressed Standard Mail mailed under sections 322 and 323 will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer. Pieces which combine Standard Mail from one of the subclasses described in 322 and 323 with First-Class Mail or Standard Mail from one of the subclasses described in 321 will be forwarded if undeliverable-as-addressed, and returned if undeliverable, as specified by the Postal Service. When Standard Mail mailed under sections 322 and 323 is forwarded or returned from one post office to another, additional charges will be based on the applicable single-piece Standard Mail rate under 322 or 323.]

360 ANCILLARY SERVICES

361 All Subclasses

All Standard Mail will receive the following services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	911
b. Certificates of mailing indicating that a specified number of pieces have been mailed	947

Certificates of mailing are not available for *Standard Mail* [Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route subclass mail] when postage is paid with permit imprint.

[362 Parcel Post, Bound Printed Matter, Special, and Library Subclasses]

[Parcel Post, Bound Printed Matter, Special, and Library subclass mail will receive the following additional services upon payment of the appropriate fees:

[Service	Schedule
a. Certificates of mailing	947
b. COD	944
c. Insurance	943
d. Special handling	952
e. Return receipt (merchandise only)	945
f. Merchandise return	932
g. Delivery confirmation]	948]

[Insurance, special handling, and COD services may not be used selectively for individual pieces in a

multi-piece Standard Mail mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.]

36*2*[3] Regular and Nonprofit

362.1 Regular and Nonprofit subclass mail will receive the following additional services upon payment of the appropriate fees.

Service	Schedule
a. Bulk parcel return service	935
b. Shipper-paid forwarding	936

362.2 Regular and Nonprofit subclass mail subject to the residual shape surcharge in 321.5 and 323.6, respectively, will receive the following additional services upon payment of the approrpriate fees.

Service	Schedule
a. Bulk insurance	943
b. Return receipt (merchandise only)	945
c. Delivery confirmation	948

Bulk insurance may not be used selectively for individual pieces in a multi-piece Standard Mail mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

363[4] Regular

Regular subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Mailing online	981

365 Nonprofit

Nonprofit subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Mailing Online (starting on a date to be specified by the Postal Service)	981

370 RATES AND FEES

The rates and fees for Standard Mail are set forth as follows:

	Schedule
a. Regular subclass	[321.2]
Presort category	*321A*
Automation category	*321B*
b. Enhanced Carrier Route subclass	32*2* [1.3]
c. Nonprofit subclass	[321.4]
Presort category	*323A*
Automation category	*323B*
d. Nonprofit Enhanced Carrier Route subclass	32*4* [1.5]
[e. Parcel Post subclass].	
[Inter-BMC	322.1A]
[Intra-BMC	322.1B]
[Destination BMC	322.1C]
[Destination SCF	322.1D]
[Destination Delivery Unit	322.1E]
[f. Bound Printed Matter subclass]	
[Single-Piece	322.2A]
[Bulk and Carrier Route	322.2B]
[g. Special subclass	323.1]
[h. Library subclass	323.2]
[i.] *e.* Fees	1000

380 AUTHORIZATIONS AND LICENSES

[381 Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses]

[A] *The* mailing fee [as] set forth in Schedule 1000 must be paid once each year *at each office of mailing or office of verification, as specified by the Postal Service,* by *or for* mailers of [Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route subclass] *Standard* [m]*Mail. Payment of the fee allows the mailer to mail at any Standard Mail rate.*

PERIODICALS CLASSIFICATION SCHEDULE

410 DEFINITION

411 General Requirements

411.1 Definition.

A publication may qualify for mailing under the Periodicals Classification Schedule if it meets all the requirements in sections 411.2 through 411.5 and the requirements for one of the qualification categories in sections 412 through 415. Eligibility for specific Periodicals rates is prescribed in section 420.

411.2 Periodicals.

Periodicals class mail is mailable matter consisting of newspapers and other periodical publications. The term ''periodical publications'' includes, but is not limited to:

a. Any catalog or other course listing including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education.

b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

411.3 Issuance

411.31 Regular Issuance.

Periodicals class mail must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively.

411.32 Separate Publication.

For purposes of determining Periodicals rate eligibility, an ''issue'' of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication, and

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. ''During the same period'' shall be defined as the periods of time ensuing between the distribution of each of the issues whose eligibility is being examined. Such separate publications must independently meet the qualifications for Periodicals eligibility.

411.4 Office of Publication.

Periodicals class mail must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original entry.

411.5 Printed Sheets.

Periodicals class mail must be formed of printed sheets. It may not be reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.

412 General Publications

412.1 Definition.

To qualify as a General Publication, Periodicals class mail must meet the requirements in section 411 and in sections 412.2 through 412.4.

412.2 Dissemination of Information.

A General Publication must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry.

412.3 Paid Circulation

412.31 Total Distribution.

A General Publication must be designed primarily for paid circulation.

At least 50 percent or more of the copies of the publication must be distributed to persons who have paid above a nominal rate.

412.32 List of Subscribers.

A General Publication must be distributed to a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time. Copies mailed to persons who are not on a legitimate list of subscribers are nonsubscriber copies.

412.33 Nominal Rates.

As used in section 412.31, nominal rate means:

a. A token subscription price that is so low that it cannot be considered a material consideration;

b. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 50 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recognized retail value, or the represented value, whichever is highest.

412.34 Nonsubscriber Copies

412.341 Up to Ten Percent.

Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to subscribers during the calendar year are mailable at the rates that apply to subscriber copies provided that the nonsubscriber copies would have been eligible for those rates if mailed to subscribers.

412.342 Over Ten Percent.

Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers during the calendar year which are presorted and commingled with subscriber copies are charged the applicable rates for [Regular] *Outside County* Periodicals, *but are not eligible for preferred rate discounts.* The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to subscribers during the calendar year.

412.35 Advertiser's Proof Copies.

One complete copy of each issue of a General Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to subscriber copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as subscriber copies.

412.36 Expired Subscriptions.

For six months after a subscription has expired, copies of a General Publication may be mailed to a former subscriber at the rates that apply to copies mailed to subscribers, if the publisher has attempted during that six months to obtain payment, or a promise to pay, for renewal. These copies do not count as subscriber copies.

412.4 Advertising Purposes

A General Publication may not be designed primarily for advertising purposes. A publication is ''designed primarily for advertising purposes'' if it:

a. Has advertising in excess of 75 percent in more than one-half of its issues during any 12-month period;

b. Is owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it;

c. Consists principally of advertising and editorial write-ups of the advertisers;

d. Consists principally of advertising and has only a token list of subscribers, the circulation being mainly free;

e. Has only a token list of subscribers and prints advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers; or

f. Is published under a license from individuals or institutions and features other businesses of the licensor.

413 Requester Publications

413.1 Definition.

A publication which is circulated free or mainly free may qualify for Periodicals class as a Requester Publication if it meets the requirements in sections 411, and 413.2 through 413.4.

413.2 Minimum Pages.

It must contain at least 24 pages.

413.3 Advertising Purposes.

413.31 Advertising Percentage.

It must devote at least 25 percent of its pages to nonadvertising and not more than 75 percent to advertisements.

413.32 Ownership and Control.

It must not be owned or controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it.

413.4 Circulated to Requesters.

413.41 List of Requesters.

It must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for, including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration.

413.42 Nonrequester Copies.

413.421 Up to Ten Percent.

Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to requesters during the calendar year are mailable at the rates that apply to requester copies provided that the nonrequester copies would have been eligible for those rates if mailed to requesters.

413.422 Over Ten Percent.

Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to requesters during the calendar year which are presorted and commingled with requester copies are charged the applicable rates for [Regular] *Outside County* Periodicals*, but are not eligible for preferred rate discounts*. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to requesters during the calendar year.

413.43 Advertiser's Proof Copies.

One complete copy of each issue of a Requester Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to requester copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as requester copies.

414 Publications of Institutions and Societies

414.1 Publisher's Own Advertising.

Except as provided in section 414.2, a publication which meets the requirements of sections 411 and 412.4, and which contains no advertising other than that of the publisher, qualifies for Periodicals class as a publication of an institution or society if it is:

a. Published by a regularly incorporated institution of learning;

b. Published by a regularly established state institution of learning

supported in whole or in part by public taxation;

c. A bulletin issued by a state board of health or a state industrial development agency;

d. A bulletin issued by a state conservation or fish and game agency or department;

e. A bulletin issued by a state board or department of public charities and corrections;

f. Published by a public or nonprofit private elementary or secondary institution of learning or its administrative or governing body;

g. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof, or by a nonprofit educational radio or television station;

h. Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons;

i. Published by or under the auspices of a trade(s) union;

j. Published by a strictly professional, literary, historical, or scientific society; or,

k. Published by a church or church organization.

414.2 General Advertising.

A publication published by an institution or society identified in sections 414.1 h through k, may contain advertising of other persons, institutions, or concerns, if the following additional conditions are met:

a. The publication is originated and published to further the objectives and purposes of the society;

b. Circulation is limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers; and

iii. Exchange copies.

c. The circulation of nonsubscriber copies, including sample and complimentary copies, does not exceed 10 percent of the total number of copies referred to in 414.2b.

415 Publications of State Departments of Agriculture

A publication which is issued by a state department of agriculture and which meets the requirements of sections 411 qualifies for Periodicals class as a publication of a state department of agriculture if it contains no advertising and is published for the purpose of furthering the objects of the department.

416 Foreign Publications

Foreign newspapers and other periodicals of the same general character as domestic publications entered as Periodicals class mail may be accepted on application of the publishers thereof or their agents, for transmission through the mail at the same rates as if published in the United States. This section does not authorize the transmission through the mail of a publication which violates a copyright granted by the United States.

420 DESCRIPTION OF SUBCLASSES

421 [Regular] *Outside County* Subclass

421.1 Definition.

The [Regular] *Outside County* subclass consists of Periodicals class mail that is not mailed under section 423 and that:

a. Is presorted, marked, and presented as specified by the Postal Service; and

b. Meets machinability, addressing, and other preparation requirements specified by the Postal Service.

421.2 [Regular] *Outside County* Pound Rates.

An unzoned pound rate applies to the nonadvertising portion of [Regular] *Outside County* subclass mail. A zoned pound rate applies to the advertising portion and may be reduced by applicable destination entry discounts. The pound rate postage is the sum of the nonadvertising portion charge and the advertising portion charge.

421.3 [Regular] *Outside County* Piece Rates.

421.31 Basic Rate Category.

The basic rate category applies to all [Regular] *Outside County* subclass mail not mailed under section 421.32, 421.33, or 421.34.

421.32 Three-Digit City and Five-Digit Rate Category.

The three-digit rate category applies to [Regular] *Outside County* subclass mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

421.33 Five-Digit Rate Category.

The five-digit rate category applies to [Regular] *Outside County* subclass mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

421.34 Carrier Route Rate Category.

The carrier route rate category applies to [Regular] *Outside County* subclass mail presorted to carrier routes as specified by the Postal Service.

421.4 [Regular] *Outside County* Subclass Discounts.

421.41 Barcoded Letter Discounts.

Barcoded letter discounts apply to letter size [Regular] *Outside County* subclass mail mailed under sections 421.31, 421.32, and 421.33 which bears a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.42 Barcoded Flats Discounts.

Barcoded flats discounts apply to flat size [Regular] *Outside County* subclass mail mailed under sections 421.31, 421.32, and 421.33 which bear a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.43 High Density Discount.

The high density discount applies to [Regular] *Outside County* subclass mail mailed under section 421.34, presented in walk sequence order, and meeting the high density and preparation requirements specified by the Postal Service.

421.44 Saturation Discount.

The saturation discount applies to [Regular] *Outside County* subclass mail mailed under section 421.34, presented in walk-sequence order, and meeting the saturation and preparation requirements specified by the Postal Service.

421.45 Destination Entry Discounts.

Destination entry discounts apply to [Regular] *Outside County* subclass mail which is destined for delivery within the service area of the destination sectional center facility (SCF) or the destination delivery unit (DDU) in which it is entered, as defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.

421.46 Nonadvertising Discount.

The nonadvertising discount applies to all [Regular] *Outside County* subclass mail and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

421.47 Preferred Rate Discount.

Periodicals Mail qualifying as Nonprofit or Classroom mail under sections 422.2 and 422.3 is eligible for the Preferred rate discount set forth in Rate Schedule 421.

422 Preferred Qualification Categories

422.1 Definition.

Preferred Qualification Outside County Subclass Periodicals consist of Periodicals Mail, other than publications qualifying as Requester Publications, that meets applicable

requirements in sections 422.2, 422.3, or 422.4.

422.2 Nonprofit.

The Periodicals Outside County Subclass Nonprofit category consists of publications entered by authorized nonprofit organizations or associations of the following types:

a. *Religious, as defined in section 1009,*

b. *Educational, as defined in section 1009,*

c. *Scientific, as defined in section 1009,*

d. *Philanthropic, as defined in section 1009,*

e. *Agricultural, as defined in section 1009,*

f. *Labor, as defined in section 1009,*

g. *Veterans', as defined in section 1009,*

h. *Fraternal, as defined in section 1009, and*

i. *Associations of rural electric cooperatives, and the publications of the following types:*

j. *one publication, which contains no advertising (except advertising of the publisher) published by the official highway or development agency of a state,*

k. *program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station, or*

l. *one conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.*

422.3 Classroom

The Periodicals Outside County Subclass Classroom rate category consists of religious, educational, or scientific publications designed specifically for use in school classrooms or religious instruction classes.

422.4 Science of Agriculture.

422.41 Definition.

Science of Agriculture mail consists of Periodicals class mail devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.

422.42 Rates.

Science of Agriculture mail is subject to pound rates, piece rates, and piece rate discounts (except for the discount set forth in section 421.47) for Outside County Subclass Periodicals Mail, except for DDU, DSCF and Zone 1 & 2 pound rates. Rates for Science of Agriculture are set forth in Rate Schedule 421.

422.43 Nonadvertising Discount.

The nonadvertising discount for Outside County Subclass Periodicals Mail applies to Science of Agriculture Periodicals, and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

422.44 Destination Entry Discounts.

Destination entry discounts apply to Science of Agriculture Periodicals which are destined for delivery within the service area of the destination sectional center facility (SCF) or the destination delivery unit (DDU) in which it is entered, as defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.

423 [Preferred Rate Periodicals] *Within County Subclass*

423.1 *Reserved* [Definition.

Periodicals class mail, other than publications qualifying as Requester Publications, may qualify for Preferred Rate Periodicals rates if it meets the applicable requirements for those rates in sections 423.2 through 423.5.]

423.2 *General* [Within County Subclass]

423.21 Definition.

Within County mail consists of *Periodicals class mail, other than publications qualifying as Requester Publications,* [Preferred Rate Periodicals class mail] mailed in, and addressed for delivery within, the county where published and originally entered, from either the office of original entry or additional entry. In addition, a Within County publication must meet one of the following conditions:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half the total paid circulation of such issue.

423.22 Entry in an Incorporated City.

For the purpose of determining eligibility for Within County mail, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

423.23 Pound Rate.

One pound rate applies to Within County pieces presorted to carrier routes to be delivered within the delivery area of the originating post office, and another pound rate applies to all other pieces.

[423.3 Nonprofit Subclass]

[Nonprofit mail is Preferred Rate Periodicals class mail entered by authorized nonprofit organizations or associations of the following types:

a. Religious, as defined in section 1009,

b. Educational, as defined in section 1009,

c. Scientific, as defined in section 1009,

d. Philanthropic, as defined in section 1009,

e. Agricultural, as defined in section 1009,

f. Labor, as defined in section 1009,

g. Veterans', as defined in section 1009,

h. Fraternal, as defined in section 1009, and

i. Associations of rural electric cooperatives,

j. One publication, which contains no advertising (except advertising of the publisher) published by the official highway or development agency of a state,

k. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station.

l. One conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.]

[423.4 Classroom Subclass]

[Classroom mail is Preferred Rate Periodicals class mail which consists of religious, educational, or scientific publications designed specifically for use in school classrooms or religious instruction classes.]

[423.5 Science of Agriculture]

[Science of Agriculture mail consists of Preferred Rate Periodicals class mail devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.]

[423.6 Preferred Rate Pound Rates]

[For Preferred Rate Periodicals entered under sections 423.3, 423.4 and 423.5, an unzoned pound rate applies to the nonadvertising portion. A zoned pound rate applies to the advertising portion and may be reduced by applicable destination entry discounts. The pound rate postage is the sum of the nonadvertising portion charge and the

advertising portion charge. For Preferred Rate Periodicals entered under section 423.2, one pound rate applies to the pieces presorted to carrier route to be delivered within the delivery area of the originating post office, and another pound rate applies to all other pieces.]

423.[7]*3* [Preferred Rate] *Within County* Piece Rates

423.[71]*31* Basic Rate Category.

The basic rate category applies to [all Preferred Rate] *Within County* Periodicals not mailed under section 423.[7]*3*2, 423.[7]*3*3, or 423.[7]*3*4.

423.[72]*32* Three-digit Rate Category.

The three-digit rate category applies to [Preferred Rate] *Within County* Periodicals [entered under sections 423.2, 423.3, 423.4, or 423.5] that are presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

423.[73]*33* Five-Digit Rate Category.

The five-digit rate category applies to [Preferred Rate] *Within County* Periodicals [entered under sections 423.2, 423.3, 423.4, or 423.5 that are] presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

423.[74]*34* Carrier Route Rate Category.

The carrier route rate category applies to [Preferred Rate] Within County Periodicals presorted to carrier routes as specified by the Postal Service.

423.[8]*4* [Preferred Rate] *Within County* Discounts 423.[8]41 Barcoded Letter Discounts.

Barcoded letter discounts apply to letter size [Preferred Rate] *Within County* Periodicals mailed under sections 423.[7]*3*1, 423.[7]*3*2, and 423.[7]33 which bear a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

423.[8]*42* Barcoded Flats Discounts.

Barcoded flats discounts apply to flat size [Preferred Rate] *Within County* Periodicals mailed under sections 423.[7]*3*1, 423.[7]*3*2, and 423.[7]*3*3 which bear a barcode representing not more than 11 digits (not including ''correction'' digits) as specified by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

423.[8]*43* High Density Discount.

The high density discount applies to [Preferred Rate] *Within County* Periodicals mailed under section 423.[7]*3*4, presented in walk sequence order, and meeting the high density and preparation requirements specified by the Postal Service.[, except that mailers of] *Alternatively,* Within County mail may qualify for such discount also by presenting otherwise eligible mailings containing pieces addressed to a minimum of 25 percent of the addresses per carrier route.

423.[8]*44* Saturation Discount.

The saturation discount applies to [Preferred Rate] *Within County* Periodicals mailed under section 423.[7]34, presented in walk sequence order, and meeting the saturation and preparation requirements specified by the Postal Service.

423.[8]*45* Destination Entry Discount[s].

A [D]*d*estination *delivery unit* [entry] discount[s] appl*ies*[y] to [Preferred Rate] *Within County* [Periodicals] *carrier route category mail* which [are]*is* destined for delivery within [the service area of the destination sectional center facility (SCF) or] the destination delivery unit (DDU) in which [they are] *it is* entered, as defined by the Postal Service. [the DDU discount only applies to Carrier Route rate category mail; the SCF discount is not available for mail entered under section 423.2.]

[423.256 Nonadvertising Discount.

The nonadvertising discount applies to Preferred Rate Periodicals entered under sections 423.3, 423.4, 423.5 and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedules 421. 423.3 or 423.4 and subtracting that amount from the applicable piece rate.]

430 PHYSICAL LIMITATIONS

Periodicals Mail may not weigh more than 70 pounds or exceed 108 inches in length and girth combined. Additional size limitations apply to individual Periodicals rate categories. [There are no maximum size or weight limits for Periodicals class mail.]

440 POSTAGE AND PREPARATION]

441 Postage.

Postage must be paid on Periodicals class mail as set forth in section 3000. [When the postage computed for a particular issue using the Nonprofit or Classroom rate schedule is higher than the postage computed using the Regular rate schedule, that issue is eligible to use the Regular rate schedule. For purposes of this section, the term issue is subject to certain exceptions related to separate mailings of a particular issue, as specified by the Postal Service.]

442 Presortation.

Periodicals class mail must be presorted as specified by the Postal Service.

443 Attachments and Enclosures

443.1 General.

First-Class Mail or Standard Mail [from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route)] may be attached to or enclosed with Periodicals class mail. The piece must be marked as specified by the Postal Service. Except as provided in section 443.2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the appropriate First-Class or [section 321] Standard Mail rate for which it qualifies (unless the rate applicable to the host piece is higher), or, if a combined piece with a [section 321] Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.

443.1a ''Ride-Along'' Attachments and Enclosures.

A limit of one Standard Mail piece, not exceeding the weight of the host copy and weighing a maximum of 3.3 ounces, from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route) may be attached to or enclosed with an individual copy of Periodicals Mail for an additional postage payment of ten cents. Periodicals containing ''Ride-Along'' attachments or enclosures must maintain uniform thickness as specified by the Postal Service. The Periodicals piece with the ''Ride-Along'' must maintain the same shape and automation compatibility as it had before addition of the ''Ride-Along'' attachment or enclosure and meet other preparation requirements as specified by the Postal Service.

This provision expires on February 26, 2002.

443.2 Incidental First-Class Mail Attachments and Enclosures.

First-Class Mail that meets one or more of the definitions in section 210 b through d may be attached to or enclosed with Periodicals class mail, with postage paid on the combined piece at the applicable Periodicals rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

444 Identification

Periodicals class mail must be identified as required by the Postal

Service. Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

445 Filing of Information

Information relating to Periodicals class mail must be filed with the Postal Service under 39 U.S.C. 3685.

446 Enclosures and Supplements

Periodicals class mail may contain enclosures and supplements as specified by the Postal Service. An enclosure or supplement may not contain writing, printing or sign thereof or therein, in addition to the original print, except as authorized by the Postal Service, or as authorized under section 443.2.

450 Deposit and Delivery

451 Deposit

Periodicals class mail must be deposited at places and times designated by the Postal Service.

452 Service

Periodicals class mail is given expeditious handling insofar as is practicable.

453 Forwarding and Return

Undeliverable-as-addressed Periodicals class mail will be forwarded or returned to the mailer, as specified by the Postal Service. Undeliverable-as-addressed combined First-Class and Periodicals class mail pieces will be forwarded or returned, as specified by the Postal Service. Additional charges when Periodicals class mail is returned will be based on the applicable First-Class Mail rate.

470 Rates and Fees

The rates and fees for Periodicals class mail are set forth as follows:

	Schedule
a. [Regular] *Outside County*	421
b. Within County	423[.2]
[c. Nonprofit	423.3]
[d. Classroom	423.4]
[e.] Science of Agriculture ..... *c.*.	421
[f.] Fees ..... *d.*.	1000

480 Authorizations and Licenses

481 Entry Authorizations

Prior to mailing at Periodicals rates, a publication must be authorized for entry as Periodicals class mail by the Postal Service. Each authorized publication will be granted one original entry authorization at the post office where the office of publication is maintained. An authorization for the establishment of an account to enter a publication at an additional entry office may be granted by the Postal Service upon application by the publisher. An application for re-entry must be made whenever the publisher proposes to change the publication's title, frequency of issue or office of original entry.

482 [Preferred Rate] *Nonprofit, Classroom and Science of Agriculture* Authorization

Prior to *entering* [mailing at] Nonprofit, Classroom, and Science of Agriculture *Periodicals Mail,* [rates,] a publication must obtain an additional Postal Service entry authorization to mail at those rates.

483 Mailing by Publishers and News Agents

Periodicals class mail may be mailed only by publishers or registered news agents. A news agent is a person or concern engaged in selling two or more Periodicals publications published by more than one publisher. News agents must register at all post offices at which they mail Periodicals class mail.

484 Fees

Fees for original entry, additional entry, re-entry, and registration of a news agent are set forth in Schedule 1000.

PACKAGE SERVICES CLASSIFICATION SCHEDULE

5[3]10 DEFINITION

5[3]11 General

Any mailable matter may be mailed as *Package Services* [Standard M] *m*ail except:

a. Matter required to be mailed as First-Class Mail;

b. Copies of a publication that is entered as Periodicals class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)

[312 Printed Matter

Printed matter, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual or personal correspondence, may be mailed as Standard Mail. Printed matter does not lose its character as Standard Mail when the date and name of the addressee and of the sender are written thereon. For the purposes of the Standard Mail Classification Schedule, ''printed'' does not include reproduction by handwriting or typewriting.]

512[313] Written Additions

Package Services [Standard M]*m*ail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

a. Marks, numbers, name, or letters descriptive of contents;

b. ''Please Do Not Open Until Christmas,'' or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in printed matter;

g. Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;

h. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication;

i. An invoice.

5[3]20 DESCRIPTION OF SUBCLASSES

[322 Subclasses Limited to Mail Weighing 16 Ounces or More]

521[322.1] Parcel Post Subclass

521.[322.1]1 Definition.

The Parcel Post subclass consists of *Package Services* [Standard M]*m*ail [weighing 16 ounces or more] that is not mailed under sections [322.3, 323.1, or 323.2] *522, 523, or 524.*

521.[322.1]2 Description of Rate Categories.

521.[322.1]21 Inter-BMC Rate Category.

The inter-BMC rate category applies to all Parcel Post subclass mail not mailed under sections *521.22, 521.23, 521.24, or 521.25* [322.122, 322.123, 322.124, or 322.125].

521.[322.1]22 Intra-BMC Rate Category.

The intra-BMC rate category applies to Parcel Post subclass mail originating and destinating within a designated BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.

521.[322.1]23 *Parcel Select*—Destination Bulk Mail Center (DBMC) Rate Category.

The *Parcel Select—DBMC* [destination bulk mail center] rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

521.[322.1]24 *Parcel Select*—Destination Sectional Center Facility (DSCF) Rate Category.

The *Parcel Select*—DSCF [destination sectional center facility] rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces sorted to five-digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

521.[322.1]25 *Parcel Select*—Destination Delivery Unit (DDU) Rate Category.

The *Parcel Select—DDU* [destination delivery unit] rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces, and entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

521.[322.1]3 Bulk Parcel Post.

Bulk Parcel Post mail is Parcel Post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined or pieces measuring over 108 inches in length and girth combined are not mailable as Bulk Parcel Post mail.

521.[322.1]31 Barcode[d] Discount.

The barcode[d] discount applies to Bulk Parcel Post mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

521.[322.1]4 Bulk Mail Center (BMC) Presort Discounts.

521.[322.1]41 BMC Presort Discount.

The BMC presort discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of 50 or more pieces, entered at a facility authorized by the Postal Service, and sorted to destination BMCs, as specified by the Postal Service.

521.[322.1]42 Origin Bulk Mail Center (OBMC) Discount.

The origin bulk mail center discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of at least 50 pieces, entered at the origin BMC, and sorted to destination BMCs, as specified by the Postal Service.

521.[322.1]5 Barcode[d] Discount.

The barcode[d] discount applies to Inter-BMC, Intra-BMC, and Parcel Select–DBMC Parcel Post subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

521.[322.1]6 Oversize Parcel Post.

521.[322.1]61 Excessive Length and Girth.

Parcel Post subclass mail pieces exceeding 108 inches in length and girth combined, but not greater than 130 inches in length and girth combined, are mailable.

521.[322.1]62 Balloon Rate.

Parcel Post subclass mail pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

521.[322.1]7 Nonmachinable Surcharge.

Inter-BMC, *Intra-BMC, and Parcel Select—DBMC* Parcel Post [subclass] mail that does not meet machinability criteria specified by the Postal Service is subject to a nonmachinable surcharge.

521.[322.1]8 Pickup Service.

Pickup service is available for Parcel Post subclass mail under terms and conditions specified by the Postal Service.

522[322.3] Bound Printed Matter Subclass

522.[322.3]1 Definition.

The Bound Printed Matter subclass consists of *Package Services* [Standard M]*m*ail weighing [at least 16 ounces, but] not more than 15 pounds, which:

a. Consists of advertising, promotional, directory, or editorial material, or any combination thereof;

b. Is securely bound by permanent fastenings including, but not limited to, staples, spiral bindings, glue, and stitching; loose leaf binders and similar fastenings are not considered permanent;

c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures or images or any combination of these, by any process other than handwriting or typewriting;

d. Does not have the nature of personal correspondence;

e. Is not stationery, such as pads of blank printed forms.

522.2 Description of Rate Categories.

522.[322.3]21 Single-Piece Rate Category.

The single-piece rate category applies to Bound Printed Matter subclass mail which is not mailed under section *522.3* [322.33] or *522.4* [322.34].

522.[322.33]22 *Basic Presort* [Bulk] Rate Category.

The [bulk] *basic presort* rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces, prepared and presorted as specified by the Postal Service.

522.[322.34]23 Carrier Route Presort Rate Category.

The carrier route presort rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces of carrier route presorted mail, prepared and presorted as specified by the Postal Service.

522.24 Destination Bulk Mail Center (DBMC) Rate Category.

The destination bulk mail center rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

522.25 Destination Sectional Center Facility (DSCF) Rate Category.

The destination sectional center facility rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing sorted to five-digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

522.26 Destination Delivery Unit (DDU) Rate Category.

The destination delivery unit rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

522.[322.35]3 Barcode[d] Discount.

The barcoded discount applies to single-piece rate and [bulk] *Basic Presort* [r]*R*ate Bound Printed Matter subclass mail that is entered at designated facilities, bears a barcode

specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

[323 Subclasses With No 16-Ounce Limitation]

523[323.1] *Media Mail* [Special] Subclass

5[3]23.11 Definition.

The *Media Mail* [Special] subclass consists of *Package Services mail* [Standard Mail] of the following types:

a. Books, including books issued to supplement other books, of at least eight printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books. Not more than three of the announcements may contain as part of their format a single order form, which may also serve as a postcard. These order forms are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

b. 16 millimeter or narrower width films which must be positive prints in final form for viewing, and catalogs of such films, of 24 pages or more, at least 22 of which are printed, except when sent to or from commercial theaters;

c. Printed music, whether in bound form or in sheet form;

d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests and other mental and personal qualities with or without answers, test scores or identifying information recorded thereon in writing or by mark;

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings. Not more than three of the announcements may contain as part of their format a single order form, which may also serve as a postcard. These order forms are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

f. Playscripts and manuscripts for books, periodicals and music;

g. Printed educational reference charts, permanently processed for preservation;

h. Printed educational reference charts, including but not limited to

i. Mathematical tables,

ii. Botanical tables,

iii. Zoological tables, and

iv. Maps produced primarily for educational reference purposes;

i. Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students; and

b. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

523.2 Description of Rate Catagories

5[3]23.[1]21 Single-Piece Rate Category.

The single-piece rate category applies to *Media Mail* [Special subclass mail] not mailed under section *523.22 or 523.23* [323.13 or 323.14.] *prepared as specified by the Postal Service.*

5[3]23.[13]*22* Level A Presort Rate Category.

The Level A presort rate category applies to mailings of at least 500 pieces of *Media Mail,* [Special subclass mail,] prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

5[3]23.[14]*23* Level B Presort Rate Category.

The Level B presort rate category applies to mailing of at least 500 pieces of *Media Mail,* [Special subclass mail,] prepared and presorted to destination Bulk Mail Centers as specified by the Postal Service.

5[3]23.[15]*3* Barcode[d] Discount.

The barcode[d] discount applies to single-piece rate and Level B presort rate *Media Mail* [Special subclass mail,] that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

524[323.2] Library *Mail* Subclass

524.[323.2]1 Definition

524[323.2]11 General.

The Library *Mail* subclass consists of *Package Services* [Standard M]*m*ail of the following types[, separated or presorted as specified by the Postal Service]:

a. Matter designated in section *524.13* [323.213], loaned or exchanged (including cooperative processing by libraries) between:

i. Schools or colleges, or universities;

ii. Public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, or between such organizations and their members, readers or borrowers.

b. Matter designated in section *524*.[323.2]14, mailed to or from schools, colleges, universities, public libraries, museums and herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations; or

c. Matter designated in section *524*.[323.2]15, mailed from a publisher or a distributor to a school, college, university or public library.

524.[323.2]12 Definition of Nonprofit Organizations and Associations.

Nonprofit organizations or associations are defined in section 1009.

524.[323.2]13 Library subclass mail under section *524*.[323.2]11.a.

Matter eligible for mailing as Library Mail [subclass mail] under subsection a of section [323.2]*524*.11 consists of:

a. Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising other than incidental announcements of books;

b. Printed music, whether in bound form or in sheet form;

c. Bound volumes of academic theses in typewritten or other duplicated form;

d. Periodicals, whether bound or unbound;

e. Sound recordings;

f. Other library materials in printed, duplicated or photographic form or in the form of unpublished manuscripts; and

g. Museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interest of museums and herbaria.

524.[323.2]14 Library *Mail* [subclass mail] under section *524*.[323.2]11.b.

Matter eligible for mailing as Library [subclass m] *M*ail under subsection b of section *524*.[323.2]11 consists of:

a. 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms; all of which must be positive prints in final form for viewing;

b. Sound recordings;

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria;

d. Scientific or mathematical kits, instruments or other devices;

e. Catalogs of the materials in subsections a through d of section *524*.[323.2]14 and guides or scripts prepared solely for use with such materials.

524.[323.2]15 Library [subclass m]*M*ail under section *524*.[323.2]11.c.

Matter eligible for mailing as Library subclass mail under subsection c of section *524*.[323.2]11 consists of books, including books to supplement other

books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

524.2 Description of Rate Categories

524.[323.2]21 Single-Piece Rate Category.

The single-piece rate category applies to Library [subclass m]*M*ail not mailed under section [323.23 or 323.24]*524.22 or 524.23 prepared as specified by the Postal Service.*

524.[323.23]22 Level A Presort Rate Category.

The Level A presort rate category applies to mailings of at least 500 pieces of Library [subclass m]*M*ail, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

524.[323.24]23 Level B Presort Rate Category.

The Level B presort rate category applies to mailings of at least 500 pieces of Library [subclass m]*M*ail, prepared and presorted to destination Bulk Mail Centers as specified by the Postal Service.

524.[323.25]3 Barcode[d] Discount.

The barcode[d] discount applies to *Single-Piece Rate and Level B Presort Rate* Library [subclass m]*M*ail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

5[3]30 PHYSICAL LIMITATIONS

5[3]31 Size

Except as provided in section *521*.[322.1]61, *Package Services* [Standard M]*m*ail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual *Package Services* [Standard M]*m*ail subclasses. [The maximum size for mail presorted to carrier route in the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness. For merchandise samples mailed with detached address cards, the carrier route maximum dimensions apply to the detached address cards and not to the samples.]

5[3]32 Weight

Package Services [Standard M]*m*ail may not weigh more than 70 pounds. Additional weight limitations apply to individual *Package Services* [Standard M]*m*ail subclasses.

5[3]40 POSTAGE AND PREPARATION

5[3]41 Postage

Postage must be paid as set forth in section 3000. [When the postage computed at a Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route Standard rate is higher than the rate prescribed in any of the Standard subclasses listed in 322 or 323 for which the piece also qualifies (or would qualify, except for weight), the piece is eligible for the applicable lower rate.] All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

5[3]42 Preparation

All pieces in a *Package Services* [Standard] mailing must be separately addressed. All pieces in a *Package Services* [Standard] mailing must be identified as specified by the Postal Service, and must contain the ZIP Code of the addressee when specified by the Postal Service. All *Package Services* [Standard] mailings must be prepared and presented as specified by the Postal Service. Two or more *Package Services* [Standard] mailings may be commingled and mailed only when specific methods approved by the Postal Service for determining and verifying postage are followed.

5[3]43 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed.

5[3]44 Attachments and Enclosures

[344.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses]

544.1[344.21] General.

First-Class Mail or Standard Mail [from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route)] may be attached to or enclosed in *Package Services* [Standard M]*m*ail [mailed under sections 322 and 323]. The piece must be marked as specified by the Postal Service. Except as provided in sections *544.2 and 544.3*, [344.22 and 344.23,] additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class or [section 321] Standard *Mail* rate for which it qualifies [(]unless the rate applicable to the host piece is higher.[), or, if a combined piece with a section 321 Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.]

5[3]44.2[2] Specifically Authorized Attachments and Enclosures.

Package Services [Standard M]*m*ail [mailed under sections 322 and 323] may contain enclosures and attachments as specified by the Postal Service and as described in subsections a and e of section *523.1*[323.11], with postage paid on the combined piece at the *Package Services* [Standard] rate applicable to the host piece.

5[3]44.[2]3 Incidental First-Class Attachments and Enclosures.

First-Class Mail that meets one or more of the definitions in subsections b through d of section 210, may be attached to or enclosed with *Package Services* [Standard M]*m*ail [mailed under section 322 or 323], with postage paid on the combined piece at the *Package Services* [Standard] rate applicable to the host piece, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

5[3]50 DEPOSIT AND DELIVERY

5[3]51 Deposit

Package Services [Standard M]*m*ail must be deposited at places and times designated by the Postal Service.

5[3]52 Service

Package Services [Standard M]*m*ail may receive deferred service.

5[3]53 Forwarding and Return

[353.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses]

Undeliverable-as-addressed *Package Services* [Standard M]*m*ail [mailed under sections 322 and 323] will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer. Pieces which combine *Package Services* [Standard M]*m*ail [from one of the subclasses described in 322 and 323] with First-Class Mail or Standard Mail [from one of the subclasses described in 321] will be forwarded if undeliverable-as-addressed, and returned if undeliverable, as specified by the Postal Service. When *Package Services* [Standard M]*m*ail [mailed under sections 322 and 323] is forwarded or returned from one post office to another, additional charges will be based on the applicable single-piece *Package Services* [Standard M]*m*ail rate [under 322 or 323].

5[3]60 ANCILLARY SERVICES

[361 All Subclasses]

Package Services [All Standard M]*m*ail will receive the following

services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	911
[b. Certificates of mailing indicating that a specified number of pieces have been mailed]	[947]

[Certificates of mailing are not available for Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route subclass mail when postage is paid with permit imprint.]

[362 Parcel Post, Bound Printed Matter, Special, and Library Subclasses]

[Parcel Post, Bound Printed Matter, Special, and Library subclass mail will receive the following additional services upon payment of the appropriate fees:]

[Service	Schedule]
[a.]*b.* Certificates of mailing	947
[b.]*c.* COD	944
[c.]*d.* Insurance	943
[d.]*e.* Special handling	952
[e.]*f.* Return receipt (merchandise only)	945
[f.]*g.* Merchandise return	932
[g.]*h.* Delivery Confirmation	948
i. Shipper Paid Forwarding	*936*
j. Signature Confirmation	*949*
k. Parcel Airlift	*951*

Insurance, special handling, and COD services may not be used selectively for individual pieces in a multi-piece *Package Services* [Standard Mail] mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

5[3]70 RATES AND FEES

The rates and fees for *Package Services* [Standard M]*m*ail are set forth as follows:

	Schedule
[a. Regular subclass	321.2]
[b. Enhanced Carrier Route subclass	321.3]
[c. Nonprofit subclass	321.4]
[d. Nonprofit Enhanced Carrier Route subclass	321.5]
a.[e. Parcel Post subclass	
Inter-BMC	[322.1] *522.2A*
Intra-BMC	[322.1] *522.2B*
Parcel Select	
Destination BMC	[322.1] *522.2C*
Destination SCF	[322.1] *522.2D*
Destination Delivery Unit	[322.1] *522.2E*
b.[f.] Bound Printed Matter subclass	
Single-Piece	[322.3] *522A*
[Bulk] *Basic Presort* and Carrier Route	[322.3] *522B*
Destination Entry Basic Presort	522C
Destination Entry Carrier Route Presort	*522D*
c.[g.] *Media Mail* [Special] subclass	323.1
d.[h.] Library *Mail* subclass	323.2
e.[i.] Fees	1000

5[3]80 AUTHORIZATIONS AND LICENSES

[382] Special and Library Subclasses]

[A presort mailing fee as set forth in Schedule 1000 must be paid once each year at each office of mailing by or for any person who mails presorted Special or Library subclass mail. Any person who engages a business concern or other individuals to mail presorted Special or Library subclass mail must pay the fee.]

581[383] Parcel Post Subclass

[A] *The* mailing fee [as] set forth in Schedule 1000 must be paid once each *12-month period* [year] *at each office of mailing or office of verification, as specified by the Postal Service,* by *or for* mailers of *any Parcel Select* [Destination BMC, Destination SCF or Destination Delivery Unit] rate category mail in the Parcel Post subclass. *Payment of the fee allows the mailer to mail at any Parcel Select rate.*

582 Bound Printed Matter Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of Destination BMC, Destination SCF or Destination Delivery Unit rate category mail in the Bound Printed Matter subclass. Payment of the fee allows the mailer to mail at any destination entry Bound Printed Matter rate.

583 Media Mail Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of presorted Media Mail. Payment of the fee allows the mailer to mail at any presorted Media Mail rate.

584 Library Mail Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of presorted Library Mail. Payment of the fee allows the mailer to mail at any presorted Library Mail rate.

SPECIAL SERVICES CLASSIFICATION SCHEDULE

910 Addressing

911 ADDRESS CORRECTION SERVICE

911.1 Definition

911.11 Address [c]*C*orrection [s]*S*ervice [is a service which provides the mailer with a method of obtaining the correct address, if available to the Postal Service, of the addressee or the reason for nondelivery.] *provides a mailer both an addressee's former and current address, if the correct address is known to the Postal Service. If the correct address is not known to the Postal Service, Address Correction Service provides the reason why the Postal Service could not deliver the mailpiece as addressed.*

911.2 [Description of Service] *Availability*

911.21 Address [c]*C*orrection service is available to mailers of postage prepaid mail of all classes[. Periodicals class mail will receive address correction service.]*, except for mail addressed for delivery by military personnel at any military installation. Address Correction Service is mandatory for Periodicals class mail.*

[911.22 Address correction service is not available for items addressed for delivery by military personnel at any military installation.]

911.22 Automated Address Correction Service is available to mailers who can receive computerized address corrections and meet the requirements specified by the Postal Service.

[911.23 Address correction provides the following service to the mailer:

a. If the correct address is known to the Postal Service, the mailer is notified of both the old and the correct address.

b. If the item mailed cannot be delivered, the mailer will be notified of the reason for nondelivery.]

911.3 *Mailer* Requirements[of the Mailer]

911.31 Mail, other than Periodicals class mail, sent under this section must bear a request for [a]*A*ddress [c]*C*orrection service.

911.4 Other Services

911.41 Address Correction Service serves as a prerequisite for Shipper Paid Forwarding.

911.[4]*5* Fees

911.[41]*51* [There is no charge for address correction service] *The fees for Address Correction Service are set forth*

in Fee Schedule 911. These fees do not apply when the correction is provided incidental to the return of the mailpiece to the sender.

[911.42 A fee, as set forth in Fee Schedule 911, is charged for all other forms of address correction service.]

912 MAILING LIST SERVICES

912.1 Definition

912.11 Mailing [l]*L*ist services [include] *enable an eligible mailer to obtain the following services:*

a. Correction of [m]*M*ailing [l]*L*ists;

b. Change-of-[a]*A*ddress [i]*I*nformation for [e]*E*lection [b]*B*oards and [r]*R*egistration [c]*C*ommissions;

c. ZIP [c]*C*oding of [m]*M*ailing [l]*L*ists; and

d. [Arrangement] *Sequencing* of [a]*A*ddress [c]*C*ards [in the sequence of delivery].

[912.12 Correction of mailing list service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists.]

[912.13 ZIP coding of mailing lists service is a service identifying ZIP Code addresses in areas served by multi-ZIP coded postal facilities.]

912.2 Description of Service*s*

[912.21 Correction of mailing list service is available only to the following owners of name and address or occupant mailing lists:

a. Members of Congress

b. Federal agencies

c. State government departments

d. Municipalities

e. Religious organizations

f. Fraternal organizations

g. Recognized charitable organizations

h. Concerns or persons who solicit business by mail]

a. *Correction of Mailing Lists. This service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists. New names will not be added to a name and address mailing list, and street address numbers will not be added or changed for an occupant mailing list.*

[912.22 The following corrections will be made to name and address lists:]

(1) *The Postal Service provides the following corrections to name and address lists:*

[a.]i. deletion of [N]names to which mail cannot be delivered or forwarded [will be deleted];

[b.]ii. correction of [I]incorrect house, rural, or post office box numbers [will be corrected;] *and*

[c.]iii. furnishing of new addresses, including Zip Codes, [W]*w*hen permanent forwarding orders are on file for customers who have moved.*[*, new addresses including ZIP Codes will be furnished;]

This service does not include the addition of new names.

[d. New names will not be added to the list.]

[912.23 The following corrections will be made to occupant lists:]

(2) The Postal Service provides the following corrections to occupant lists:

[a.]*i. deletion of* [N]*n*umbers representing incorrect or non-existent street addresses[will be deleted];

[b.]*ii. identification of* [B]*b*usiness [or] *addresses and* rural route addresses [will be distinguished if], *to the extent* known; *and*

[c.]*iii. grouping of* [C]*c*orrected cards or sheets [will be grouped]by route[;].

[d. Street address numbers will not be added or changed.]

[912.24 Corrected lists will be returned to customers at no additional charge.]

[912.25 Residential change-of-address information is available only to election boards or registration commissions for obtaining, if known to the Postal Service, the current address of an addressee.]

b. *Change-of-Address Information for Election Boards and Registration Commissions. This service provides election boards and voter registration commissions with the current address of a resident addressee, if known to the Postal Service.*

[912.26 ZIP coding or mailing list service provides that addresses will be sorted to the finest possible ZIP Code sortation.]

c. ZIP Coding of Mailing Lists. *This service provides sortation of addresses to the finest possible ZIP Code level.*

[912.27 Gummed labels, wrappers, envelopes, Stamped Cards, or postcards indicative of one-time use will not be accepted as mailing lists.]

[912.28 Sequencing of address cards service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.]

c. *Sequencing of Address Cards. This service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.*

912.3 Requirements of Customer

912.31 Correction of Mailing List service is available only to the following owners of name and address or occupant mailing lists:

a. *Members of Congress*

b. *Federal agencies*

c. *State government departments*

d. *Municipalities*

e. *Religious organizations*

f. *Fraternal organizations*

g. *Recognized charitable organizations*

h. *Concerns or persons who solicit business by mail*

912.[31]*32* A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as specified by the Postal Service.

912.33 Gummed labels, wrappers, envelopes, Stamped Cards, or postcards indicative of one-time use will not be accepted as mailing lists.

912.4 Fees

912.41 The fees for [m]*M*ailing [l]*L*ist services are set forth in Fee Schedule 912.

920 DELIVERY ALTERNATIVES

921 POST OFFICE BOX AND CALLER SERVICE

[Editorial Note: The order of appearance of old section 921.1 Caller Service and old section 921.2 Post Office Box Service have been reversed.]

921.[2]*1* Post Office Box Service

921.[21]*11* Definition

921.[211]*111* Post [o]*O*ffice [b]*B*ox service [is a service which]provides the customer with a private, locked receptacle for the receipt of mail during the hours [when the lobby of a postal facility is open.]*specified by the Postal Service.*

921.[22]*12* [Description of Service]Limitations

921.[221]*121* The Postal Service may limit the number of post office boxes occupied by any one customer.

[921.222 A post office boxholder may ask the Postal Service to deliver to the post office box all mail properly addressed to the holder. If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, under existing regulations.]

921.[223]*122* Post [o]*O*ffice [b]*B*ox service [cannot be used when the sole purpose is, by subsequently filing change-of-address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.]*is not available to a customer whose sole purpose for using this service is to obtain free forwarding or transfer of mail by filing change-of-address orders.*

921.[23]*13* Fees

921.[231]*131* Fees for [p]*P*ost [o]*O*ffice [b]Box service are set forth in Fee Schedule 921.

921.[232]*132* In postal facilities primarily serving academic institutions or the students of such institutions, fees for post office boxes are:

Period of box use	Fee
95 days or less	½ semiannual fee.
96 to 140 days	¾ semiannual fee.
141 to 190 days	Full semiannual fee.
191 to 230 days	1¼ semiannual fee.
231 to 270 days	1½ semiannual fee.
271 days to full year	[Full]*Twice semi*annual fee.

921.[233]*133* No refunds will be made for post office box fees paid under section 921.[232]*132.* [For purposes of this section, the full annual fee is twice the amount of the semi-annual fee.]

921.134 Two box keys are available upon payment of a refundable deposit, as specified by the Postal Service. Additional keys, including replacement keys, will be provided, as specified by the Postal Service, only upon payment of the key fee set forth in Fee Schedule 921. Changing the lock on a box is available upon request of the primary box customer and payment of the lock replacement fee set forth in Fee Schedule 921.

921.[1]*2* Caller Service

921.[11]*21* Definition

921.[111]*211* Caller service [is a service which permits a customer to obtain mail addressed to the customer's box number through a call window or loading dock.]*provides a means for receiving mail, and enables an eligible customer to have properly addressed mail delivered through a call window or loading dock.*

921.[12]*22 Availability*[Description of Service]

[921.121 Caller service uses post office box numbers as the address medium but does not actually use a post office box.]

[921.122 Caller service is not available at certain postal facilities.]

921.[123]*221* Caller service is provided to customers *at the discretion of the Postal Service, based* on [the basis of]mail volume received and [number]*capacity and utilization* of post office boxes [used]at any one facility.

[921.124 A customer may reserve a caller number.]

921.[125]*222* Caller service [cannot be used when the sole purpose is, by subsequently filing change-of-address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.]*is not available to a customer whose sole purpose for using this service is to obtain free forwarding or transfer of mail by filing change-of-address orders.*

921.[13]*23* Fees

921.[131]*231* Fees for [c]*C*aller service are set forth in Fee Schedule 921.

930 PAYMENT ALTERNATIVES

931 BUSINESS REPLY MAIL

931.1 Definitions

931.11 Business [r]*R*eply [m]*M*ail [is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use]*service enables a Business Reply Mail permit holder, or the permit holder's authorized representative, to distribute Business Reply Mail cards, envelopes, cartons and labels, which can then be used* by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. [A distributor is the holder of a business reply license.]*The permit holder guarantees payment on delivery of postage and fees for the Business Reply Mail pieces that are returned to the addressee, including any pieces that the addressee refuses.*

[931.12 A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation.]

[931.2 Description of Service]

[The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.]

931.[3]*2 Mailer* Requirements[of the Mailer]

931.[31]*21* Business reply cards, envelopes, cartons and labels must [be preaddressed and bear business reply markings.]*meet the addressing and preparation requirements specified by the Postal Service. Qualified Business Reply Mail must in addition meet the requirements presented in sections 221.24 or 222.34 for the First-Class Mail Qualified Business Reply Mail rate categories.*

931.[32]*22* [Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.]*To qualify for the advance deposit account per piece fees, the customer must maintain sufficient money in an advance deposit account to cover postage and fees due for returned Business Reply Mail.*

931.23 To qualify for the nonletter-size weight-averaging per piece and monthly fees set forth in Fee Schedule 931, the permit holder must be authorized for weight averaging, and receive Business Reply Mail pieces that meet the addressing and other preparation requirements specified by the Postal Service, but do not meet the machinability requirements specified by the Postal Service for mechanized or automation letter sortation.

931.3 Other Services

931.31 Reserved

931.4 Fees

931.41 The fees for [b]*B*usiness [r]Reply [m]*M*ail are set forth in Fee Schedule 931.

[931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.]

931.[43]42 [An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.]*The annual accounting fee set forth in Fee Schedule 1000 must be paid each year for each business reply advance deposit account at each facility where the mail is to be received.*

[931.5 Nonletter-Size Weight Averaging Fees]

931.43 [A]*The* nonletter-size weight averaging monthly fee [as]set forth in Fee Schedule 931 must be paid each month during *any part of* which [the distributor's weight averaging account is active.]*the permit holder is authorized to use the weight averaging fees.*

931.[6]*5* Authorizations and Licenses

931.[61]*51* In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule [931]*1000*.

931.[62]*52* Except as provided in section 931.[73]*53*, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.[63]*53* If the [b]*B*usiness [r]*R*eply [m]*M*ail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all [b]Business [r]*R*eply [m]*M*ail.

931.[64]*54* The license to mail [b]*B*usiness [r]*R*eply [m]*M*ail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.[65]*55* Authorization to pay nonletter-size weight-averaging [b]*B*usiness [r]*R*eply [m]*M*ail fees as set forth in Fee Schedule 931 may be canceled for failure of a [b]*B*usiness [r]*R*eply [m]*M*ail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

932 MERCHANDISE RETURN SERVICE

932.1 Definition

932.11 Merchandise [r]*R*eturn service [provides a method whereby a shipper may]*enables a Merchandise Return service permit holder to* authorize its customers to return a parcel with the postage paid by the *permit holder.*[shipper. A shipper is the holder of a merchandise return permit.]

932.2 [Description of Service]*Availability*

932.21 Merchandise [r]Return service is available to all [shippers who obtain the necessary permit and]*Merchandise Return service permit holders* who guarantee payment of postage and fees for all returned parcels.

932.22 Merchandise [r]*R*eturn service is available for the return of any parcel under the following classification schedules:

a. First-Class Mail

b. Standard Mail

c. *Package Services*

932.3 *Mailer* Requirements[of the Mailer]

932.31 Merchandise Returnandise return labels must be prepared [at the shipper's expense to specifications set forth] *as specified* by the Postal Service*, and be made available to the permit holder's customers.*

[932.32 The shipper must furnish its customer with an appropriate merchandise return label.]

932.4 Other Services

932.41 The following services may be purchased in conjunction with Merchandise Return Service:

Service	Fee Schedule
a. Certificate of [m]*M*ailing	947
b. Insurance	943
c. Registered [m]*M*ail	942
d. Special *[h]H*andling	952

[932.42 Only the shipper may purchase insurance service for the +erchandise return parcel by indicating the amount of insurance on the merchandise return label before providing it to the customer. The customer who returns a parcel to the shipper under merchandise return service may not purchase insurance.]

932.5 Fees

932.51 [The fee for the merchandise return service is set forth in Fee Schedule 932. This fee is paid by the shipper.]*The permit holder must pay the accounting fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.*

932.6 Authorizations and Licenses

932.61 A permit fee as set forth in Schedule 1000 must be paid once each [calendar year]*12-month period* by shippers utilizing [m]*M*erchandise [r]*R*eturn service.

932.62 The merchandise return permit may be canceled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

933 ON-SITE METER [SETTING] *SERVICE*

933.1 Definition

933.11 On-[s]*S*ite [m]*M*eter [setting or examination service is a service whereby the Postal Service will service a postage meter]*service enables a mailer or meter manufacturer to obtain the following meter-related services from the Postal Service* at the mailer's or meter manufacturer's premises[.]*:*

a. *checking a meter in or out of service; and*

b. *setting or examining a meter.*

933.2 [Description of Service]*Availability*

933.21 On-[s]*S*ite [m]*M*eter [setting or examination]service is available on a scheduled basis, and meter setting may be performed on an emergency basis for those customers enrolled in the scheduled on-site meter setting or examination program.

933.3 Fees

933.31 The fees for [o]*O*n-[s]*S*ite [m]*M*eter [setting or examination]service are set forth in Fee Schedule 933. *The basic meter service fee is charged whenever a postal employee is available to provide a meter-related service in section 933.11 at the mailer's or meter manufacturer's premises, even if no particular service is provided.*

934 Reserved

935 BULK PARCEL RETURN SERVICE

935.1 Definition

935.11 Bulk Parcel Return Service provides a method whereby high-volume parcel mailers may have machinable *Standard Mail* parcels returned to designated postal facilities for pickup by the mailer at a predetermined frequency specified by the Postal Service or delivered by the Postal Service in bulk in a manner and frequency specified by the Postal Service. Such parcels are being returned because they:

[(1)]*a.* are undeliverable-as-addressed;

[(2)]*b.* have been opened, resealed, and redeposited into the mail for return to the mailer using the return label described in section 935.36 below; or

[(3)]*c.* are found in the mailstream, having been opened, resealed, and redeposited by the recipient for return to the mailer, and it is impracticable or inefficient for the Postal Service to return the mailpiece to the recipient for payment of return postage.

935.2 [Description of Service]*Availability*

935.21 Bulk Parcel Return Service is available only for the return of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

935.3 *Mailer* Requirements[of the Mailer]

935.31 Mailers must receive authorization from the Postal Service to use Bulk Parcel Return Service.

935.32 To claim eligibility for Bulk Parcel Return Service at each facility through which the mailer requests Bulk Parcel Return Service, the mailer must demonstrate receipt of 10,000 returned machinable parcels at a given delivery point in the previous postal fiscal year or must demonstrate a high likelihood of receiving 10,000 returned parcels in the postal fiscal year for which the service is requested.

935.33 Payment for Bulk Parcel Return Service is made through advance deposit account, or as otherwise specified by the Postal Service.

935.34 Mail for which Bulk Parcel Return Service is requested must bear endorsements specified by the Postal Service.

935.35 Bulk Parcel Return Service mailers must meet the documentation and audit requirements of the Postal Service.

935.36 Mailers of parcels endorsed for Bulk Parcel Return Service may furnish the recipient a return label, prepared at the mailer's expense to specifications set forth by the Postal Service, to authorize return of opened, machinable parcels at the expense of the original mailer. There is no additional fee for use of the label.

935.4 Other Services

935.41 The following services may be purchased in conjunction with Bulk Parcel Return Service:

Service	Fee schedule
a. Address Correction Service	911

Service	Fee schedule
b. Certificate of Mailing	947
c. Shipper-Paid Forwarding	936

935.5 Fees

935.51 The *per return* fee for Bulk Parcel Return Service is set forth in Fee Schedule 935.

935.52 The permit holder must pay the accounting fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.

935.6 Authorizations and Licenses

935.61 A permit fee as set forth in Schedule 1000 must be paid once each [calendar year]*12-month period* by mailers utilizing Bulk Parcel Return Service.

935.62 The Bulk Parcel Return Service permit may be canceled for failure to maintain sufficient funds in an advance deposit account to cover postage and fees on returned parcels or for failure to meet the specifications of the Postal Service, including distribution of return labels that do not conform to Postal Service specifications.

936 SHIPPER-PAID FORWARDING

936.1 Definition

936.11 Shipper-Paid Forwarding [provides a method whereby mailers may]*enables mailers to* have undeliverable-as-addressed machinable *Standard Mail* parcels forwarded at applicable First-Class Mail *or Package Services mail* rates for up to one year from the date that the addressee filed a change-of-address order. If [the parcel, for which]Shipper-Paid Forwarding is elected[,] *for a parcel that* is returned, the mailer will pay the applicable First-Class Mail *or Package Services mail* rate, or the Bulk Parcel Return Service fee, if that service was elected.

936.2 [Description of Service]*Availability*

936.21 Shipper-Paid Forwarding is available only for the forwarding of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

936.22 Shipper-Paid Forwarding is available only if automated Address Correction Service, as described in section 911, is used.

936.3 *Mailer* Requirements[of the Mailer]

[936.31 Shipper-Paid Forwarding is available only in conjunction with automated Address Correction Service in section 911.]

936.[32]*31* Mail for which Shipper-Paid Forwarding is purchased must meet the preparation requirements of the Postal Service.

936.[33]*32* Payment for Shipper-Paid Forwarding is made through advance deposit account, or as otherwise specified by the Postal Service.

936.[34]*33* Mail for which Shipper-Paid Forwarding is requested must bear endorsements specified by the Postal Service.

936.4 Other Services

936.41 The following services may be purchased in conjunction with Shipper-Paid Forwarding:

Service	Fee schedule
a. Certificate of Mailing	947
b. Bulk Parcel Return Service	935

936.5 Applicable Rates *and Fees*

936.51 Except as provided in section 935, single-piece rates under the Letters and Sealed Parcels subclass or the Priority Mail subclass of First-Class Mail, *or the Parcel Post subclass of Package Services*, as set forth in Rate Schedules 221[and], 223, *521.2A and 521.2B*, apply to pieces forwarded or returned under this section.

936.52 The accounting fee specified in Fee Schedule 1000 must be paid once each 12-month period for each advance deposit account.

940 ACCOUNTABILITY AND RECEIPTS

941 CERTIFIED MAIL

941.1 Definition

941.11 Certified [m]*M*ail service [is a service that provides a mailing receipt to the sender and a record of delivery at the office of delivery.] *provides a mailer with evidence of mailing, and guarantees retention of a record of delivery by the Postal Service for a period specified by the Postal Service.*

941.2 [Description of Service] *Availability*

941.21 Certified [m]*M*ail service is [provided] *available* for matter mailed as First-Class Mail.

941.3 Included Services

941.[22]*31* If requested by the mailer, *the Postal Service will indicate* the time of acceptance [by the Postal Service will be indicated] on the *mailing* receipt.

[941.23 A record of delivery is retained at the office of delivery for a specified period of time.]

941.[24]*32* If the initial attempt to deliver the mail is not successful, a notice of attempted delivery is left at the mailing address.

[941.25 A receipt of mailing may be obtained only if the article is mailed at a post office, branch or station, or given to a rural carrier.]

941.[26]*33* [Additional copies of the original mailing receipt may be obtained by the mailer.] *A mailer may obtain a copy of the mailing receipt on terms specified by the Postal Service.*

941.[3]*4* [Deposit of Mail]*Mailer Requirements*

941.[31]*41* Certified [m]*M*ail must be deposited in a manner specified by the Postal Service.

941.42 The mailer must mail the article at a post office, branch, or station, or give the article to a rural carrier, in order to obtain a mailing receipt.

941.[4]*5* Other Services

941.[41]*51* The following services may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. Restricted Delivery	946
b. Return Receipt	945

941.[5]*6* Fees

941.[51]*61* The fee[s] for [c]*C*ertified [m]*M*ail service [are] *is* set forth in Fee Schedule 941.

942 REGISTERED MAIL

942.1 Definition

942.11 Registered [m]*M*ail [is a] service [that] provides added protection to mail sent under this section and indemnity in case of loss or damage. *The amount of indemnity depends upon the actual value of the article at the time of mailing, up to a maximum of $25,000, and is not available for articles of no value.*

942.2 [Description of Service] *Availability*

942.21 Registered [m]*M*ail service is available [to mailers of prepaid mail sent as] *for prepaid* First-Class Mail [except that registered mail must] *of any value, if the mail* meets the minimum requirements for length and width [regardless of thickness.] *specified by the Postal Service.*

[942.22 Registered mail service provides insurance up to a maximum of $25,000, depending upon the actual value at the time of mailing, except that insurance is not available for articles of no value.]

[942.23 There is no limit on the value of articles sent under this section.]

942.[24]*22* Registered [m]*M*ail service is not available for:

a. All delivery points because of the high security required for [r]*R*egistered [m]*M*ail; in addition, [not all delivery points will be available for registry and]liability is limited in some geographic areas[;]

b. Mail of any class sent in combination with First-Class Mail;

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

942.3 Included Services

942.[25]*31* The following services are provided as part of [r]*R*egistered [m]*M*ail service at no additional cost to the mailer:

a. A *mailing* receipt;

b. A record of delivery, retained by the Postal Service for a specified period of time;

c. A notice of attempted delivery*,* [will be] left at the mailing address if the initial delivery attempt is unsuccessful; *and*

d. *A notice of nondelivery,* [W]*w*hen [r]*R*egistered [m]*M*ail is undeliverable-as-addressed and cannot be forwarded[, a notice of nondelivery is provided].

942.32 Registered Mail is forwarded and returned without additional registry charge.

942.4 Mailer Requirements

942.41 Registered Mail must be deposited in a manner specified by the Postal Service.

[942.26 A claim for complete loss of insured articles may be filed by the mailer only. A claim for damage or for partial loss of insured articles may be filed by either the mailer or addressee.]

942.[27]*42* Indemnity claims for [r]*R*egistered [m]*M*ail must be filed within a period of time, specified by the Postal Service, from the date the article was mailed. *A claim concerning complete loss of registered articles may be filled by the mailer only. A claim concerning damage to or partial loss of registered articles may be filed by either the mailer or addressee.*

[942.3 Deposit of Mail]

[942.31 Registered mail must be deposited in a manner specified by the Postal Service.]

[942.4 Service]

[942.41 Registered mail is provided maximum security.]

[942.5 Forwarding and Return]

[942.51 Registered mail is forwarded and returned without additional registry charge.]

942.[6]*5* Other Services

942.[61]*51* The following services may be obtained in conjunction with mail sent under this section upon payment of applicable fees:

Service	Fee Schedule
a. Collect on [d]*D*elivery	944
b. Restricted [d]*D*elivery	946
c. Return [r]*R*eceipt	945
d. Merchandise [r]*R*eturn (shippers only)	932

942.[7]*6* Fees

942.[71]*61* The fees for [r]*R*egistered [m]*M*ail are set forth in Fee Schedule 942.

942.62 There are no additional Registered Mail fees for forwarding and return of Registered Mail.

943 INSURANCE

943.1 Express Mail Insurance

943.11 Definition

943.111 Express Mail Insurance [is a service that] provides the mailer with indemnity for loss of, rifling of, or damage to items sent by Express Mail.

943.12 [Description of Service] *Availability*

943.121 Express Mail Insurance is available only for Express Mail.

943.13 Limitations and Mailer Requirements

943.[122]*131* Insurance coverage is provided, for no additional charge, up to $500 per piece for document reconstruction, up to $5,000 per occurrence, regardless of the number of claimants. [Insurance coverage is also provided, for no additional charge, up to $500 per piece for merchandise. Insurance coverage for merchandise valued at more than $500 is available for an additional fee, as set forth in Fee Schedule 943.] The maximum liability for merchandise is $5,000 per piece. For negotiable items, currency, or bullion, the maximum liability is $15.

943.[123]*132* Indemnity claims for Express Mail must be filed within a specified period of time from the date the article was mailed.

943.[124]*133* Indemnity will be paid under terms and conditions specified by the Postal Service.

943.[125]*134* Among other limitations specified by the Postal Service, indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Due to seizure by any agency of government; or

d. Due to war, insurrection or civil disturbances.

913.14 *Other Services*

943.141 Reserved

943.[13]*15* Fees

943.[131]*151* The fees for Express Mail Insurance service are set forth in Fee Schedule 943.

943.2 General Insurance

943.21 [Retail Insurance] *Definition*

943.211 [Retail] *General* Insurance [is a service that]provides the mailer with indemnity for loss of, rifling of, or damage to mailed items. *General Insurance provides a bulk option for mail meeting the conditions described below and specified further by the Postal Service.*

[943.212 The maximum liability of the Postal Service for Retail Insurance is $5000.]

943.22 Availability

943.[213]*221* [Retail] *General* Insurance is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail *or Package Services*;

b. [Parcel Post, Bound Printed Matter, Special, and Library subclasses of Standard Mail.] *Package Services;*

c. *Regular and Nonprofit subclasses of Standard Mail, for Bulk Insurance only, for mail subject to residual shape surcharge.*

943.[214]*222* [Retail] *General* Insurance is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

943.223 The Bulk Insurance option of General Insurance service is available for mail entered in bulk at designated facilities and in a manner specified by the Postal Service, including the use of electronic manifesting.

943.23 Included Services

943.[215]*231* For [Retail] *General* Insurance, the mailer is issued a receipt for each item mailed. For items insured for more than $50, a [receipt] *record* of delivery is [obtained] *retained* by the Postal Service *for a specified period*.

943.[216]*232* For items insured for more than $50, a notice of attempted delivery is left at the mailing address when the first attempt at delivery is unsuccessful.

943.233 Mail undeliverable as addressed will be returned to the sender as specified by the sender or by the Postal Service.

[943.217 Retail insurance provides indemnity for the actual value of the article at the time of mailing.]

943.[22]*24* [Bulk Insurance] *Limitations and Mailer Requirements*

943.241 Mail insured under section 943.2 must be deposited as specified by the Postal Service.

[943.221 Bulk Insurance service is available for mail entered in bulk at designated facilities and in a manner specified by the Postal Service, including the use of electronic manifesting, and sent under the following classification schedules:]

[a. First-Class Mail, if containing matter that may be mailed as Standard Mail;]

[b. Parcel Post, Bound Printed Matter, Special, and Library subclasses of Standard Mail.]

943.[222]*242* Bulk Insurance *must* bear[s] endorsements and identifiers specified by the Postal Service. Bulk Insurance mailers must meet the documentation requirements of the Postal Service.

943.243 By insuring an item, the mailer guarantees forwarding and return postage.

943.[223]*244 General Insurance, other than Bulk Insurance, provides indemnity for the actual value of the article at the time of mailing.* Bulk Insurance provides indemnity for the lesser of (1) the actual value of the article at the time of mailing, or (2) the wholesale cost of the contents to the sender.

[943.23 Claims]

943.[231]*245* For [Retail Insurance,] *General insurance, other than Bulk Insurance,* a claim for complete loss may be filed by the mailer only, and a claim for damage or for partial loss may be filed by either the mailer or addressee. For Bulk Insurance, all claims must be filed by the mailer.

[943.232 A claim for damage or loss on a parcel sent merchandise return under section 932 may be filed only by the purchaser of the insurance.]

943.[233]*246* Indemnity claims must be filed within a specified period of time from the date the article was mailed.

[943.24 Deposit of Mail]

[943.241 Mail insured under section 943.2 must be deposited as specified by the Postal Service.]

[943.25 Forwarding and Return]

[943.251 By insuring an item, the mailer guarantees forwarding and return postage unless instructions on the piece mailed indicate that it not be forwarded or returned.]

[943.252 Mail undeliverable as addressed will be returned to the sender as specified by the sender or by the Postal Service.]

943.[26]*25* Other Services

943.[261]*251* The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a.Parcel Airlift	951
b.Restricted [d]*D*elivery (for items insured for more than $50)	946
c.Return [r]*R*eceipt (for items insured for more than $50)	945
d.Special [h]*H*andling	952
e.Merchandise [r]*R*eturn (shippers only)	932

943.[27]26 Fees

943.[271]261 The fees for *General* Insurance are set forth in Fee Schedule 943.

944 COLLECT ON DELIVERY

944.1 Definition

944.11 Collect on Delivery (COD) service [is a service that]allows a mailer to mail an article for which full or partial payment has not yet been received and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

944.2 [Description of Service] Availability

944.21 COD service is available for collection of [$600] $1,000 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

a. Express Mail

b. First-Class Mail

c. [Parcel Post, Bound Printed Matter, Special, and Library subclasses of Standard Mail] Package Services

944.22 Service under this section is not available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate COD shipment [consisting] consists of merchandise or bill of lading, [is being mailed,] the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-[ ]picture manufacturers, distributors, or exchanges;

e. Goods that have not been ordered by the addressee.

944.3 Included Services

944.[23]*31* COD service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only the receipt of the instrument issued to the mailer after payment of COD charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

944.[24]*32* A receipt is issued to the mailer for each piece of COD mail. Additional copies of the original mailing receipt may be obtained by the mailer.

944.[25]*33* Delivery of COD mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of attempted delivery will be left at the mailing address.

944.[26]*34* The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

944.[27]*35* The mailer may designate a new addressee or alter the COD charges by submitting the appropriate form and by paying the appropriate fee as set forth in Fee Schedule 944.

[944.28 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.]

[944.29 COD indemnity claims must be filed within a specified period of time from the date the article was mailed.]

944.[3]*4* Limitations and Mailer Requirements[of the Mailer]

944.[31]*41* [COD mail must be identified as COD mail.]*The mailer must* identify COD mail as COD mail, as specified by the Postal Service.

[944.4 Deposit of Mail]

944.[41]*42* COD mail must be deposited in a manner specified by the Postal Service.

[944.5 Forwarding and Return]

944.[51]*43* A mailer of COD mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

944.[52]*44* For COD mail sent as [Standard Mail] Package Services mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of COD mail that was refused when first offered for delivery;

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

944.45 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

944.46 COD indemnity claims must be filed within a specified period of time from the date the article was mailed, and meet the requirements specified by the Postal Service.

944.[6]*5* Other Services

944.[61]*51* The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fee:

Service	Fee Schedule
a. Registered [m]*M*ail, if sent as First-Class	942
b. Restricted [d]*D*elivery	946
c. Special [h]*H*andling	952

944.[7]*6* Fees

944.[71] *61* Fees for COD service are set forth in Fee Schedule 944.

945 RETURN RECEIPT

945.1 Definition

945.11 Return [r]*R*eceipt service [is a service that]provides evidence to the mailer that an article has been received at the delivery address. *Mailers requesting Return Receipt service at the time of mailing will be provided, as appropriate, the signature of the addressee or addressee's agent, the date delivered, and the address of delivery, if different from the address on the mailpiece. Mailers requesting Return Receipt service after mailing will be provided the date of delivery and the name of the person who signed for the article.*

945.2 [Description of Service] *Availability*

945.21 Return [r]*R*eceipt service is available for mail sent under the following sections or classification schedules:

Service	Fee schedule
a. Certified [m]*M*ail	941
b. COD [m]*M*ail	944
c. Insurance (if insured for more than $50)	943
d. Registered [m]*M*ail	942
[e. Delivery Confirmation	948]
[f.]*e.* Express Mail	
[g.]*f.* Priority Mail (merchandise only)	
[h.]*g.* Standard Mail (limited to [merchandise sent by Parcel Post, Bound Printed Matter, Special, and Library subclasses)] *merchandise subject to residual shape surcharge and sent by Regular and Nonprofit subclasses)*	
[i.]*h.* Package Services	

945.22 Return [r]*R*eceipt service is available at the time of mailing or, when purchased in conjunction with [c]*C*ertified [m]*M*ail, COD, Insurance (if for more than $50), [r]*R*egistered [m]*M*ail, or Express Mail, after mailing.

[945.23 Mailers requesting return receipt service at the time of mailing will be provided, as appropriate, the signature of the addressee or addressee's agent, the date delivered, and the address of delivery, if different from the address on the mailpiece.]

[945.24 Mailers requesting return receipt service after mailing will be provided the date of delivery and the name of the person who signed for the article.]

945.3 Included Services

945.[25]*31* If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request [a duplicate return receipt.]*evidence of delivery from the delivery record, at no additional fee.*[No fee is charged for a duplicate return receipt.]

945.4 Other Services

945.41 Reserved

945.[3]*5* Fees

945.[31]*51* The fees for [r]*R*eturn [r]*R*eceipt service are set forth in Fee Schedule 945.

946 RESTRICTED DELIVERY

946.1 Definition

946.11 Restricted [d]*D*elivery service [is a service that provides a means by which a mailer may direct that delivery will be made only]*enables a mailer to direct the Postal Service to limit delivery* to the addressee or to someone authorized by the addressee to receive such mail.

946.2 [Description of Service] *Availability*

946.21 This service is available for mail sent under the following sections:

Service	Fee schedule
a. Certified Mail	941
b. COD Mail	944
c. Insurance (if insured for more than $50)	943
d. Registered Mail	942

946.22 Restricted [d]*D*elivery is available to the mailer at the time of mailing or after mailing.

946.23 Restricted [d]Delivery service is available *for delivery* only to natural persons specified by name.

946.3 Included Services

946.[24]*31* A record of delivery will be retained by the Postal Service for a *period* specified [period of time]*by the Postal Service.*

[946.25 Failure to provide restricted delivery service when requested after mailing, due to prior delivery, is not grounds for refund of the fee or communications charges.]

946.4 Other Services

946.41 Reserved

946.[3]*5* Fees

946.[31]*51* The fee[s] for [r]*R*estricted [d]*D*elivery service [are]*is* set forth in Fee Schedule 946.

946.52 The fee (or communications charges) will not be refunded for failure to provide restricted delivery service when requested after mailing, due to prior delivery.

947 CERTIFICATE OF MAILING

947.1 Definition

947.11 Certificate of [m]*M*ailing service [is a service that furnishes evidence of] *furnishes evidence that mail has been presented to the Postal Service for* mailing.

947.2 [Description of Service] *Availability*

947.21 Certificate of [m]*M*ailing service is available [to mailers of matter sent under the classification schedule to] *for matter sent using* any class of mail.

[947.22 A receipt is not obtained upon delivery of the mail to the addressee. No record of mailing is maintained at the post office.]

[947.23 Additional copies of certificates of mailing may be obtained by the mailer.]

947.3 Included Service

947.31 The mailer may obtain a copy of a Certificate of Mailing on terms specified by the Postal Service.

947.4 Limitations

947.31 The service does not entail retention of a record of mailing by the Postal Service and does not provide evidence of delivery.

947.[3]*5* Other Services

947.[31]*51* The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Fee schedule
a. Parcel [a]*A*irlift	951
b. Special [h]*H*andling	952

947.[4]*6* Fees

947.[41]*61* The fees for [c]*C*ertificate of [m]*M*ailing service are set forth in Fee Schedule 947.

948 DELIVERY CONFIRMATION

948.1 Definition

948.11 Delivery [c]*C*onfirmation service provides electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made.

948.2 [Description of Service] *Availability*

948.21 Delivery [c]*C*onfirmation service is available for Priority Mail and [the Parcel Post, Bound Printed Matter, Special and Library subclasses of Standard Mail.] *Package Services mail, as well as mail subject to the residual shape surcharge in the Regular and Nonprofit subclasses of Standard Mail.*

948.3 Mailer Requirements

948.[22]*31* Delivery [c]*C*onfirmation service may be requested only at the time of mailing.

948.[23]*32* Mail for which [d]*D*elivery [c]*C*onfirmation service is requested must meet preparation requirements [established] *specified* by the Postal Service, and bear a *Delivery Confirmation* barcode specified by the Postal Service.

948.[24]*33* Matter for which [d]*D*elivery [c]*C*onfirmation service is requested must be deposited in a manner specified by the Postal Service.

948.4 Other Services

948.41 Reserved

948.[3]*5* Fees

948.[31]*51 The fees for* Delivery [c]*C*onfirmation service [is subject to the fees] *are* set forth in Fee Schedule 948.

949 SIGNATURE CONFIRMATION

949.1 Definition

949.11 Signature Confirmation service provides electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made, and a copy of the signature of the recipient.

949.2 Availability

949.21 Signature Confirmation is available for Priority Mail and Package Services mail.

949.3 Mailer Requirements

949.31 Signature Confirmation service may be requested only at the time of mailing.

949.32 Mail for which Signature Confirmation service is requested must meet preparation requirements specified by the Postal Service, and bear a Delivery Confirmation barcode specified by the Postal Service.

949.33 Matter for which Signature Confirmation is requested must be deposited in a manner specified by the Postal Service.

949.4 Other Services

949.41 Reserved

949.5 Fees

949.51 The fees for Signature Confirmation service are set forth in Fee Schedule 949.

950 Parcel Handling

951 PARCEL AIRLIFT (PAL)

951.1 Definition

951.11 Parcel [a]*A*irlift service [is a service that] provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.

951.2 [Description of Service] *Availability*

951.21 Parcel [a]*A*irlift service is available for mail sent under the [Standard Mail] *Package Services* Classification Schedule.

951.3 [Physical Limitations] *Mailer Requirements*

951.31 The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to [p]*P*arcel [a]*A*irlift mail. In no instance may the parcel exceed 30 pounds in weight, or 60 inches in length and girth combined.

[951.4 Requirements of the Mailer]

951.[41]*32* Mail sent under this section must be endorsed as specified by the Postal Service.

[951.5 Deposit of Mail]

951.[51] *33* [PAL] *Parcel Airlift* mail must be deposited in a manner specified by the Postal Service.

951.[6]*4* Forwarding and Return

951.[61]*41*[PAL]Parcel Airlift mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 2030 of the General Definitions, Terms and Conditions. [PAL]*Parcel Airlift* mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in section 353 as appropriate.

951.[7]*5* Other Services

951.[71]*51* The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. Certificate of [m]*M*ailing	947
b. Insurance	943
c. Restricted [d]*D*elivery (if insured for more than $50)	946
d. Return [r]*R*eceipt (if insured for more than $50)	945
e. Special [h]*H*andling	952

951.[8]*6* Fees

951.[81]*61* The fees for [p]*P*arcel [a]*A*irlift service are set forth in Fee Schedule 951.

952 SPECIAL HANDLING

952.1—Definition

952.11—Special [h]*H*andling service [is a service that] provides preferential handling to the extent practicable during dispatch and transportation.

952.2 [Description of Service]Availability

952.21 Special [h]*H*andling service is available for mail sent under the following classification schedules:

a. First-Class Mail

b. [Parcel Post, Bound Printed Matter, Special, and Library subclasses of Standard Mail] *Package Services*

[952.22 Special handling service is mandatory for matter that requires special attention in handling, transportation and delivery.]

952.3 Mailer Requirements [of the Mailer]

Mail sent under this section must be identified as specified by the Postal Service.

[952.4 Deposit of Mail]

952.[41]*32* Mail sent under this section must be deposited in a manner specified by the Postal Service.

952.33 Special Handling service is mandatory for matter that requires special attention in handling, transportation and delivery.

952.[5]*4* Forwarding and Return

952.[51] *41* If undeliverable as addressed, [s]Special [h]*H*andling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the applicable Standard Mail rate is collected on delivery.

952.[6]*5* Other Services

952.[61]*51* The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. COD [m]*M*ail	944
b. Insurance	943
c. Parcel [a]*A*irlift	951
d. Merchandise [r]*R*eturn (shippers only)	932

952.[7]*6* Fees

952.[71]*61* The fees for [s]Special [h]*H*andling service are set forth in Fee Schedule 952.

960 STAMPED PAPER

961 STAMPED ENVELOPES

961.1 Definition

961.11 Plain [s]*S*tamped [e]*E*nvelopes and printed [s]*S*tamped [e]*E*nvelopes are envelopes with postage thereon offered for sale by the Postal Service.

961.2 [Description of Service]*Availability*

961.21 Stamped [e]*E*nvelopes are available for:

a. First-Class Mail within the first rate increment.

b. Standard Mail mailed at a minimum per piece rate as specified by the Postal Service.

961.22 Printed [s]*S*tamped [e]*E*nvelopes may be obtained by special request.

961.3 Fees

961.31 The fees for [s]*S*tamped [e]*E*nvelopes are set forth in Fee Schedule 961.

962 STAMPED CARDS

962.1 Definition

962.11 [Stamped Cards.

]Stamped Cards are cards with postage imprinted or impressed on them[and], and supplied by the Postal

Service for the transmission of messages.[

962.12 Double Stamped Cards.]

Double Stamped Cards consist of two attached cards, one of which may be detached by the receiver and returned by mail as a single Stamped Card.

962.2 *Availability*

962.[2]*21* [Description of Service.

]Stamped Cards are available for First-Class Mail.

962.3 Fees

962.[3]*31* [Fees

]The fees for Stamped Cards are set forth in Fee Schedule 962.

970 POSTAL MONEY ORDERS

971 [DOMESTIC POSTAL]MONEY ORDER[S] *SERVICE*

971.1 Definition

971.11 Money [o]*O*rder service [is a service that]provides the customer with an instrument for payment of a specified sum of money.

971.2 [Description of Service]*Limitations*

971.21 The maximum value for which a domestic postal money order may be purchased is $700. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed by law or under regulations prescribed by the Postal Service.

971.3 *Included Services*

971.[22]*31* A receipt of purchase is provided at no additional cost.

971.[23]*32* The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge if replaced on the date originally issued.

971.[24]*33* If a replacement money order is issued after the date of original issue because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.

971.[25]*34* Inquiries or claims may be filed by the purchaser, payee, or endorsee.

971.4 Other Services

971.41 Reserved

971.[3]*5* Fees

971.[31]*51* The fees for [domestic postal m]*M*oney [o]*O*rder[s] *service* are set forth in Fee Schedule 971.

980 ACCEPTANCE ALTERNATIVES

981 MAILING ONLINE

981.1 Definition

Mailing Online is a service that allows mailers to submit electronic documents, with address lists, for subsequent conversion into hard copy form, entry as mail, and delivery.

981.2 Availability

981.21 Mailing Online is available for documents submitted in an electronic form, along with an address list, to be entered under the following classification schedules:

a. Express Mail;

b. First-Class Mail;

c. Regular and Nonprofit subclasses of Standard Mail.

981.22 Except as provided in section 981.23, documents presented through Mailing Online are eligible for only the following rate categories:

a. Express Mail Next Day Service and Second Day Service

b. First-Class Mail Letters and Sealed Parcels Automation Letters Basic

c. First-Class Mail Letters and Sealed Parcels Automation Flats Basic

d. First-Class Mail Cards Automation Basic

e. First-Class Mail Single-Piece Priority Mail

f. Standard Mail Regular Automation Basic Letters

g. Standard Mail Regular Automation Basic Flats

h. Standard Mail Nonprofit Automation Basic (starting on a date to be specified by the Postal Service)

i. Standard Mail Nonprofit Automation Basic Flats (starting on a date to be specified by the Postal Service)

981.23 That portion of a Mailing Online mailing consisting of pieces with addresses that cannot be made to meet Postal Service addressing requirements is not eligible for any Automation Basic rate categories, but instead may be sent, at the option of the Mailing Online customer, at the applicable single-piece rates for First-Class Mail Letters and Sealed Parcels, First-Class Mail Cards, or Priority Mail.

981.3 *Mailer* Requirements[of the Mailer]

981.31 Documents and address lists must be presented in electronic form, as specified by the Postal Service, through the Internet site specified by the Postal Service. Documents must be prepared using application software approved by the Postal Service.

981.4 Other Special Services

Other special services that are available in conjunction with the subclass of mail chosen by the Mailing Online customer are available for Mailing Online pieces only as specified by the Postal Service.

981.5 Fees

981.51 The fees for Mailing Online are described in Fee Schedule 981.

981.6 Functionally Equivalent Systems

981.61 General.

Mailpieces created by a system certified by the Postal Service to be functionally equivalent to Mailing Online are eligible for the same rate categories as Mailing Online mailpieces. Mailpieces created by a certified, functionally equivalent service are in no case eligible for rate categories providing larger discount than Mailing Online mailpieces would receive.

981.62 Definition.

A functionally equivalent system is one which is capable of all of the following, comparable to Mailing Online, as specified by the Postal Service:

a. accepting documents and mailing lists from remote users in electronic form, such as via the Internet or converting documents and mailing lists to electronic form;

b. using the electronic documents, mailing lists, and other software including sortation software certified by the Postal Service that sorts to the finest level of sortation possible, to create barcoded mailpieces meeting the requirements for automation category mail, with 100 percent standardized addresses on all pieces claiming discounted rates;

c. commingling mailpieces from all sources without diversion to any other system and batching them according to geographic destination prior to printing and mailing; and

d. generating volumes that exceed on average any otherwise applicable volume minimums.

981.63 Certification

981.631 General.

Functionally equivalent systems must meet the requirements for certification specified by the Postal Service.

981.632 Fee.

Functionally equivalent systems are subject to the annual certification fee set forth in Fee Schedule 1000.

981.633 Cancellation.

Certification can be cancelled by the Postal Service for failure to continue to meet the requirements of this section and those specified by the Postal Service.

981.7 Duration of Experimental Service Period

981.71 The provisions of section 981 expire the later of:

a. three years after the implementation date specified by the Postal Service Board of Governors, or

b. if, by the expiration date specified in (a), a proposal to make Mailing Online permanent is pending before the Postal Rate Commission, the later of:

1. three months after the Commission takes action on such proposal under section 3624 of Title 39, or

2. —if applicable on the implementation date for a permanent Mailing Online.

General Definitions, Terms and Conditions

1000 General Definitions

As used in this Domestic Mail Classification Schedule, the following terms have the meanings set forth below.

1001 Advertising

Advertising includes all material for the publication of which a valuable consideration is paid, accepted, or promised, that calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. If an advertising rate is charged for the publication of reading matter or other material, such material shall be deemed to be advertising. Articles, items, and notices in the form of reading matter inserted in accordance with a custom or understanding that textual matter is to be inserted for the advertiser or his products in the publication in which a display advertisement appears are deemed to be advertising. If a publisher advertises his own services or publications, or any other business of the publisher, whether in the form of display advertising or editorial or reading matter, this is deemed to be advertising.

1002 Aspect Ratio

Aspect ratio is the ratio of width to length.

1003 Bills and Statements of Account

1003.1 A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.

1003.2 A statement of account is the assertion of the existence of a debt in a definite amount but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.

1003.3 A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount he is required for acquittal of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient information to enable the debtor to determine the exact amount of the claim asserted.

1003.4 A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

1004 Girth

Girth is the measurement around a piece of mail at its thickest part.

1005 Invoice

An invoice is a writing showing the nature, quantity, and cost or price of items shipped or sent to a purchaser or consignor.

1006 Permit Imprints

Permit imprints are printed indicia indicating postage has been paid by the sender under the permit number shown.

1007 Preferred Rates

Preferred rates are the reduced rates established pursuant to 39 U.S.C. 3626.

1008 ZIP Code

The ZIP Code is a numeric code that facilitates the sortation, routing, and delivery of mail.

1009 Nonprofit Organizations and Associations

Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The standard of primary purpose requires that each type of organization or association be both organized and operated for the primary purpose. The following are the types of organizations or associations that may qualify as authorized nonprofit organizations or associations.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

i. To conduct religious worship;

ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship;

iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

i. The instruction or training of the individual for the purpose of improving or developing his capabilities;

ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

i. To conduct research in the applied, pure or natural sciences;

ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations that are organized for:

i. Relief of the poor and distressed or of the underprivileged;

ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or:

(A) To lessen neighborhood tensions;

(B) To eliminate prejudice and discrimination;

(C) To defend human and civil rights secured by law; or

(D) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agriculture pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers.

Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization that meets all the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

2000 Delivery of Mail

2010 Delivery Services

The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Fee Schedule 921.

b. Carrier delivery service.

c. General delivery.

d. Post office box service. The fees for post office box service are set forth in Fee Schedule 921.

2020 Conditions of Delivery

2021 General

Except as provided in section 2022, *2030, and 3030,* mail will be delivered as addressed unless the Postal Service is instructed otherwise by the addressee in writing.

2022 Refusal of Delivery

The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail that does not require a delivery receipt at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service. For mail that requires a delivery receipt, the addressee or his representative may read and copy the name of the sender of registered, insured, certified, COD, return receipt, and Express Mail prior to accepting delivery. Upon signing the delivery receipt the piece may not be returned to the Postal Service without the applicable postage and fees affixed.

2023 Receipt

If a signed receipt is required, mail will be delivered to the addressee (or competent member of his family), to persons who customarily receive his mail or to one authorized in writing to receive the addressee's mail.

2024 Jointly Addressed Mail

Mail addressed to several persons may be delivered to any one of them. When two or more persons make conflicting orders for delivery for the same mail, the mail shall be delivered as determined by the Postal Service.

2025 Commercial Mail Receiving Agents

Mail may be delivered to a commercial mail receiving agency on behalf of another person. In consideration of delivery of mail to the commercial agent, the addressee and the agent are considered to agree that:

a. No change-of-address order will be filed with the post office when the agency relationship is terminated;

b. When remailed by the commercial agency, the mail is subject to payment of new postage.

2026 Mail Addressed To Organizations

Mail addressed to governmental units, private organizations, corporations, unincorporated firms or partnerships, persons at institutions (including but not limited to hospitals and prisons), or persons in the military is delivered as addressed or to an authorized agent.

2027 Held Mail

Mail will be held for a specified period of time at the office of delivery upon request of the addressee, unless the mail:

a. Has contrary retention instructions;

b. Is perishable; or

c. Is registered, COD, insured, return receipt, certified, or Express Mail for which the normal retention period expires before the end of the specified holding period.

2030 Forwarding and Return

2031 Forwarding

Forwarding is the transfer of undeliverable-as-addressed mail to an address other than the one originally placed on the mailpiece. All post offices will honor change-of-address orders for a period of time specified by the Postal Service.

2032 Return

Return is the delivery of undeliverable-as-addressed mail to the sender.

2033 Applicable Provisions

The provisions of sections 150, 250, 350, 450, *550,* 935 and 936 apply to forwarding and return.

2034 Forwarding for Postal Service Adjustments

When mail is forwarded due to Postal Service adjustments (such as, but not limited to, the discontinuance of the post office of original address, establishment of rural carrier service, conversion to city delivery service from rural, readjustment of delivery districts, or renumbering of houses and renaming of streets), it is forwarded without charge for a period of time specified by the Postal Service.

3000 POSTAGE AND PREPARATION

3010 Packaging

Mail must be packaged so that:

a. The contents will be protected against deterioration or degradation;

b. The contents will not be likely to damage other mail, Postal Service employees or property, or to become loose in transit;

c. The package surface must be able to retain postage indicia and address markings;

d. It is marked by the mailer with a material that is neither readily water soluble nor easily rubbed off or smeared, and the marking will be sharp and clear.

3020 Envelopes

Paper used in the preparation of envelopes may not be of a brilliant color. Envelopes must be prepared with paper strong enough to withstand normal handling.

3030 Payment of Postage and Fees

Postage must be fully prepaid on all mail at the time of mailing, except as authorized by law or this Schedule. Except as authorized by law or this Schedule, mail deposited without prepayment of sufficient postage shall be delivered to the addressee subject to payment of deficient postage, returned to the sender, or otherwise disposed of as specified by the Postal Service. Mail deposited without any postage affixed will be returned to the sender without any attempt at delivery.

3040 Methods for Paying Postage and Fees

Postage for all mail may be prepaid with postage meter indicia, adhesive stamps, [or] permit imprint, or *other payment methods* [unless otherwise limited or] specified by the Postal Service. [The following methods of paying postage and fees require p]*P*rior authorization *for use of certain payment methods may be required, as specified by* [from] the Postal Service[:]. *A fee is charged for authorization to use a permit imprint, as set forth in Schedule 1000.*

[a. Permit imprint,
b. Postage meter,
c. Precanceled stamps, precanceled envelopes, and mailer's precanceled postmarks.]

[3050 Authorization Fees]

[Fees for authorization to use a permit imprint are set forth in Schedule 1000. No fee is charged for authorization to use a postage meter. Fees for setting postage meters are set forth in Fee Schedule 933. No fee is charged for authorization to use precanceled stamps, precanceled envelopes or mailer's precanceled postmark.]

3050 Reserved

3060 Special Service Fees

Fees for special services may be prepaid in any manner appropriate for the class of mail indicated or as otherwise specified by the Postal Service.

3070 Marking of Unpaid Mail

Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable First-Class rate of postage.

3080 Refund of Postage

When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made. There shall be no refund for registered, COD, general insurance, and Express Mail Insurance fees when the article is withdrawn by the mailer after acceptance. In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

3090 Calculation of Postage

When a rate schedule contains per piece and per pound rates, the postage shall be the sum of the charges produced by those rates. When a rate schedule contains a minimum per piece rate and a pound rate, the postage shall be the greater of the two. When the computation of postage yields a fraction of a cent in the charge, the next higher whole cent must be paid.

4000 POSTAL ZONES

4010 Geographic Units of Area

In the determination of postal zones, the earth is considered to be divided into units of area thirty minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones.

4020 Measurement of Zone Distances

The distance upon which zones are based shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this shall not cause two post offices to be regarded as within the same local zone.

4030 Definition of Zones

4031 Local Zone

The local zone applies to mail mailed at any post office for delivery at that office; at any city letter carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.

4032 First Zone

The first zone includes all territory within the quadrangle of entry in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area. The first zone also applies to mail between two post offices in the same sectional center.

4033 Second Zone

The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

4034 Third Zone

The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

4035 Fourth Zone

The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius approximately 600 miles from the center of a given unit of area.

4036 Fifth Zone

The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

4037 Sixth Zone

The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

4038 Seventh Zone

The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

4039 Eighth Zone

The eighth zone includes all units of area outside the seventh zone.

4040 Zoned Rates

Except as provided in section 4050, rates according to zone apply for zone-rated mail sent between Postal Service facilities including armed forces post offices, wherever located.

4050 APO/FPO Mail

4051 General

Except as provided in section 4052, the rates of postage for zone-rated mail transported between the United States, or the possessions or territories of the United States, on the one hand, and Army, Air Force and Fleet Post Offices on the other, or among the latter, shall be the applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet Post Office concerned.

4052 Transit Mail

The rates of postage for zone-rated mail that is mailed at or addressed to an Armed Forces post office and is transported directly to or from Armed Forces post offices at the expense of the Department of Defense, without transiting any of the 48 contiguous states (including the District of Columbia), shall be the applicable local zone rate; provided, however, that if the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery is greater than the local zone for such mail, postage shall be assessed on the basis of the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery of such mail, as the case may be. The word ''transiting'' does not include enroute transfers at coastal gateway cities which are necessary to transport military mail directly between military post offices.

5000 PRIVACY OF MAIL

5010 First-Class and Express Mail

Matter mailed as First-Class Mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

5020 All Other Mail

Matter not paid at First-Class Mail or Express Mail rates must be wrapped or secured in the manner specified by the Postal Service so that the contents may be examined. Mailing of sealed items as other than First-Class Mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

6000 Mailable Matter

6010 General

Mailable matter is any matter which:

a. Is not mailed in contravention of 39 U.S.C. Chapter 30, or of 17 U.S.C. 109;

b. While in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property; and

c. Is not mailed contrary to any special conditions or limitations placed on transportation or movement of certain articles, when imposed under law by the U.S. Department of the Treasury; U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Health and Human Services, U.S. Department of Transportation; and any other Federal department or agency having legal jurisdiction.

6020 Minimum Size Standards

The following minimum size standards apply to all mailable matter:

a. All items must be at least 0.007 inch[es] thick, and

b. all items, other than keys and identification devices, which are 0.25 inch thick or less must be

i. rectangular in shape,

ii. at least 3.5 inches in width, and

iii. at least 5 inches in length.

6030 Maximum Size and Weight Standards

Where applicable, the maximum size and weight standards for each class or subclass of mail are set forth in sections 130, 230, [322.16,] 330, [and]430, *521.6, and 530.* Additional limitations may be applicable to specific subclasses, and rate and discount categories as provided in the eligibility provisions for each subclass or category.

Stanley F. Mires,

Chief Counsel, Legislative.

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Federal Register

Tuesday,
December 26, 2000

Part III

Department of Agriculture

Rural Housing Service

Housing Programs: Multi-Family, Single Family, Rural Rental, Farm Labor, and Preservation; Grants and Funding Availability; Notices

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 2001 (FY 2001). This action is taken to comply with 42 U.S.C. 1490p, which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Chief, Loan Origination Branch, Single Family Housing, Direct Loan Division, Stop 0783, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, D.C., 20250, telephone (202) 720–3214. (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Notice

Part 1940, subpart L of 7 CFR contains the ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' The following guidance has been provided to our State offices on FY 2001 appropriations and access to funds. Separate guidance has been provided to our State offices for assistance available in our Multi- and Single-Family Housing programs as follows:

Multi-Family Housing (MFH)

I. General

A. This provides guidance on MFH funding for the Rural Rental Housing program (RRH) for FY 2001. Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 2001, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) section 504 Rural Housing Grants and section 533 Housing Preservation Grant (HPG) programs.

B. MFH Loan and Grant Levels for FY 2001 Are as Follows

MFH Loan Programs Credit Sales: $1,782,582
Section 514 Farm Labor Housing (LH) loans: $28,522,532
Section 515 Rural Rental Housing (RRH) loans: $114,321,087
Section 521 Rental Assistance (RA): $680,000,000
Section 516 LH grants: $15,000,000 (does not include carryover)
Sections 525 Technical and Supervisory Assistance grants (TSA) and 509 Housing Application Packaging grants (HAPG) (Shared between single and multi-family housing): $1,687,543 (includes carryover)
Section 533 Housing Preservation grants (HPG): $8,000,000 (does not include carryover)
Section 538 Guaranteed Rural Rental Housing program: $100,000,000 (does not include carryover)
Processing Worker Housing Grants: $5,000,000

II. Funds Not Allocated to States

A. Credit Sales Authority

For FY 2001, $1,782,582 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State.

B. Section 538 Guaranteed Rural Rental Housing Program

Guaranteed loan funds will be made available under a Notice of Funding Availability (NOFA) being published in the **Federal Register**. Additional guidance will be provided at that time.

III. Farm Labor Housing (LH) Loans and Grants

This is a new single funding account for the farm labor housing program that includes both loans and grants. The Administrator has the authority to transfer funds between the two programs. Upon NOFA closing the Administrator will evaluate the responses and determine proper distribution of funds between loans and grants.

A. Section 514 Farm LH Loans

1. These loans are funded in accordance with 7 CFR 1940.579(a).
FY 2001 Appropriation: $28,522,532
Available for Off-Farm Loans: $23,522,000
Available for On-Farm Loans: $2,000,000
National office Reserve: $3,000,532

2. Off-farm loan funds will be made available under a NOFA being published in the **Federal Register**. Additional guidance will be provided in the NOFA.

B. Section 516 Farm LH Grants

1. Grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown.
FY 2001 Appropriation: $15,000,000
Available for LH Grants for Off-Farm: $10,000,000
Available for Technical Assistance Grants: $1,500,000
National office Reserve: $3,500,000

2. Labor Housing grant funds for Off-Farm will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

3. Technical assistance grants will be made available under a NOFA being published in this **Federal Register**. Additional guidance will be provided in the NOFA.

C. Processing Worker Housing Grant funds in the amount of $5 million will be made available under a Notice of Funding Availability (NOFA) that will be published later this fiscal year. Additional guidance will be provided in the NOFA.

D. Labor Housing Rental Assistance (RA) will be held in the National office for use with LH loan and grant applications. RA is only available with an LH loan of at least 5 percent of the total development cost. Projects without a LH loan cannot receive RA.

IV. Section 515 RRH Loan Funds

FY 2001 section 515 Rural Rental Housing allocation (Total): $114,321,087
New Construction funds and set-asides: $49,000,000
New construction loans: $16,980,753
Set-aside for nonprofits: $10,288,998
Set-aside for underserved counties and colonias: $5,716,054
Earmark for EZ, EC, or REAP Zones: $14,514,195
State RA designated reserve: $1,500,000
Rehab and repair funds and equity: $55,000,000

Rehab and repair loans: $50,000,000
Designated equity loan reserve: $5,000,000
General reserve: $10,321,087

A. New Construction Loan Funds

New construction loan funds will be made available using a national NOFA being published in the **Federal Register**. Upon closing of the NOFA, States will submit a list, in rank order of the eligible projects.

B. National Office New Construction Set-asides

The following legislatively mandated set-asides of funds are part of the National office set-aside:

1. Nonprofit Set-Aside

An amount of $10,288,998 has been set aside for nonprofit applicants. All Nonprofit loan proposals must be located in designated places as defined in RD Instruction 1944–E.

2. Underserved Counties and Colonias Set-Aside

An amount of $5,716,054 has been set aside for loan requests to develop units in the underserved 100 most needy counties or colonias as defined in section 509(f) of the Housing Act of 1949 as amended. Priority will be given to proposals to develop units in colonias or tribal lands.

3. EZ, EC or REAP Zone Earmark

An amount of $14,514,195 has been earmarked for loan requests to develop units in EZ or EC communities or REAP Zones until June 30, 2001.

C. Rental Assistance (RA)

Limited new construction RA will be held in the National office for use with section 515 Rural Rental Housing loans.

D. Designated Reserves for State RA

An amount of $1.5 million of section 515 loan funds has been set aside for matching with projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

E. Repair and Rehabilitation Loans

Tenant health and safety continues to be the top priority. Repair and rehabilitation funds must be first targeted to RRH facilities that have physical conditions that affect the health and safety of tenants and subsequently made available to facilities that have deferred maintenance. All funds will be held in the National office and will be distributed based upon indicated rehabilitation needs in the MFH survey conducted in October 2000.

F. Designated Reserve for Equity Loans

An amount of $5 million has been designated for the equity loan preservation incentive described in RD Instruction 1965–E. The $5 million will be further divided into $4 million for equity loan requests currently on the pending funding list and $1 million to facilitate the transfer of properties from for-profit owners to nonprofit corporations and public bodies. Funds for such transfers would be authorized only for for-profit owners who are currently on the pending funding list who agree to transfer to nonprofit corporations or public bodies rather than to remain on the pending list. If insufficient transfer requests are generated to utilize the full $1 million set aside for nonprofit and public body transfers, the balance will revert to the existing pending equity loan funding list.

G. General Reserve

There is one general reserve fund of $10,321,087. Some examples of immediate allowable uses include, but are not limited to, hardships and emergencies, RH cooperatives or group homes, or RRH preservation.

V. Section 533 Housing Preservation Grants (HPG)

Total Available: $8,000,000
Less General Reserve: $800,000
Less Earmark for EZ, EC or REAP Zones: $600,000
Total Available for Distribution: $6,600,000

Amount available for allocation. See end of this Notice for HPG State allocations. Fund availability will be announced in a NOFA being published in the **Federal Register**.

The amount of $600,000 is earmarked for EZ, EC or REAP Zones until June 30, 2001.

Single Family Housing (SFH)

I. General

A. This Notice Provides SFH Allocations for FY 2001

Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568. Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation are located on a chart at the end of this notice.

B. The SFH Levels Authorized for FY 2001 are as Follows

Section 502 Guaranteed Rural Housing (RH) loans

Nonsubsidized Guarantees: $3,144,568,810

Section 502 Direct RH loans

Very low-income subsidized loans: $469,479,450
Low-income subsidized loans: $597,519,300
Credit sales (Non program): $10,000,000
Section 504 housing repair loans: $32,395,598
Section 504 housing repair grants: $30,000,000
Section 509 compensation for construction defects: $755,821
Section 523 mutual and self-help housing grants: $34,000,000
Section 523 Self-Help Site Loans: $5,008,976
Section 524 RH site loans: $5,128,000
Section 306C Water and waste disposal grants: $1,099,297
Section 525 Supervisory and technical assistance and section 509 Housing Application Packaging Grants Total Available for single and multi-family: $1,687,543
Natural disaster funds (Section 502 loans): $10,495,428
Natural disaster funds (Section 504 loans): $12,590,353
Natural disaster funds (Section 504 grants): $7,464,372

Carryover funds are included in the balance.

Does not include North Carolina Elderly Demonstration Program.

Includes $1,000,000 for EZ/EC and REAP communities until June 30, 2001.

C. SFH Funding not Allocated to States are

1. Credit Sale Authority

Credit sale funds are available only for non-program sales of Real Estate Owned (REO) property.

2. Section 509 Compensation for Construction Defects

All claims for compensation for construction defects must be submitted to the National office for authorization prior to approval.

3. Section 523 Mutual and Self-Help Technical Assistance Grants

$34 million has been appropriated for section 523 Mutual and Self-Help Technical Assistance Grants. Of these funds, $1 million is earmarked for EZ, EC or REAP Zones until June 30, 2001. The State Director must request funding approval from the National office for all requests. A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) contractor on all predevelopment, new, and existing (refunding) grant applications.

4. Section 523 Mutual and Self-Help Site Loans and Section 524 RH Site Loans

The State Director must request funding authority from the National office prior to obligating loan funds.

5. Section 306C WWD Grants to Individuals in Colonias

The objective of the section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

The total amount available to Arizona, New Mexico, and Texas will be $1,099,297 for FY 2001. This amount includes the carryover unobligated balance of $99,297 and the transferred amount of $1.0 million from the Rural Utilities Service (RUS) to RHS for processing individual grant applications. These States will have access to the equal quarterly allocation distributions.

6. Section 525 Technical and Supervisory Assistance (TSA) and Section 509 Housing Application Packaging Grants (HAPG)

One million dollars of new funds and $687,543 of carry-over funds from previous years remain available for the TSA and HAPG programs. State Directors should submit proposals from potential applicants to the National office for review and concurrence prior to authorizing an application. The 29 eligible States under HAPG that have active grantees operating will be able to access up to $5,000 for section 502 or 504 loan and grant programs in order to continue operations. Reserve requests will be considered on a first-come, first-served basis.

7. Natural Disaster Funds

Funds are available until exhausted to those States that have received a Presidential Declaration.

8. Deferred Mortgage Payment Demonstration

There is no FY 2001 funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

9. Section 502 Direct Funds for Families Not Qualifying for Payment Assistance

Funds from State's allocation may be used for qualified very low- and low-income applicants when the payment assistance formula shows there is no need for the subsidy.

II. State Allocations

A. Section 502 Nonsubsidized Guaranteed RH (GRH) Loans

1. Amount Available for Allocation

Total Available: $3,144,568,810
Less National office General Reserve: $704,948,167
Less Special Outreach Area Reserve: $300,120,643
Basic Formula—Administrative Allocation: $2,137,500,000

2. National office General Reserve

The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

3. Reservation of Funds

Because it is anticipated that demand will exceed available funds, States must use the reservation of funds system per § 1980.351 of RD Instruction 1980–D.

4. Special Outreach Areas

FY 2001 GRH funding is allocated to States in two funding streams (70/30) similar to the 60/40 income split for direct SFH funds. Seventy percent of GRH funds may be used in any eligible area. Thirty percent of GRH funds are to be used in special outreach areas. Special outreach areas are counties with median incomes at or below the State's nonmetropolitan median income. Each funding stream will independently be subject to pooling.

5. National Office Special Area Outreach Reserve

A special outreach area reserve fund has been established at the National office. Funds from this reserve may only be used in special outreach areas.

6. Suballocation by the State Director

The State Director may retain funds at the State office level or suballocate to the Area or Field office level.

B. Section 502 Direct RH Loans

1. Amount Available for Allocation

Total Available: $1,066,998,755
Less Required Set Aside for Underserved Counties and Colonias: $53,349,937
EZ, EC and REAP Earmark: $38,757,160
Less General Reserve: $146,500,000
Administrator's Reserve: $30,000,000
Hardships & Homelessness: $3,500,000
Homeownership Partnership: $90,000,000
Rural Housing Demonstration Program: $3,000,000
Program funds for the sale of REO properties: $20,000,000
Less Designated Reserve for Self-Help: $125,000,000
Basic Formula Administrative Allocation: $703,391,658

2. Reserves

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homeless applicants based upon historical data and projected demand. This shall include the direct section 502 loan and section 504 loan and grant programs.

(ii) The State's 25 percent portion of funds for Mutual Self-Help loans.

(iii) Subsequent loans for essential improvements or repairs and transfers with assumptions.

(iv) Financing for the purchase of program REOs when the National office reserve has been exhausted.

(v) States will leverage an amount equal to 25 percent of their initial low-income allocation and 5 percent of their initial very low-income allocation with funding from other sources. For example if a State receives an initial low-income allocation of $900,000 the amount to be leveraged from other sources would be $225,000 ($900,000 × 25 percent) for a total RHS and other funding source of $1,125,000 ($900,000 + $225,000).

(vi) Areas targeted by the State according to its strategic plan.

b. National Office Reserves.

(i) General Reserve. The National office has a general reserve of $146.5 million. Of this amount, the Administrator's reserve is $30 million. One of the purposes of the Administrator's reserve will be for loans in Indian Country. Indian Country is defined as land inside the boundaries of Indian reservations, communities made up mainly of Native Americans, Indian trust and restricted land, and tribal allotted lands. The remaining reserves will be established as follows:

(ii) Hardship and Homelessness Reserve. $3.5 million has been set aside for hardships and homeless.

(iii) Homeownership Partnership. Ninety million dollars has been set aside for Homeownership Partnerships. These funds will be used to expand existing partnerships and create new partnerships, such as the following:

(A) Department of Treasury, Community Development Financial Institutions (CDFI)—Funds will be available to fund leveraged loans made in partnership with the Department of Treasury CDFI participants.

(B) Rural Home Loan Partnership (RHLP). Partnership initiatives established to carry out the objectives of the National Partners in Homeownership including the RHLP and other strategies or initiatives.

(iv) Rural Housing Demonstration Program. Three million dollars has been set aside for innovative demonstration initiatives.

(v) Program credit sales. Twenty million dollars has been set aside for program sales of REO property. There will be no State distribution of program credit sale authority, rather funds will be available on a first-come, first-served basis.

c. *Designated Reserve for Self-Help.* One hundred twenty-five million dollars has been set aside for matching funds to assist participating Self-Help applicants. The matching funds were established on the basis of the National office contributing 75 percent from the National office reserve and States contributing 25 percent of their allocated section 502 RH funds.

d. *Underserved Counties and Colonias.* An amount of $53,349,937 has been set aside for the 100 underserved counties and colonias.

e. *Empowerment Zone (EZ) and Enterprise Community (EC) Earmark.* An amount of $38,757,160 has been earmarked until June 30, 2001 for loans in EZ, EC or REAP Zones. Further information will follow.

f. *Reserve Requests.* All National office reserve requests should be submitted by the State Director to the National office on a case-by-case basis.

g. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.)

h. *Suballocation by the State Director.* The State Director may suballocate to each area office using the methodology and formulas required by 7 CFR part 1940, subpart L. If suballocated to the area level, the Rural Development Manager will make funds available on a first-come, first-served basis to all offices at the field or area level. No field office will have its access to funds restricted without the prior written approval of the Administrator.

C. Section 504 Housing Loans and Grants

Section 504 grant funds are included in the Rural Housing Assistance Grant program (RHAG) in the FY 2001 appropriation.

1. Amount available for allocation

Section 504 Loans
Total Available: $32,395,598
Less 5% for 100 Underserved Counties and Colonias: $1,619,780
EZ, EC or REAP Zone Earmark: $1,287,968
Less General Reserve: $1,500,000
Basic Formula—Administrative Allocation: $27,987,850

Section 504 Grants
Total Available: $30,000,000
Less 5% for 100 Underserved Counties and Colonias: $1,500,000
Less EZ, EC or REAP Earmark: $600,000
Less General Reserve: $1,500,000
Basic Formula—Administrative Allocation: $26,400,000

2. Reserves and Set-Asides

a. *State Office Reserve.* State Directors must maintain an adequate reserve to handle all anticipated hardship applicants based upon historical data and projected demand.

b. *Underserved Counties and Colonias.* Approximately $1.62 million and $1.5 million have been set aside for the 100 underserved counties and colonias until June 30, 2001 for the section 504 loan and grant programs, respectively.

c. *Empowerment Zone (EZ) and Enterprise Community (EC) Earmark (Loan Funds Only).* Approximately $1.288 million and $600,000 have been earmarked through June 30, 2001 for EZ, EC or REAPs for the section 504 loan and grant programs, respectively.

d. *National Office Reserve.* $1.5 million for section 504 loan hardships and $1.5 million for section 504 grant extreme hardships have been set-aside in the general reserve. For section 504 grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant.

INFORMATION ON BASIC FORMULA CRITERIA, DATA SOURCE AND WEIGHT, ADMINISTRATIVE ALLOCATION, POOLING OF FUNDS, AND AVAILABILITY OF THE ALLOCATION

Description	Section 502 nonsubsidized guaranteed RH loans	Section 502 Direct RH loans	Section 504 loans and grants
1. Basic formula criteria, data source, and weight.	See 7 CFR 1940.563(b)	See 7 CFR 1940.565(b)	See 7 CFR 1940.566(b) and 1940.567(b).
2. Administrative Allocation:			
Western Pacific Area	$1,000,000	$1,000,000	$1,000,000 loan. $500,000 grant.
3. Pooling of funds:			
a. Mid year pooling	If necessary	If necessary	If necessary.
b. Year-end pooling	August 17, 2001	August 17, 2001	August 17, 2001.
c. Underserved counties & colonias.	N/A	June 30, 2001	June 30, 2001.
d. EZ, EC or REAP	N/A	June 30, 2001	June 30, 2001.
e. Credit sales	N/A	June 30, 2001	N/A.
4. Availability of the allocation:			
a. first quarter	50 percent	50 percent	50 percent.
b. second quarter	75 percent	70 percent	70 percent.
c. third quarter	90 percent	90 percent	90 percent.
d. fourth quarter	100 percent	100 percent	100 percent.

1. Data derived from the 1990 U.S. Census was provided to each State by the National office on August 12, 1993.

2. Due to the absence of Census data.

3. All dates are tentative and are for the close of business (COB). Pooled funds will be placed in the National office reserve and made available administratively. The Administrator reserves the right to redistribute funds based upon program performance.

4. Funds will be distributed cumulatively through each quarter listed until the National office year-end pooling date.

Dated: December 15, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

BILLING CODE 3410–XV–U

Rural Housing Service FY 2000
Multi-Family Housing
Section 533
Housing Preservation Grant

STATE	FORMULA FACTOR	TOTAL ALLOCATION
AL	0.02957	$195,162
AK	0.00587	$38,742
AZ	0.01780	$117,480
AR	0.02310	$152,460
CA	0.04653	$307,098
CO	0.00840	$55,440
DE	0.00190	$12,540
MD	0.00880	$58,080
FL	0.02890	$190,740
GA	0.03867	$255,222
HI	0.00790	$52,140
WPA	0.00647	$42,702
ID	0.00743	$49,038
IL	0.02250	$148,500
IN	0.02157	$142,362
IA	0.01340	$88,440
KS	0.01130	$74,580
KY	0.03483	$229,878
LA	0.03170	$209,220
ME	0.00913	$60,258
MA	0.00793	$52,338
CT	0.00453	$29,898
RI	0.00100	$6,600
MI	0.02977	$196,482
MN	0.01673	$110,418
MS	0.03180	$209,880
MO	0.02460	$162,360
MT	0.00620	$40,920
NE	0.00713	$47,058
NV	0.00263	$17,358
NJ	0.00657	$43,362
NM	0.01437	$94,842
NY	0.02753	$181,698
NC	0.04497	$296,802
ND	0.00413	$27,258
OH	0.03450	$227,700
OK	0.01917	$126,522
OR	0.01423	$93,918
PA	0.03687	$243,342
PR	0.04923	$324,918
SC	0.02690	$177,540
SD	0.00597	$39,402
TN	0.02973	$196,218
TX	0.07645	$504,570
UT	0.00430	$28,380
VT	0.00403	$26,598
NH	0.00503	$33,198
VI	0.00273	$18,018
VA	0.02660	$175,560
WA	0.01743	$115,038
WV	0.01937	$127,842
WI	0.01873	$123,618
WY	0.00307	$20,262
DISTR.	1.00000	$6,600,000
N/O RES.		$800,000
EZ/EC/REAP		$600,000
TTL AVAIL.		$8,000,000

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RURAL HOUSING SERVICE
FISCAL YEAR 2001 ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2001 ALLOCATION
ALABAMA	0.0267275	$18,773
ALASKA	0.0055160	$3,874
ARIZONA	0.0145422	$10,214
ARKANSAS	0.0208104	$14,617
CALIFORNIA	0.0454819	$31,946
COLORADO	0.0091766	$6,446
DELAWARE	0.0024571	$1,726
MARYLAND	0.0115334	$8,101
FLORIDA	0.0312406	$21,943
VIRGIN ISLANDS	0.0020058	$1,409
GEORGIA	0.0374586	$26,311
HAWAII	0.0067195	$4,720
W PAC ISLANDS	N/A	$1,000
IDAHO	0.0076722	$5,389
ILLINOIS	0.0266774	$18,738
INDIANA	0.0270785	$19,020
IOWA	0.0163474	$11,482
KANSAS	0.0127369	$8,946
KENTUCKY	0.0288838	$20,288
LOUISIANA	0.0246715	$17,329
MAINE	0.0108314	$7,608
MASSACHUSETTS	0.0109818	$7,714
CONNECTICUT	0.0066693	$4,684
RHODE ISLAND	0.0015545	$1,092
MICHIGAN	0.0353525	$24,831
MINNESOTA	0.0199077	$13,983
MISSISSIPPI	0.0250226	$17,576
MISSOURI	0.0252733	$17,752
MONTANA	0.0063685	$4,473
NEBRASKA	0.0086752	$6,093
NEVADA	0.0028583	$2,008
NEW JERSEY	0.0097784	$6,868
NEW MEXICO	0.0110320	$7,749
NEW YORK	0.0359041	$25,219
NORTH CAROLINA	0.0484405	$34,024
NORTH DAKOTA	0.0045131	$3,170
OHIO	0.0390131	$27,402
OKLAHOMA	0.0174005	$12,222
OREGON	0.0154949	$10,884
PENNSYLVANIA	0.0467857	$32,862
PUERTO RICO	0.0239695	$16,836
SOUTH CAROLINA	0.0258249	$18,139
SOUTH DAKOTA	0.0062682	$4,403
TENNESSEE	0.0291846	$20,499
TEXAS	0.0660415	$46,387
UTAH	0.0040618	$2,853
VERMONT	0.0052653	$3,698
NEW HAMPSHIRE	0.0072711	$5,107
VIRGINIA	0.0289841	$20,358
WASHINGTON	0.0187042	$13,138
WEST VIRGINIA	0.0175008	$12,292
WISCONSIN	0.0237188	$16,660
WYOMING	0.0036105	$2,536
STATE TOTALS	1.0000000	$703,391
100 UNDERSERVED COUNTIES/COLONIAS		$53,350
EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK		$38,757
GENERAL RESERVE		$146,500
SELF HELP		$125,000
TOTAL		$1,066,998

RURAL HOUSING SERVICE
FISCAL YEAR 2001 ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

STATES	TOTAL FY 2001 ALLOCATION	VERY LOW-INCOME ALLOCATION 40 PERCENT	LOW-INCOME ALLOCATION 60 PERCENT
ALABAMA	$18,773	$7,509	$11,264
ALASKA	$3,874	$1,550	$2,325
ARIZONA	$10,214	$4,086	$6,129
ARKANSAS	$14,617	$5,847	$8,770
CALIFORNIA	$31,946	$12,778	$19,168
COLORADO	$6,446	$2,578	$3,867
DELAWARE	$1,726	$690	$1,036
MARYLAND	$8,101	$3,240	$4,861
FLORIDA	$21,943	$8,777	$13,166
VIRGIN ISLANDS	$1,409	$564	$845
GEORGIA	$26,311	$10,524	$15,786
HAWAII	$4,720	$1,888	$2,832
W PAC ISLANDS	$1,000	$400	$600
IDAHO	$5,389	$2,156	$3,233
ILLINOIS	$18,738	$7,495	$11,243
INDIANA	$19,020	$7,608	$11,412
IOWA	$11,482	$4,593	$6,889
KANSAS	$8,946	$3,579	$5,368
KENTUCKY	$20,288	$8,115	$12,173
LOUISIANA	$17,329	$6,932	$10,397
MAINE	$7,608	$3,043	$4,565
MASSACHUSETTS	$7,714	$3,085	$4,628
CONNECTICUT	$4,684	$1,874	$2,811
RHODE ISLAND	$1,092	$437	$655
MICHIGAN	$24,831	$9,933	$14,899
MINNESOTA	$13,983	$5,593	$8,390
MISSISSIPPI	$17,576	$7,030	$10,545
MISSOURI	$17,752	$7,101	$10,651
MONTANA	$4,473	$1,789	$2,684
NEBRASKA	$6,093	$2,437	$3,656
NEVADA	$2,008	$803	$1,205
NEW JERSEY	$6,868	$2,747	$4,121
NEW MEXICO	$7,749	$3,100	$4,649
NEW YORK	$25,219	$10,087	$15,131
NORTH CAROLINA	$34,024	$13,610	$20,414
NORTH DAKOTA	$3,170	$1,268	$1,902
OHIO	$27,402	$10,961	$16,441
OKLAHOMA	$12,222	$4,889	$7,333
OREGON	$10,884	$4,353	$6,530
PENNSYLVANIA	$32,862	$13,145	$19,717
PUERTO RICO	$16,836	$6,734	$10,102
SOUTH CAROLINA	$18,139	$7,256	$10,884
SOUTH DAKOTA	$4,403	$1,761	$2,642
TENNESSEE	$20,499	$8,200	$12,299
TEXAS	$46,387	$18,555	$27,832
UTAH	$2,853	$1,141	$1,712
VERMONT	$3,698	$1,479	$2,219
NEW HAMPSHIRE	$5,107	$2,043	$3,064
VIRGINIA	$20,358	$8,143	$12,215
WASHINGTON	$13,138	$5,255	$7,883
WEST VIRGINIA	$12,292	$4,917	$7,375
WISCONSIN	$16,660	$6,664	$9,996
WYOMING	$2,536	$1,014	$1,522
STATE TOTALS	$703,391	$281,356	$422,035
100 Underserved Counties and Colonias	$53,350	$21,340	$32,010
EZ/EC/REAP Reserve	$38,757	$15,503	$23,254
General Reserve	$146,500	$81,280	$65,220
Self-Help	$125,000	$70,000	$55,000
TOTAL	$1,066,998	$469,479	$597,519

RURAL HOUSING SERVICE
FISCAL YEAR 2001
ALLOCATION IN THOUSANDS
SECTION 502 GUARANTEED LOANS (NONSUBSIDIZED)

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2001 ALLOCATION
ALABAMA	0.0253847	$54,235
ALASKA	0.0061561	$13,153
ARIZONA	0.0155290	$33,178
ARKANSAS	0.0213661	$45,649
CALIFORNIA	0.0524861	$112,136
COLORADO	0.0100701	$21,515
DELAWARE	0.0024043	$5,137
MARYLAND	0.0104750	$22,380
FLORIDA	0.0308357	$65,881
VIRGIN ISLANDS	0.0027236	$5,819
GEORGIA	0.0385293	$82,318
HAWAII	0.0083323	$17,802
W PAC ISLANDS	N/A	$1,000
IDAHO	0.0077774	$16,616
ILLINOIS	0.0256395	$54,779
INDIANA	0.0236023	$50,425
IOWA	0.0151422	$32,351
KANSAS	0.0123032	$26,286
KENTUCKY	0.0286790	$61,273
LOUISIANA	0.0256223	$54,742
MAINE	0.0113916	$24,338
MASSACHUSETTS	0.0117468	$25,097
CONNECTICUT	0.0065708	$14,039
RHODE ISLAND	0.0017216	$3,678
MICHIGAN	0.0337181	$72,039
MINNESOTA	0.0184738	$39,469
MISSISSIPPI	0.0259670	$55,479
MISSOURI	0.0253687	$54,200
MONTANA	0.0067138	$14,344
NEBRASKA	0.0083216	$17,779
NEVADA	0.0029735	$6,353
NEW JERSEY	0.0091825	$19,618
NEW MEXICO	0.0117200	$25,040
NEW YORK	0.0369739	$78,995
NORTH CAROLINA	0.0471742	$100,787
NORTH DAKOTA	0.0040847	$8,727
OHIO	0.0378081	$80,777
OKLAHOMA	0.0175713	$37,541
OREGON	0.0166212	$35,511
PENNSYLVANIA	0.0438367	$93,656
PUERTO RICO	0.0250931	$53,611
SOUTH CAROLINA	0.0249510	$53,308
SOUTH DAKOTA	0.0065435	$13,980
TENNESSEE	0.0276859	$59,151
TEXAS	0.0665018	$142,080
UTAH	0.0039861	$8,516
VERMONT	0.0057475	$12,280
NEW HAMPSHIRE	0.0075234	$16,074
VIRGINIA	0.0278404	$59,481
WASHINGTON	0.0200905	$42,923
WEST VIRGINIA	0.0172518	$36,859
WISCONSIN	0.0222867	$47,616
WYOMING	0.0035006	$7,479
STATE TOTALS	1.0000000	$2,137,500
GENERAL RESERVE		$704,948
SPECIAL OUTREACH AREAS RESERVE		$302,120
TOTAL		$3,144,568

RURAL HOUSING SERVICE
FISCAL YEAR 2001
ALLOCATION IN THOUSANDS
SECTION 504 RURAL HOUSING LOANS

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2001 ALLOCATION
ALABAMA	0.0290630	$767
ALASKA	0.0080174	$212
ARIZONA	0.0200434	$529
ARKANSAS	0.0225489	$595
CALIFORNIA	0.0531151	$1,402
COLORADO	0.0085185	$225
DELAWARE	N/A	$100
MARYLAND	0.0095206	$251
FLORIDA	0.0295641	$780
VIRGIN ISLANDS	N/A	$100
GEORGIA	0.0395858	$1,045
HAWAII	0.0100217	$264
W PAC ISLANDS	N/A	$1,000
IDAHO	0.0075163	$198
ILLINOIS	0.0225489	$595
INDIANA	0.0220478	$582
IOWA	0.0130282	$344
KANSAS	0.0115250	$304
KENTUCKY	0.0320695	$846
LOUISIANA	0.0295641	$780
MAINE	0.0100217	$264
MASSACHUSETTS	0.0080174	$212
CONNECTICUT	0.0040087	$106
RHODE ISLAND	N/A	$100
MICHIGAN	0.0290630	$767
MINNESOTA	0.0175380	$463
MISSISSIPPI	0.0300651	$793
MISSOURI	0.0240521	$635
MONTANA	0.0060130	$159
NEBRASKA	0.0070152	$185
NEVADA	N/A	$100
NEW JERSEY	0.0070152	$185
NEW MEXICO	0.0150326	$397
NEW YORK	0.0285619	$754
NORTH CAROLINA	0.0476031	$1,256
NORTH DAKOTA	0.0040087	$106
OHIO	0.0330717	$873
OKLAHOMA	0.0175380	$463
OREGON	0.0150326	$397
PENNSYLVANIA	0.0370803	$978
PUERTO RICO	0.0340738	$899
SOUTH CAROLINA	0.0280608	$740
SOUTH DAKOTA	0.0060130	$159
TENNESSEE	0.0295641	$780
TEXAS	0.0781694	$2,566
UTAH	0.0040087	$106
VERMONT	0.0045098	$119
NEW HAMPSHIRE	0.0055119	$145
VIRGINIA	0.0295641	$780
WASHINGTON	0.0185402	$489
WEST VIRGINIA	0.0180391	$476
WISCONSIN	0.0195423	$516
WYOMING	N/A	$100
STATE TOTALS	1.0000000	$27,987
GENERAL RESERVE		$1,500
EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES EARMA		$1,288
100 UNDERSERVED COUNTIES/COLONIAS		$1,620
TOTAL		$32,395

RURAL HOUSING SERVICE
FISCAL YEAR 2001 ALLOCATION IN THOUSANDS
SECTION 504 RURAL HOUSING GRANTS

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2001 ALLOCATION
ALABAMA	0.0280565	$722
ALASKA	0.0056781	$146
ARIZONA	0.0170343	$439
ARKANSAS	0.0223784	$576
CALIFORNIA	0.0480968	$1,238
COLORADO	0.0083501	$215
DELAWARE	N/A	$100
MARYLAND	0.0100202	$258
FLORIDA	0.0340685	$878
VIRGIN ISLANDS	N/A	$100
GEORGIA	0.0367406	$946
HAWAII	0.0076821	$198
W PAC ISLANDS	N/A	$500
IDAHO	0.0073481	$189
ILLINOIS	0.0263864	$680
INDIANA	0.0243824	$628
IOWA	0.0163662	$422
KANSAS	0.0133602	$344
KENTUCKY	0.0297265	$766
LOUISIANA	0.0260524	$671
MAINE	0.0103542	$267
MASSACHUSETTS	0.0096861	$250
CONNECTICUT	0.0053441	$138
RHODE ISLAND	N/A	$100
MICHIGAN	0.0317305	$817
MINNESOTA	0.0197063	$508
MISSISSIPPI	0.0270545	$697
MISSOURI	0.0257184	$662
MONTANA	0.0060121	$155
NEBRASKA	0.0086841	$224
NEVADA	N/A	$100
NEW JERSEY	0.0083501	$215
NEW MEXICO	0.0123582	$318
NEW YORK	0.0323985	$835
NORTH CAROLINA	0.0470948	$1,213
NORTH DAKOTA	0.0046761	$120
OHIO	0.0360726	$929
OKLAHOMA	0.0183703	$473
OREGON	0.0156983	$404
PENNSYLVANIA	0.0437547	$1,126
PUERTO RICO	0.0263865	$680
SOUTH CAROLINA	0.0260524	$671
SOUTH DAKOTA	0.0063461	$164
TENNESSEE	0.0293925	$757
TEXAS	0.0714772	$1,841
UTAH	N/A	$100
VERMONT	0.0046761	$120
NEW HAMPSHIRE	0.0060121	$155
VIRGINIA	0.0283905	$731
WASHINGTON	0.0183703	$473
WEST VIRGINIA	0.0180363	$465
WISCONSIN	0.0223783	$576
WYOMING	N/A	$100
STATE TOTALS	0.9823100	$26,400
GENERAL RESERVE		$1,500
EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES EARMAR		$600
100 UNDERSERVED COUNTIES/COLONIAS		$1,500
TOTAL		$30,000

[FR Doc. 00–32619 Filed 12–22–00; 8:45 am]
BILLING CODE 3410–XV–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for section 502 Demonstration Program to Provide Single Family Housing (SFH) Loans and Grants in North Carolina to Elderly Families Who Lost Their Housing as a Result of a Major Disaster

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces a Demonstration Program to provide section 502 loans and grants in North Carolina for very-low and low-income elderly families who lost their housing as a result of a major disaster.

DATES: Applications may be submitted at any time until funds are exhausted. Funding is limited, and loan and grants will be obligated on a first come, first served basis from the date of receipt of a full application.

ADDRESSES: Applicants wishing to apply for assistance must contact their local Rural Development office in North Carolina for an application package. Rural Development offices are listed in the government section of phone books under ''United States Department of Agriculture (USDA), Rural Development.'' Applicants may also contact the State office serving North Carolina at the following address: USDA, Rural Development, 4405 Bland Road, Suite 260, Raleigh, NC 27609, phone (919) 873–2060, TDD (919) 873–2003 (these are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: For general information, applicants should contact their local or State Rural Development Office in North Carolina. Interested parties may also contact David J. Villano, Deputy Administrator, Single Family Housing, Rural Housing Service, United States Department of Agriculture, Stop 0780, 1400 Independence Avenue, SW, Washington, DC, 20250–0780, telephone (202) 720–5177 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Single Family Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans.

Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0172 in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 502 of the Housing Act of 1949 (42 U.S.C. 1471, *et seq.*) provides the Rural Housing Service (RHS) with the authority to make loans to very-low and low income persons and families who currently do not own adequate housing and cannot obtain other credit for modest housing in rural areas. The Demonstration Program described in this NOFA was authorized by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Public Law 106–387 (October 28, 2000). Under this Demonstration Program, loans and grants may be made under section 502 of the Housing Act of 1949 in North Carolina to elderly families whose housing was destroyed by a major disaster as so declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The applicant must (1) not have had insurance that covered such as loss and (2) be unable to repay a section 502 loan (without a section 502 grant). Funds may only be used for the purchase of a new modular home and an adequate building site, or a new modular home if the applicant already owns an adequate building site.

B. Availability of Section 502 Funds for This Demonstration Program

A combination loan and grant will be available for eligible persons under this NOFA; however, funding is limited. A maximum of $5,000,000 in section 502 grant funds is available. Section 502 loan funds, with a budget authority level of $400,000, were made available under the aforementioned appropriations act. Funds under this NOFA are not subject to the provisions of 7 CFR 1940.565 and will be held in a National reserve.

I. Determining the Amount of a Loan and Grant

Loan and grant combinations are available. Eligible applicants are expected to pay 20% of their adjusted income (as described in 7 CFR part 3550) toward a subsidized mortgage payment (principal and interest), real estate taxes, and insurance (PITI). After subtracting the monthly escrow for taxes and insurance, RHS will determine the maximum subsidized section 502 loan that the applicant can repay. The calculated loan amount will be deducted from the actual cost of the housing or market value, whichever is less. The remaining amount will be covered by a subsidized section 502 grant.

For example, an applicant desires to purchase a new modular home for $72,000. Her adjusted income is $700 per month. Annual real estates taxes (based upon an ''as completed'' valuation) are estimated to be $400, and homeowners insurance is estimated to be $200. Twenty percent of her adjusted income is $140 per month ($700 times 20%). From that amount, $50 per month is deducted for taxes and insurance ($400 taxes plus $200 insurance divided by 12 equals $50 per month). In summary, the applicant can pay $90 per month towards a subsidized mortgage payment ($140 minus $50 for taxes and insurance equals $90). Based upon a $90 per month payment, the applicant would be eligible to receive a $30,000 section 502 subsidized loan. Since the cost of the house is $72,000, RHS will provide a $30,000 subsidized loan and $42,000 grant ($72,000 cost minus $30,000 loan equals $42,000).

III. Impact of Other Affordable Housing Products

If the applicant is to receive any other affordable housing product or assistance (a forgivable loan or grant from another source, additional FEMA assistance, etc.) in conjunction with funds from RHS, the RHS loan or grant will be reduced correspondingly. An outside grant will reduce the RHS grant; and an outside loan (requiring payments) will reduce the RHS loan on a dollar for dollar basis. For example, if the applicant is to receive a $5,000 grant from another source, it will reduce the amount of the RHS grant by $5,000. Similarly, a forgivable loan of $7,500 (one requiring no payments until the property is sold or title transferred) will also reduce the grant amount by $7,500. An affordable housing loan (which requires monthly payments) from another source of $2,000, will reduce the RHS loan amount by $2,000. RHS funding is extremely limited, and the Agency must ensure that funds are used prudently and to the maximum extent possible so that as many elderly families can be assisted as possible.

IV. Grants

Under the terms of the grant, the grant recipient is required to personally occupy the housing acquired with grant

funds for 10 years. If the grantee fails to personally occupy the housing for this term, then some or all of the grant must be repaid to the Agency, as discussed below. There is no penalty if the grantee stops personally occupying the property after the tenth anniversary of the grant. Repayment of the penalty for failing to personally occupy the housing will be secured by the standard Agency form deed of trust for North Carolina and the applicant will be required to sign an Agency grant agreement.

V. Grant Default and Penalties for Default

The following events shall be considered a default under the grant:

A. The property is sold or title transferred;

B. The grantee fails to honor any of the terms of the grant agreement, or any of the terms of the Promissory Note, Mortgage or Deed of Trust securing an Agency loan which enabled the grantee to purchase the security property;

C. The grantee falsely certifies, or fails to certify that the grantee occupies or will occupy the security property;

D. The property is no longer personally occupied by the grantee, including by death of the grantee; or

E. The grantee, or someone acting on the grantee's behalf, provided false or inaccurate information to obtain the grant.

For the first full five years from closing, should a default occur, the penalty for default will be 100% of the grant amount. On the sixth anniversary, the penalty for default will be reduced by 20%, and the penalty will be reduced by an additional 20% on each succeeding anniversary date so that there will be no penalty for default after the tenth anniversary of the grant. In the case of death of the grantee at any time during the 10-year period, the penalty under the grant shall apply to anyone holding a remainder interest in the property, or by the heirs of the estate and the penalty amount will be promptly paid to the Agency. The Agency will charge interest on such penalty amount at the United States Treasury's current value of funds rate in effect at the time of default. The following example represents the potential penalties resulting from a default on a section 502 grant that was closed June 15, 2001:

Date of Default: Penalty for default
June 15, 2001: 100%
June 15, 2002: 100%
June 15, 2003: 100%
June 15, 2004: 100%
June 15, 2005: 100%
June 15, 2006: 100%
June 15, 2007: 80%
June 15, 2008: 60%
June 15, 2009: 40%
June 15, 2010: 20%
June 15, 2011: 0

Under this example, if the property is sold or title transferred from June 15, 2001 up to and including June 15, 2006, the penalty would be 100% of the grant amount. For a default that would occur on July 1, 2006, the penalty would be 100% of the grant amount. For a default that would occur on June 16, 2007, the penalty would be 80% of the grant amount.

Should a default occur (with the exception of false or inaccurate information), the Agency may amortize repayment over a period of time with interest when it is in the best financial interest of the Government and is consistent with the objectives of the Demonstration Program.

VI. Submitting Loan and Grant Requests

All applications must be filed with the appropriate Rural Development office and must meet the applicable requirements of 7 CFR part 3550 and this NOFA. Incomplete applications will be returned to the applicant. Applicants must provide documentation to support their loan and grant in accordance with 7 CFR part 3550 and this NOFA.

VII. Funding and Approval of Applications

As mentioned, funding for this program is limited. Therefore, it is imperative that customers submit applications and related supporting documents in a timely manner. Submission of an application neither reserves funds nor ensures funding. Loan and grant requests will be obligated in the order in which a full application is received by Rural Development until funds are exhausted. A full application includes a valid sales contract for the purchase of a modular home, an adequate building site (or evidence of ownership, if the site is already owned), and a loan and grant request which can be approved in accordance with 7 CFR part 3550 and this NOFA.

VIII. Applicability of Current Regulations

All loan and grant requests for this Demonstration Program are subject to the provisions of this NOFA. Grants are also subject to 7 CFR part 3015. In addition, loan and grant requests are subject to the requirements of 7 CFR part 3550, with the following modifications:

A. Loan Purposes

Section 3550.52 does not apply except for paragraphs (d) and (e). Funds may only be used to purchase a new modular home and an adequate building site (if the applicant does not already own an adequate building site), and related eligible costs outlined in paragraph (d) such as site preparation, special features to accommodate the needs of persons with disabilities, title and closing costs, etc.

B. Eligibility Requirements

Section 3550.53 applies, with the exception of paragraph (d).

In addition, the applicant must:

(1) be an elderly family as defined in section 3550.10; and

(2) have owned or rented housing (which was their primary residence) that was destroyed by a major disaster declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

(3) have sufficient income to pay living expenses, current debts, real estate taxes (based upon an as-completed valuation), homeowners insurance, utilities, and required maintenance on the house; and

(a) did not have homeowner's insurance or other insurance to cover such loss; or

(b) cannot repay a section 502 loan without the benefit of a section 502 grant as described in this NOFA.

C. Applications

Section 3550.55 applies, with the exception of paragraph (c).

D. Site Requirements

Section 3550.56 applies, except for paragraph (a). In addition, a loan or grant may only be made in a rural area designated by RHS.

E. Dwelling Requirements

Section 3550.57 applies, with the exception of paragraph (c). Only new modular homes are eligible under this Demonstration Program. In North Carolina, a modular home is defined as a manufactured building designed to be used as a one family unit which has been constructed and labeled indicating compliance with the North Carolina State Uniform Residential Building Code, Volume VII (available in most public libraries or through North Carolina Building Inspectors). The unit must have a North Carolina validation stamp. In addition, unless the applicant requests a waiver for individual needs, the modular unit must have the following design features at a minimum:

(1) grab bars, or blocking for them, in the tub and shower;

(2) toilet centered a minimum of 18 inches from side wall with grab bars or blocking;

(3) minimum 30 × 48 inch area of approach in front of all fixtures;

(4) minimum 29 inch clearance below lavatory counter with insulated piping (a removable cabinet front may be used);

(5) minimum 32 inch clearance for all door openings;

(6) minimum 18 inch space at latch side of all doors;

(7) ''view'' windows at a maximum 36 inch sill height;

(8) electrical receptacles at 15 to 18 inches of height;

(9) flush thresholds (maximum of ½ inch rise);

(10) minimum 42 inch accessible route throughout;

(11) lights switches and thermostat at 48 inch maximum height;

(12) high contrast, glare free floor surfaces and trim;

(13) minimum of one entry ramped with accessible route to parking and mailbox, or property designed to accommodate such needs at a later time;

(14) kitchen cabinets with removable panel under sink, pipes insulated, and removable fronts for work space;

(15) lever handles for sink, lavatory, and door knobs; and

(16) if the house does not have an attached garage, a minimum 8 × 8 foot accessible, attached storage space.

F. Ownership Requirements

Section 3550.58 applies with the exception of paragraphs (b), (c), (d), and (e). At the time of closing, the applicant must have fee-simple ownership.

G. Escrow Account

Section 3550.60 applies. Escrow accounts are required regardless of the loan and grant amounts.

H. Insurance

Section 3550.61 applies; however, the loss payable clause must cover the combined amount of all loans needed to obtain the housing plus the section 502 grant. Flood insurance, where applicable, is required regardless of the loan or grant amount.

I. Appraisals

Section 3550.62 applies. Appraisals are required regardless of the loan and grant amounts. The combined section 502 loan and grant, plus any prior liens, may not exceed the appraised value.

J. Maximum Loan Amount

Section 3550.63 applies, with the exception of paragraph (b)(3). The Housing and Urban Development (HUD) 203(b) limits in effect as of September 30, 1998, apply.

K. Payment Subsidy

Section 3550.68 applies, with the exception of paragraph (c). Eligible applicants will receive interest credit.

L. Deferred Mortgage Payments

Section 3550.69 is not applicable.

M. Recapture

Section 3550.162 applies; however, the section 502 grant shall be considered original equity. If the loan is repaid within its 10th year anniversary, or a penalty is imposed for a default on the grant, the balance due on the 502 grant shall be considered to be part of the outstanding balance on the 502 loan for recapture purposes.

N. Other

Sections 3550.71, 3550.73, 3550.74, and 3550.101 through 3550.150 are not applicable.

VI. Exception Authority

The Administrator, or Deputy Administrator, Single Family Housing, reserves the right to make an exception to any requirement or provision of this NOFA or address any omission that is consistent with the applicable statute upon the request of the State Director for North Carolina if he or she determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's financial interests.

Dated: December 15, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–32620 Filed 12–22–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for Fiscal Year 2001

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 515 Rural Rental Housing (RRH) loan funds and section 521 Rental Assistance (RA) for new construction, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs) and Rural Economic Area Partnership (REAP) communities. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of all applications, including those for the set-asides, in response to this NOFA is 5 p.m., local time for each Rural Development State office on March 26, 2001. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7734, TDD (907) 761–8905, Miguel Correa

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819 or, (530) 792–5830, TDD (530) 792–5848, Millie Manzanedo or, Jeff Deiss

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215,

(303) 236–2801 (ext. 122), TDD (303) 236–1590, ''Sam'' Mitchell

Connecticut—Served by Massachusetts State Office

Delaware and Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, LaDonn McElligott

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2718, TDD (785) 271–2767, Gary Schumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, Craig Hildreth

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503)414–3387, Joyce Hein

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue,

Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT:

For general information, applicants may contact Linda Armour, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1753 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Explanation of 90-Day NOFA Application Deadline

The Agency is using a 90-day application period to allow adequate time for our customers to complete their applications, including finding a suitable site and preparing the market study. In many cases, the process of locating a site suitable for multi-family housing is time-consuming. Factors such as environmental issues, zoning issues, and community support must be addressed. In addition, the market study required by RHS is complex. It is difficult to complete a high quality market study within a limited timeframe. Because the quality of the site and market are two of the most important ingredients for the long-term success of a multi-family development, a 90-day application period is provided.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

B. Distribution Methodology

The total amount available for FY 2001 for section 515 is $114,321,087, of which $49,000,000 is available for new construction as follows:

Section 515 new construction funds: $16,980,753

Set-aside for nonprofits: $10,288,998

Set-aside for Underserved Counties and Colonias: $5,716,054

Set-aside for EZ, EC, and REAP zones: $14,514,195

State Rental Assistance (RA) designated reserve: $1,500,000

C. Section 515 New Construction Funds

For fiscal year 2001, the Administrator has determined that it would not be practical to allocate funds to States because of funding limitations; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart E. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. The required applicant contribution is not considered leveraged assistance. Leveraged assistance includes loans and grants from other sources, contributions from the applicant above the required contribution indicated by the Sources and Uses Comprehensive Evaluation (available from the Rural Development State Office) and tax abatements or other savings in operating costs provided that, at the end of the abatement period when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: The proposal will be scored based on the requested funds, provided (1) the applicant includes evidence of a filed application for the funds; and (2) the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	0

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or REAP community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or Low-Income Housing Tax Credits) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the total development cost. (National office initiative)

(d) The loan request includes donated land meeting the provisions of 7 CFR 1944.215(r)(4). (5 points)

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

D. Applications That Do Not Require New Construction Rental Assistance (RA)

For fiscal year 2001, limited new construction RA is available. Therefore, the Agency is inviting applications to develop units in markets that do not require RA. The market study for non-RA proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents without tenant subsidies. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-Asides

Loan requests will be accepted for the following set-asides:

1. Nonprofit Set-Aside

An amount of $10,288,998 has been set aside for nonprofit applicants. All loan proposals must be in designated places in accordance with 7 CFR part 1944, subpart E. A State or jurisdiction may receive one proposal from this set-aside, which cannot exceed $1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. If there are insufficient funds to fund one loan request from each participating State, selection will be made by point score. If there are any funds remaining, they will revert to the National office reserve. Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

2. Underserved Counties and Colonias Set-Aside

An amount of $5,716,054 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. EZ, EC, and REAP Set-Aside

An amount of $14,514,195 has been set aside to develop units in EZ, EC, or REAP communities. Loan requests that are eligible for this set-aside may also be eligible for regular section 515 funds as a high-need community. The state must indicate on the list submitted to the National office if the request is eligible for the EZ, EC, and REAP set-aside and regular section 515 funds. If requests for this set-aside exceed available funds, selection will be made by point score.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

B. No State may receive more than $2.5 million from regular section 515 funds. Reserve funds, including set-aside funds, are not included in this cap.

III. Rental Assistance (RA)

New construction RA will be held in the National office for use with section 515 Rural Rental Housing loans. RA may be requested by applicants, except for non-RA requests in accordance with section I.D. above.

IV. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart E and section V of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

V. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that exceed the National limit of $1 million will be returned to the applicant); and

3. List of designated places for which applications for new section 515 facilities may be submitted.

VI. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National office and one by the State office. This fiscal year, the National office initiative will be used in the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the total development cost. No State selection criteria will be used this fiscal year.

B. $10,288,998 is available nationwide in a set-aside for eligible nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $5,716,054 is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $14,514,195 is available nationwide in a set-aside for EZ, EC, and REAP communities.

E. $1,500,000 is available nationwide in a reserve for States with viable State Rental Assistance (RA) programs. In order to participate, States are to submit specific written information about the State RA program, i.e., a memorandum of understanding, documentation from the provider, etc., to the National Office.

Dated: December 15, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–32621 Filed 12–22–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2001

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction and acquisition with rehabilitation of off-farm units for

farmworker households. Applications may also include requests for section 521 rental assistance (RA) and operating assistance for migrant units. This document describes the method used to distribute funds, the application process, and submission requirements.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on April 25, 2001. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to locate off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Center, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7734, TDD (1–800–770–8255), (1–800–770–8905), Miguel Correa

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8706, TDD (602) 280–8770, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Clinton King

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 124), TDD (303) 236–1590, Mary Summerfield

Connecticut—Served by Massachusetts State Office

Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5628, TDD (208) 378–5644, LaDonn McElligott

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Julie Brown

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 661204, (785) 271–2721, TDD (785) 271–2767, Virginia Hammersmith

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192 , TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7804, TDD (651) 602–3799, Joyce Vondal

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray

Missouri State Office, 1201 Business Loop, 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Randall L. Griffith

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2518, TDD (406) 585–2562, Craig Hildreth

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 2120, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2401, TDD (614) 255–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Margo Donelin

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg,

PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact David Layfield, Farm Labor Housing Loan Specialist, or Mary Fox, Senior Loan Specialist of the Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Definitions

Farm Labor. Farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to process any agricultural or aquacultural commodity.

Migrant Agricultural Laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place they call home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

Operating Assistance. Assistance toward the cost of operating off-farm migrant farmworker projects financed under sections 514 or 516 of the Housing Act of 1949. Projects that receive operating assistance may not receive tenant-specific rental assistance (RA).

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The Farm Labor Housing program is authorized by the Housing Act of 1949: Section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance (RA)) and operating assistance for migrant projects are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as local housing authorities). In addition, RHS is authorized under section 514 to make loans to finance off-farm housing to limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

The amounts available for fiscal year (FY) 2001 for off-farm housing construction are:
Section 514 loans: $ 23,522,000
Section 516 grants $ 10,000,000

C. Section 514 and Section 516 Funds

Section 514 loan funds and section 516 grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart D. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(b) Seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more.)

2. States will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

3. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

II. Funding Limits

A. Individual requests may not exceed $2.5 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds.

C. Rental Assistance and Operating Assistance will be held in the National office for use with section 514 loans and section 516 grants.

III. Application Process

All applications for sections 514 and 516 funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart D, and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 pm, local time, on April 25, 2001 unless date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for application information.

V. Areas of Special Emphasis or Consideration

The selection criteria contained in 7 CFR 1944, Subpart D, includes one optional criteria set by the National office. This fiscal year, the National office initiative will be used in the selection criteria as follows:

Up to 10 Points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include but are not limited to: transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent from any party administering each service, including the applicant. (0 to 10 points)

Dated: December 15, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–32622 Filed 12–22–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for section 533 Housing Preservation Grants

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on March 26, 2001. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 745–6494, Miguel Correa

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8765, TDD (602) 280–8706, Johnna Vargas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5819, TDD (530) 792–5848, Millie Manzanedo or Jeff Deiss

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, ''Sam'' Mitchell

Connecticut—Served by Massachusetts State Office

Delaware & Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4353, TDD (302) 697–4303, Pat Baker

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens,

GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8316, TDD (808) 933–8321, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, LaDonn McElligott

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2718, TDD (785) 271–2767, Gary Schumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Dale D. Holmes

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–7068, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray,

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9301, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, Craig Hildreth

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 13), TDD (775) 885–0633, William L. Brewer ,

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Jim Fowler

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3631, TDD (609) 265–3687, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Phil Reimers

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3325, TDD (503) 414–3387, Joyce Hein

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 254), TDD 1–800–274–1572, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–3432, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4324, TDD (801) 524–3309, Robert L. Milianta

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6028, TDD (802) 223–6365, Sandra Mercier

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office,

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620 (ext. 7145), TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Tracee Lilly, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR 1944.674 and 1944.676(f), (g), and (h) for specific guidance on these requirements relative to the HPG program.

Application Requirements

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package and the project selection criteria. Entities wishing to apply for assistance should contact the Rural Development State office to receive further information, the State allocation of funds, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

Funding Information

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level.

You should contact the State office to determine the allocation and the State

maximum grant level, if any. For FY 2001, $8,000,000 is available for the Housing Preservation Grant Program. A set aside of $600,000 has been established for grants located in Empowerment Zones, Enterprise Communities, and REAP Zones and $6,600,000 has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds''. Decisions on funding will be based on preapplications.

Dated: December 15, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

[FR Doc. 00–32623 Filed 12–22–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Fund Availability (NOFA or Notice) announces the timeframe and submission requirements and deadlines to submit proposals in the form of ''NOFA responses'' for the section 538 Guaranteed Rural Rental Housing Program (GRRHP). Eligible lenders, as defined in paragraph IX.(D) of this NOFA, are invited to submit NOFA responses for the development of affordable rental housing to serve rural America. Only responses submitted by eligible lenders, on the lender's letterhead, and signed by both the applicant and the lender will be reviewed. This Notice describes the overall NOFA response and application process, including the selection and identification of any priorities for selection of NOFA responses, and the process by which the Rural Housing Service (RHS or Agency) will score and rank the NOFA responses. Information will also be included concerning the submission requirements. Lenders may submit a complete application concurrently with the NOFA response.

DATES: The Fiscal Year (FY) 2001 program dollars will be allocated through a continuous selection process. On a monthly basis starting with the third Thursday of January (January 18, 2001) and each third Thursday of the month through August 16, 2001, or until all funds are expended, the agency will review all NOFA responses that have been received monthly.

Lenders will submit responses that are ready to be processed to a complete application once the NOFA selection is made. NOFA responses will be reviewed for completeness and eligibility, and if so deemed, lenders will be requested to submit a full application and the required application fee of $2,500.00 within 90 days of selection, if not already submitted.

Applications will be sent to the Rural Development State office in which the project is located. If an application is not submitted within 90 days from the date of the letter notifying the lender of the NOFA selection, the selection is subject to cancellation, thereby allowing another NOFA response that is ready to proceed with processing to be selected. A completed application may be submitted with the NOFA response. However, a completed application and application fee must be submitted by the August 16, 2001 NOFA response date. The deadline for receipt of NOFA responses is 4:00 PM, Eastern Standard or Daylight Time, whichever is then applicable, each third Thursday of the month. Lenders intending to mail a NOFA response must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a U. S. Post Office or private mailer does not constitute delivery. Postage due NOFA responses or applications will not be accepted. NOFA responses received after the deadlines previously mentioned and before August 16, 2001, will be held for the next month's review if funds remain. The NOFA submission deadline dates are as follows:

- Thursday, January 18, 2001, 4:00 P.M. EDT/EST
- Thursday, February 15, 2001, 4:00 P.M. EDT/EST
- Thursday, March 15, 2001, 4:00 P.M. EDT/EST
- Thursday, April 19, 2001, 4:00 P.M. EDT/EST
- Thursday, May 17, 2001, 4:00 P.M. EDT/EST
- Thursday, June 21, 2001, 4:00 P.M. EDT/EST
- Thursday, July 19, 2001, 4:00 P.M. EDT/EST
- Thursday, August 16, 2001, 4:00 P.M. EDT/EST

When all funds have been exhausted, a notice will be placed in the **Federal Register** to notify the public.

ADDRESSES: Responses for participation in the program must be identified as ''Section 538 Guaranteed Rural Rental Housing Program'' on the envelope and be submitted to: Director, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 1263 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781.

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Deputy Director, Guaranteed Loans, Multi-Family Housing Processing Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Ave. SW, Washington, DC 20250–0781. E-mail: jallen@rdmail.rural.usda.gov. Telephone: (202) 690–4499. This number is not toll-free. Hearing or speech impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The GRRHP is operated under 7 CFR part 3565. The Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with the ''how to'' administrative guidance needed to administer the program. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, may be found on the Rural Development Regulation web site internet address of ''http://rdinit.usda.gov/regs'' or copies may be obtained from the Rural Housing Service Multi-Family Housing Processing Division at 202–720–1604. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Discussion of Notice

I. Purpose and Program Summary

On March 28, 1996, President Clinton signed the Housing Opportunity Program Extension Act of 1996, Public Law 104–120, authorizing the section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program is designed to increase the supply of affordable multi-family housing through partnerships between Rural Housing Service (RHS) and major lending sources, as well as state and local housing finance agencies and bond issuers. Tax exempt financing can be used as a source of capital for the guaranteed loan. Qualified lenders will be authorized to originate, underwrite, and close loans for multi-family housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit when the acquisition results in the creation of new affordable housing units. RHS may guarantee such

loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and interest of the loan, and in the case of a construction loan, the maximum guarantee will be 90 percent of the work in place, or up to 90 percent of the amounts actually advanced by the lender, whichever is less. Any losses would be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

II. Allocation

Fiscal year (FY) 2001 budget authority provides approximately $100 million in program dollars. All FY 2001 funds will be held in the National office. There are no set-asides for the GRRHP for FY 2001.

III. The NOFA Response Process

Lenders should respond to the section 538 NOFA only when they have completed a preliminary underwriting analysis and are willing to make the proposed loan, subject to, among other conditions, to the issuance of a guarantee by the Agency. Unfortunately, the Agency has found that in some instances, this has not been the case. In an effort to reduce the number of unacceptable NOFA responses and judiciously commit program dollars to projects that demonstrate a readiness to proceed, the Agency will strictly adhere to the submission requirements found in chapter 4 of HB–1–3565.

In the interest of time, lenders have the option of submitting a combined NOFA response and application. However, the Agency will not give preference to a submission containing both a NOFA response and an application. Lenders who submit complete applications are encouraged, but not required, to include a checklist of the items listed in paragraph 4.9, of HB–1–3565 and to have their applications indexed and tabbed to facilitate the review process.

NOFA responses will be reviewed for completeness and eligibility, and if so deemed, the lender will be asked to submit a full application and the required application fee of $2,500.00. The application and fee must be submitted within 90 days of the date the lender receives the selection letter, unless the Agency has agreed to an extension because the applicant is waiting for a determination of their application for tax credits, or other sources of project funds, from an allocating governmental or quasi-governmental Agency and the applicant is scheduled to be notified after the initial 90 day time frame has expired. Applications and fees will be sent to the Rural Development State office in which the project is located. If an application is not submitted within 90 days from the date of the letter notifying the lender of the NOFA selection, the selection is subject to cancellation, thereby allowing another NOFA response that is ready to proceed with processing to be selected.

To submit a complete application, the lender will work with the Agency to complete the appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G, prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first. In addition, the Agency will determine that the Civil Rights Impact Analysis Certification and all other Federal requirements, including intergovernmental review (RD Instruction 1940-J) and flood insurance requirements (7 CFR part 1806 subpart B), both available in any Rural Development office, have been met prior to taking any official action on an application for a loan guarantee.

IV. Interest Credit

Assistance can include both loan guarantees and interest credits. For at least 20 percent of the loans made under the program, RHS will provide the borrower with interest credits to reduce the interest rate of the loan by a maximum of 250 basis points. However, in no instance will the lender's interest rate be reduced to lower than the Applicable Federal Rate as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986.

RHS will provide interest credit on loans up to $1.5 million. Lenders with proposals that could be viable with or without interest credits are encouraged to submit a NOFA response reflecting financial and market feasibility under both funding options. A request in the NOFA response to be considered under both options will not affect the rating of the response for interest credit selection. However, once the interest credit funds are exhausted, only those NOFA responses requesting consideration under both funding options or the Non-Interest Credit option will be further considered.

Due to limited interest credit funds and the Agency's responsibility to target and give priority to rural areas most in need, NOFA responses requesting to receive interest credit must score a minimum threshold of 70 points. The NOFA responses will be scored on the basis of the criteria as described in 7 CFR 3565.5(b) and as published in paragraph VIII of this NOFA. In the event that requests exceed available funds, the interest credit NOFA responses will be ranked and scored separately using the same selection criteria as described above. In the event of ties, selection between proposals will be by lot.

V. NOFA Response Requirements

NOFA response requirements are subject to change. It is important to note that all responses must be submitted in accordance with the terms of this NOFA, which are different from the NOFA issued in FY 2000.

Selections will be based on the lender's review of project feasibility and merit.

At a minimum, the information contained in the following sample NOFA Response must be submitted by the lender, on lender's letterhead, and be signed by both the lender and the applicant. Incomplete responses will not be considered, and the lender will be notified of the reason that the response was incomplete. The required NOFA Response information is listed as follows:

Sample NOFA Response:

BILLING CODE 3410–XY–J

Lender Name	Lender organization name.
Lender Tax Id Number	Insert number.
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Complete mailing address for lender.
Phone Number	Phone number for lender contact.

Fax Number	Insert number.
E-mail Address	Insert E-mail address.
Borrower Name And Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Tax Classification Type	State whether borrower is full profit, not for profit, etc.
Borrower Tax Id Number	Insert number.
Borrower Address, including County	Insert Address and County.
Borrower Phone Number	Insert Number.
Principal Or Key Member	Insert name and title.
Borrower Information And Statement Of Housing Development Experience	Attach relevant information.
New Construction Or Repair/Rehab. Of At Least $15,000/Unit.	State whether the project is new construction or repair/rehab.
Project Location Town	Town in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert Number.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, Senior or Mixed.
Property Description And Proposed	See Attached.

Development Schedule	
Total Project Development Cost	Enter amount for total project.
Number Of Units	The total number of units in the project.
Cost Per Unit	Total development cost divided by number of units.
Bedroom Mix	Number of units by number of bedrooms.
Rent	Proposed rent structure.
Median Income For Community	Provide median income for the project community.
Evidence Of Site Control	Attach relevant information.
Description Of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Interest Credit (IC)	Is interest credit requested for this loan (Yes or No).
If Above Is Yes, Should Proposal Be Considered Under Non-IC Selection, If IC Funds Are Exhausted?	If Yes, proposal must show financial feasibility for NON-IC consideration.
Borrower's Proposed Equity	Insert Amount.
TAX CREDITS	Are tax credit to be provided to project?
Other Sources Of Funds	List all funding sources.
Loan To Value	Guaranteed loan divided by value.
Debt Coverage Ratio	Net Operating Income divided by debt payments.
Percentage Of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.

EZ/EC	Yes or No. Is the project in EZ/EC community?
Colonia Or Tribal Lands	Yes or No. Is the project in a Colonia or on an Indian Reservation?
Presidential Declared Disaster Area	Yes or No
Population	Must be within the 20,000 population limit set for the program.
Is A Guarantee For Construction Advances Being Requested?	Yes or No. (The Agency will guarantee construction advances, only as part of a combination construction and permanent loan).
Loan Term	Fixed rate, up to a 40 year term, must be fully amortizing. Note: Balloon mortgages are not eligible.
Basis Points Over 10 Year Treasury	Insert relevant number.

VI. Lender Submission Requirements

(A) Lender Eligibility and Approval Status: Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status as defined in paragraph IX.(D) of this NOFA will be submitted.

(B) Lender Certification: A commitment letter or certification by the lender that the lender will make a loan to the borrower for the proposed project, under specified terms and conditions subject to the issuance of a guarantee by the Agency. The lender certification must be on the lender's letterhead, and be signed by both the lender and the applicant, and will be submitted by the lender to the Agency.

VII. Competitive Criteria

To expedite the review of the NOFA responses, RHS suggests using the sample NOFA response checklist found in paragraph V. of this NOFA to ensure that all the submission requirements and competitive criteria of this NOFA have been addressed.

VIII. Selection Criteria

NOFA responses will be reviewed as received on a first come first serve basis on the third Thursday of each month. In the event that demand exceeds available funds, priorities will be assigned to eligible proposals on the basis of the following criteria as described in 7 CFR 3565.5(b) and as published in this NOFA. In the event of ties, selection between proposals will be by lot. Points will be assigned as follows:

(A) Projects located in rural communities with the smallest population will receive priority. All proposals will be ranked in order of their population. The proposals will be given a point score starting with the project located in the area with the lowest population receiving 20 points, the next 19 points and so forth, until up to 20 projects have received points.

(B) The most needy communities as determined by the median income from the most recently available census data. The proposals will be given a point score starting with the community having the lowest median income receiving 20 points, the next 19 points and so forth until up to 20 proposals have received points.

(C) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with state and local communities, including other partners with similar housing goals. Leveraging points will be awarded as follows:

Loan to value ratio (percentage %)	Points
More than 75	10
70–75	15
Less than 70	20

(D) Loans with interest rates less than the maximum allowable 250 basis points over the 10 Year Treasury Bond Yield will be awarded points as follows (fractional basis points will be rounded to the nearest whole basis point):

Interest rate	Points
More than 200 basis points	0
200 to 151 basis points, inclusive	5
150 to 100 basis points, inclusive	10
99 to 50 basis points, inclusive	15
Less than 50 basis points	20

(E) Preference will be given to proposals having a higher percentage of 3–5 bedroom units to total units. The proposals will be ranked in order of this percentage with the proposal with the highest percent receiving 20 points, the next 19 points and so forth until up to 20 projects have received points.

(F) Proposals to be developed in a colonia, on tribal land, in an Empowerment Zone or Enterprise Community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing (20 points).

(G) Projects will be ranked by the length of the amortization period, with the longest receiving priority as follows:

Amortization (Yrs.)	Points
40	20
At least 35	15
At least 30	10
At least 20	5
Less than 20	0

IX. Additional Information

(A). Maximum Interest Rate

The maximum allowable interest rate on a loan submitted for a guarantee is 250 basis points over the 10-year Treasury Bond Yield as published in the Wall Street Journal as of the business day prior to the business day the yield is set.

(B). Surcharges for Guarantee of Construction Advances

There is no surcharge for guarantee of construction advances for FY 2001.

(C). Program Fees for FY 2001

(1) There is an initial guarantee fee of 1% of the total guarantee amount which will be due when the loan guarantee is issued. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) There is an annual renewal fee of 0.5% of the guaranteed outstanding principal balance charged each year or portion of the year that the guarantee is in effect. This fee will be collected prospectively on January 1, of the calendar year.

(3) There is no fee for site assessment and market analysis or preliminary feasibility in FY 2001.

(4) There is a non-refundable application fee of $2,500 when the application is submitted following proposal selection under the NOFA.

(5) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(6) There is a flat fee of $500 when a lender requests RHS to reopen a guarantee commitment after the period of the commitment lapses.

(7) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible applicant.

(8) There is no lender application fee for lender approval in FY 2001.

(D). Eligible Lenders for section 538 Approval

The application for lender approval must be made at the same time as the first loan application. The first loan application means: (1) The first application for a loan guarantee for a new loan; or (2) The first application before ownership of any GRRHP loan is transferred to that lender. A lender must be approved before a loan guarantee is issued or a guaranteed loan is acquired.

An eligible lender must be a licensed business entity or Housing Finance Authority (HFA) in good standing in the state or states where it conducts business; be approved by the Agency; and meet at least one of the criteria contained below. Lenders who are not eligible may participate in the program if they maintain a correspondent relationship with a lender who is eligible. An eligible lender must:

(1) Meet the qualifications of, and be approved by, the Secretary of Housing and Urban Development to make multi-family housing loans that are to be insured under the National Housing Act;

(2) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multi-family housing loans that are to be sold to such corporations;

(3) Be a state or local Housing Finance Authority, or a member of the Federal Home Loan Bank system, with a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner;

(4) Be a lender who meets the requirements for Agency approval contained in 7 CFR part 3565 subpart C and has a demonstrated ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner; or

(5) Be a lender who meets the following requirements in addition to the other requirements of 7 CFR part 3565 subparts C and I:

(a) Have qualified staff to perform multi-family housing servicing and asset management;

(b) Have facilities and systems that support servicing and asset management functions; and

(c) Have documented procedures for carrying out servicing and asset management responsibilities.

Dated: December 15, 2000.

James C. Kearney,

Administrator, Rural Housing Service

[FR Doc. 00–32624 Filed 12–22–00; 8:45 am]

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Federal Register

Tuesday,
December 26, 2000

Part IV

Environmental Protection Agency

40 CFR Part 799

Testing of Certain High Production Volume Chemicals; Data Collection and Development on High Production Volume (HPV) Chemicals; Proposed Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42213A; FRL–6758–4]

RIN 2070–AD16

Testing of Certain High Production Volume Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) to require manufacturers (including importers) and processors of certain high production volume (HPV) chemical substances to conduct testing for acute toxicity; repeat dose toxicity; developmental and reproductive toxicity; genetic toxicity (gene mutations and chromosomal aberrations); ecotoxicity (in fish, Daphnia, and algae) and environmental fate (including five tests for physical chemical properties and biodegradation). EPA has preliminarily determined that each of the 37 chemical substances included in this proposed rule is produced in substantial quantities and that there is substantial human exposure to each of them. Moreover, EPA believes that there are insufficient data to reasonably determine or predict the effects on health or the environment of the manufacture, distribution in commerce, processing, use, or disposal of the chemicals, or any combination of these activities. EPA has concluded that this proposed testing program is needed and appropriate for developing such data. Data developed under this proposed rule will provide critical information about the environmental fate and potential hazards associated with these chemicals which, when combined with information about exposure and uses, will allow the Agency and others to evaluate potential health and environmental risks and take appropriate follow up action. Persons who export or intend to export any chemical substance included in the final rule based on this proposed rule would be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D. EPA has also taken steps, as described in this document, to consider animal welfare and to provide instructions on ways to reduce or in some cases eliminate animal testing, while at the same time ensuring that the public health is protected.

DATES: Comments, identified by docket control number OPPTS–42213A, must be received by EPA on or before April 25, 2001. If you want to request an opportunity to present oral comments, refer to Unit I.E. of the **SUPPLEMENTARY INFORMATION**. Your request must be in writing and must be received by EPA on or before January 25, 2001. Only if such a request is received, would EPA schedule a public meeting on this proposed rule, which would be announced in a subsequent document in the **Federal Register** and held in Washington, DC.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42213A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260-8130; fax number: (202) 260–1096; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in § 799.5085(j) of the proposed regulatory text. Any use of the term ''manufacture'' in this document will encompass ''import,'' unless otherwise stated. In addition, as described in Unit VI. , once the Agency issues a final rule, any person who exports, or intends to export, any of the chemical substances included in the final rule will be subject to the export notification requirements in 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE PROPOSED TESTING REQUIREMENTS

Type of entity	NAICS codes	Examples of potentially affected entities
Chemical Manufacturers (including Importers)	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.
Processors	325, 32411	Persons who process one or more of the subject chemical substances.

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 Table 1 of 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. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in Unit V.E. entitled *Would I be required to test under this rule?* and consult the proposed regulatory test. 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**.

If you are an entity identified in Table 1 of this unit, you would only be subject to the testing requirements contained in this proposed rule if you manufacture or process any of the chemical substances that are listed in § 799.5085(j) of the proposed regulatory text.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select

''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also access additional information about the Chemical Right-to-Know Program at http://ww.epa.gov/chemrtk/ or about the TSCA testing program at http://www.epa.gov/opptintr/chemtest/. For your convenience, EPA may have also provided some non-EPA internet addresses. In doing so, the Agency has verified the accuracy of these addresses at the time of signature. However, since EPA is not responsible for these non-EPA sites, the Agency does not have any control over these addresses. A paper copy of any document referenced in this way has been included in the public version of the official record for this document as described in Unit I.B.2.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–42213A. The official record consists of the documents referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42213A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO), East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. 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) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6/7/8/9 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–42213A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. Can I Request an Opportunity to Present Oral Comments to the Agency?

You may submit a request for an opportunity to present oral comments. This request must be made in writing. If such a request is received on or before January 25, 2001, EPA will hold a public meeting on this proposed rule in Washington, DC. This written request must be submitted to the address provided in Unit I.C.1 and 2. If such a request is received, EPA will announce the scheduling of the public meeting in a subsequent document in the **Federal Register**. If a public meeting is announced, and if you are interested in attending or presenting oral and/or written comments at the public meeting, you should follow the instructions provided in the subsequent document announcing the public meeting.

F. What Should I Consider as I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options proposed, new approaches not yet considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final rule. 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.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule or collection activity.
7. Make sure to submit your comments by the deadline listed under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Authority

This document proposes a test rule under section 4(a)(1)(B) of TSCA, 15 U.S.C. 2603(a)(1)(B), that would require certain health and environmental tests for 37 chemical substances that are produced in substantial quantities, and that enter or may reasonably be anticipated to enter the environment in substantial quantities and/or to which there is or may be significant or substantial human exposure. The tests pertain to acute toxicity; repeat dose toxicity; developmental and reproductive toxicity; genetic toxicity (gene mutations and chromosomal aberrations); ecotoxicity (tests in fish, Daphnia, and algae); and environmental fate (including five tests for physical chemical properties and biodegradation). Some or all of these

tests would be required for a particular chemical substance, depending upon what data are already available for that substance.

Section 2(b)(1) of TSCA, 15 U.S.C. 2601(b)(1), states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statute to include import] and those who process such chemical substances and mixtures [.]'' To implement this policy, TSCA section 4(a) mandates that EPA require by rule that manufacturers and processors of chemical substances and mixtures conduct testing if the Administrator finds that:

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data [.]

If EPA makes these findings for a chemical substance or mixture, the Administrator must require by rule that testing be conducted on that chemical substance or mixture. The purpose of the testing would be to develop data about the substance or mixture's health and environmental effects where there is an insufficiency of data and experience, in order to support a determination that the manufacture, distribution in commerce, processing, use or disposal of the substance or mixture, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

Once the Administrator has made a finding under TSCA section 4(a)(1), EPA may require any type of health or environmental effects testing necessary to address unanswered questions about the effects of the chemical substance. EPA need not limit the scope of testing required to the factual basis for the TSCA section 4(a)(1)(A)(i) or (B)(i) findings, as long as EPA finds that there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and that testing is necessary to develop the data. This approach is explained in more detail in EPA's statement of policy for making findings under TSCA section 4(a)(1)(B) (frequently described as the ''B'' policy) in the **Federal Register** of May 14, 1993 (58 FR 28736) (Ref. 24 at 28738–28739).

In this proposed rule, EPA intends to use its broad TSCA section 4 authority to obtain the data necessary to support the development of preliminary or ''screening level'' hazard and risk characterizations for certain HPV chemical substances (see § 799.5085(j) of the proposed regulatory text for the list of chemicals). EPA has made preliminary findings for these chemicals under TSCA section 4(a)(1)(B) that: They are produced in substantial quantities; there is or may be substantial human exposure to them; existing data are insufficient to determine or predict their health and environmental effects; and testing is necessary to develop such data. Testing for additional HPV chemical substances (Ref. 1) will be proposed at a later date as the Agency learns more about these additional substances with respect to human exposure, release, and sufficiency of the data and experience available on the hazards of the substances.

III. Background

A. Why is EPA Pursuing Hazard Information on HPV Chemicals?

EPA found that, of those non-polymeric organic substances produced or imported in amounts equal to or greater than 1 million pounds per year based on 1990 reporting for EPA's Inventory Update Rule (IUR) (40 CFR part 710), only 7% have a full set of publicly available internationally recognized basic health and environmental fate/effects screening test data (Ref. 2). Of the over 2,800 U.S. HPV chemicals based on 1990 data, 43% have no publicly available basic hazard data. For the remaining chemicals, limited amounts of the data are available. This lack of available hazard data compromises EPA's and others' ability to determine whether these HPV chemicals pose potential risks to human health or the environment, as well as the public's right-to-know about the hazards of chemicals that are found in their environment, their homes, their workplaces, and the products that they buy. It is EPA's intent to close this knowledge gap. EPA believes that for most of the HPV chemicals, insufficient data are readily available to reasonably determine or predict the effects on health or the environment from the manufacture (including importation), distribution in commerce, processing, use, or disposal of the chemicals, or any combination of these activities. EPA has concluded that a program to collect and, where needed, develop basic screening level toxicity data is necessary and appropriate to provide information in order to assess the potential hazards/risks that may be posed by exposure to HPV chemicals.

On April 21, 1998, a national effort, known as the ''Chemical Right-To-Know'' (ChemRTK) Program, was announced in order to empower citizens with knowledge about the most widespread chemicals in commerce—chemicals that people may be exposed to in the places where they live, work, study, and play. EPA's ChemRTK Program is being designed in such a way as to make certain basic information about HPV chemicals available to the public.

EPA plans to make available to the public the summarized data obtained on HPV chemicals. Additional information that EPA receives will also be shared with the public, other Federal agencies, and any other interested parties. As appropriate, this information will be used to ensure a scientifically sound basis for risk assessment/management actions. This effort, will serve to further the Agency's goal of identifying and controlling human and environmental risks as well as providing greater protection and knowledge to the public. In addition, EPA and other parties agreed to work with other nations and international groups to ensure commensurate increases in the pace of complementary voluntary international data collection and development efforts on HPV chemicals.

This ChemRTK Program is consistent with the U.S. policy as presented in the TSCA. Section 2(b)(1) of TSCA, 15 U.S.C. 2601(b)(1), states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical

substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.''

B. What Do We Currently Know About the Basic Health and Environmental Hazards of HPV Chemicals?

The information relevant to understanding the basic health and environmental hazards of HPV chemicals is derived from a battery of tests agreed upon by the international community as appropriate for screening international HPV chemical substances for toxicity. Six basic testing endpoints have been adopted by the Organization for Economic Cooperation and Development (OECD) as the minimum required to screen international HPV chemical substances for toxicity (Ref. 4). The agreed-upon testing endpoints, known as the OECD's Screening Information Data Set (SIDS) include: Acute toxicity; repeat dose toxicity; developmental and reproductive toxicity; genetic toxicity (gene mutations and chromosomal aberrations); ecotoxicity (studies in fish, Daphnia, and algae); and environmental fate (including physical/chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility], photolysis, hydrolysis, transport/distribution, and biodegradation). As conceived by the OECD, the ''SIDS battery'' of tests can be used by governments to conduct an initial assessment of the hazards and risks posed by HPV chemical substances and prioritize HPV chemicals to identify those in need of additional, more in-depth testing and assessment.

A need for basic screening level data on HPV chemicals has been identified and supported by various data availability studies conducted by EPA and others. Toxic Ignorance, which was prepared by Environmental Defense (formerly the Environmental Defense Fund), raised a variety of concerns about the untested chemicals that are produced in and/or imported into the United States (Ref. 28). Environmental Defense found that baseline data on health effects were not publicly available for a selected set of 100 HPV chemicals.

In April 1998, EPA completed a study entitled *Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals?* (Ref. 2) that evaluated the public availability of screening level health hazard data and environmental hazard/fate data on U.S. HPV chemicals. EPA's study found major gaps in the basic information on HPV chemicals that is readily available to EPA and to the public, and reinforced the need for governmental leadership on this issue. The study analyzed the availability of test data for 2,863 HPV chemicals (defined as those non-polymeric organic substances produced in or imported into the United States in amounts equal to or greater than 1 million pounds per year based on 1990 reporting for EPA's IUR (40 CFR part 710). EPA searched for publicly available data on these chemicals and learned that most of them may never have been tested for any or most of the SIDS endpoints. The search strategy used a total of 11 publicly accessible data bases in its analysis. Details of the search strategy can be found in the report (Ref. 2). The major conclusions of EPA's study are described in Unit III.A.

In June 1998, the American Chemistry Council (ACC, formerly the Chemical Manufacturers Association (CMA)) issued a report (Ref. 3) regarding public data availability for HPV chemicals based on a study conducted with 11 main data sources, including data sources other than those searched by EPA for its study. The ACC report, entitled *Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals* (Ref. 3) reached conclusions similar to EPA, that is, that only limited toxicity and environmental fate data appear to exist in the public domain for many U.S. HPV substances. Details of the search strategy used can be found in the ACC report (Ref. 3).

EPA recognizes that additional data may exist beyond those identified through either the EPA, ACC, or Environmental Defense studies. To the extent that additional relevant data are known to exist, EPA is particularly interested in receiving this information as part of the HPV Initiative (see Unit III.D.), including a full citation for publications and ''robust'' (i.e., detailed) summaries of pertinent published and unpublished studies. If relevant scientifically adequate existing data are submitted at any time before testing is initiated, including after the final rule is issued, the Agency will consider such data to determine if they satisfy the testing requirement and will take appropriate necessary action to ensure that unnecessary testing is no longer required. In addition, exemption procedures to be used are found at 40 CFR 790.80 and 790.82. Guidance on the preparation of robust summaries is available on EPA's ChemRTK website (Ref. 34).

C. Why is EPA Focusing on HPV Chemicals?

It is generally accepted that chemicals having a high level of production have an increased potential for exposure in comparison to low production volume chemicals. The focus on HPV chemicals is derived from the experience gained over the past 15 years by EPA and the OECD. The OECD is an intergovernmental organization consisting of 29 developed countries, including the United States, with advanced worldwide market economies. The OECD is helping coordinate a cooperative, international effort to secure basic toxicity information on HPV chemicals in use worldwide.

The OECD, after considering a variety of priority setting approaches, concluded in 1990 that consideration of HPV status provided a useful and effective organizing focus for a voluntary testing and assessment effort to screen and thereby identify priorities among international HPV chemicals.

In the late 1980s, OECD initiated a voluntary program to ensure that basic information is available on international HPV chemicals. This program, which is a part of the OECD's program on existing chemicals, produced an internationally agreed upon set of basic SIDS screening tests and is working to develop complete SIDS data sets for all international HPV chemicals. The SIDS includes information on the identity of each chemical, uses, sources and extent of exposure; physical and chemical properties; environmental fate; and certain limited toxicity data for humans and the environment. The SIDS is not intended to describe a chemical thoroughly, but rather is intended to provide enough information to support an initial (or screening) assessment and to assign a priority for further work. By 1990, the United States and 13 other OECD member countries established a voluntary international testing program to develop the basic data set for all international HPV chemicals. To date, the OECD has initiated or completed work on approximately 500 chemicals.

The OECD threshold for high production volume chemicals is 2.2 million pounds (equivalent to 1 million kilograms) reported in any member country. (Note that the OECD HPV threshold, like the U.S. HPV threshold, is not applied to polymers. However, the OECD threshold, unlike the U.S. HPV threshold, is applied to inorganics (Ref. 5)). The presence of a chemical on the OECD's list of HPV chemicals was and continues to be accepted (Ref. 5) by OECD member countries as providing a sufficient indicator of potential

exposure to warrant testing at the SIDS level.

EPA does not believe that a production volume threshold which is chosen for an international program on existing chemicals and which is the only trigger for entry into that program should be determinative of the threshold chosen for ''substantial production'' under TSCA section 4(a)(1)(B)(i). See EPA's ''B'' policy (Ref. 24). Among the reasons is that the TSCA section 4(a)(1)(B)(i) finding of substantial production is not the sole finding EPA must make to require testing based on TSCA section 4(a)(1)(B). EPA must also find that there is substantial release, or substantial or significant human exposure under TSCA sections 4(a)(1)(B)(i)(I) and (II). In addition, EPA must find that data are insufficient and testing is necessary under TSCA sections 4(a)(1)(B)(ii) and (iii).

In response to EPA's proposed ''B'' policy (Ref. 23), both ACC and the Society of the Plastics Industry Inc., commented that EPA's proposed production volume threshold of 1 million pounds is a reasonable interpretation of ''substantial production'' under TSCA (Ref. 6 and 7). Additionally, they indicated that the OECD 2.2 million pound threshold would be preferable to achieve consistency between EPA's activities under TSCA section 4 and the OECD HPV SIDS program.

The 1 million pound threshold for production normally used by EPA under the ''B'' policy generally narrowed the universe of chemicals potentially subject to TSCA section 4(a)(1)(B) to 11% of the TSCA Inventory of chemical substances (see TSCA sections 8(a) and 8(b)), using Inventory information available in 1988 (Ref. 23 at 32296). However, that small percentage of the Inventory accounts for 95% of total chemical production in the United States. EPA believes it reasonable to use this information as a basis for making a finding of ''substantial production'' for substances produced at or above that threshold. Furthermore, EPA equates ''substantial production'' with production in ''high volumes.''

The United States committed to conducting SIDS testing and assessment on 25% of the international HPV chemicals as its contribution to the OECD HPV SIDS effort; other countries' commitments for conducting SIDS testing and assessment on international HPV chemicals vary in proportion to the size of the country's gross domestic product. Because most of the international HPV chemicals are also commercially available in the United States, EPA considers the OECD HPV SIDS program to be an integral part of domestic testing activities. EPA, in developing and implementing the OECD HPV SIDS program, worked jointly with industry and environmental groups in the United States and with governments and industry in other OECD member countries to achieve the common goal of developing this minimum level of testing for HPV chemicals. EPA continues to work with other parties (international organizations, environmental groups, unions, animal welfare groups, other Federal agencies, and others) to secure their interest and continued support for this effort.

Nevertheless, because of the slow pace of the OECD's international efforts to generate the needed data (which would have potentially required over 30 years to complete), the OECD has recognized the need to accelerate its efforts in order to ensure the availability of the basic data needed to support screening level assessments of international HPV chemicals. EPA has also recognized the need to accelerate its efforts to develop SIDS data on US HPV chemicals to support domestic efforts on chemicals. The HPV Initiative, which is described in Unit III.D., reflects EPA's interest in collecting, developing and making publicly available these needed data.

D. Why is EPA Proposing to Take this Action?

A major component of the Agency's ChemRTK activity is the HPV Initiative, which is a data collection and development program established by EPA for existing U.S. HPV chemicals. Under this Initiative, HPV chemicals are defined as non-polymeric organic chemicals manufactured (including imported) at or above 1 million pounds per year based on information submitted under the 1990 TSCA IUR. The strategy and overall approach that EPA is using to address data collection needs for U.S. HPV chemicals are discussed in a separate document entitled *Data Collection and Development on High Production Volume (HPV) Chemicals* that is published elsewhere in this issue of the **Federal Register** (Ref. 27).

Through the HPV Initiative, which includes a voluntary component (the HPV Challenge Program), certain international efforts, and rulemaking under TSCA such as this proposed rule, basic screening level hazard data necessary to provide critical information about the environmental fate and potential hazards associated with HPV chemicals will be collected or, where necessary, developed. Data collected and/or developed under the HPV Initiative, when combined with information about exposure and uses, will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate follow up action. The HPV Initiative will generally be carried out in a manner consistent with the OECD HPV SIDS program to ensure that the data and information generated can be contributed to the international effort and, conversely, that international SIDS testing and assessments can be used to fulfill the data gaps identified as part of the HPV Initiative. Additional detailed information is available on the SIDS website (http://www.oecd.org/ehs/sidsman.htm) and EPA's ChemRTK website (http://www.epa.gov/chemrtk).

The following is a brief summary of this HPV Initiative. For additional background information related to the HPV Initiative, please refer to the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27).

1. *Voluntary HPV Challenge Program.* A primary component of this HPV Initiative is the voluntary HPV Challenge Program, which was created in cooperation with industry, environmental groups, and other interested parties, and is designed to assemble and make publicly available basic screening level data on the potential hazards of U.S. HPV chemicals while avoiding unnecessary or duplicative testing. The voluntary HPV Challenge Program is described in detail the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27).

As of November 9, 2000, EPA has received full or provisional commitments from 469 companies, individually or through 187 consortia to sponsor 2,155 chemicals under in the voluntary HPV Challenge Program. Continually updated information regarding the chemicals being sponsored under the voluntary HPV Challenge Program and the names of company sponsors and consortia can be found on EPA's ChemRTK website (http://www.epa.gov/chemrtk/sumresp.htm), and on the US HPV Chemical Tracking System (http://www.hpvchallenge.com).

Under the voluntary HPV Challenge Program, alternatives to the testing proposed under this proposed rule are available. For example, under the OECD HPV SIDS program, some instances have been identified where, using chemical category approaches, less than a full set of SIDS tests for every chemical in the category has been judged sufficient for screening purposes. In addition, the OECD HPV SIDS

program allows some use of structure activity relationships (SAR) analysis for individual chemicals. These strategies have the potential to reduce the time required to complete the program, the number of tests actually conducted, and the number of test animals needed.

While EPA is encouraging the use of scientifically appropriate categories of related chemicals and SAR under the voluntary component of the HPV Initiative, these approaches are not included in this proposed rule. However, EPA has not identified any possibilities that will allow inclusion of the category and SAR approach for any chemicals listed in this proposed rule. EPA believes that the incorporation of such elements in a test rule would require complex, time consuming, and resource intensive procedural steps, such as multi-phase rulemaking. EPA specifically solicits comments and suggestions on procedures that would allow inclusion of such approaches in HPV test rules. EPA solicits comments on simplified procedures which would allow inclusion of such approaches in TSCA section 4 HPV SIDS rulemaking.

Although the Agency believes that none of the chemicals included in this proposed rule appear to be candidates for these approaches, persons who believe that a chemical under this proposed rule can be dealt with using a category or SAR approach are encouraged to submit appropriate information, along with their comments which substantiate this belief. If, based on submitted information and other information available to EPA, the Agency determines that a chemical meets the requirements for consideration under a category or SAR approach, and that practicable measures are available at the time to modify the testing requirement, EPA will take such measures as are necessary to avoid unnecessary testing. Modifications can also be applied for after the final rule issues under 40 CFR 790.55 up to 60 days before the specified reporting deadline. Category or SAR approaches which represent significant alterations in the scope of testing, however, would likely require multi-phase rulemaking involving publication of additional **Federal Register** document(s) soliciting comment on the proposed procedures to be used. Comment is specifically requested on simplified approaches which might allow for the efficient and effective handling of category and SAR approaches via rulemaking.

a. *Can I still participate in the voluntary HPV Challenge Program?* Certainly. Although the participants in the voluntary HPV Challenge Program were asked to submit commitments by December 1, 1999, you can still volunteer through a viable commitment (as described in Unit III.D.1.b) to sponsor chemicals under the HPV Challenge Program. Sponsors who wish to use alternative approaches to those proposed for a chemical listed in a proposed TSCA section 4 HPV SIDS rulemaking should seriously consider sponsoring that chemical in this under the voluntary HPV Challenge Program prior to the close of the comment period for that rulemaking.

b. *How can I participate in the voluntary HPV Challenge?* At this stage, persons who wish to sponsor a chemical through a viable commitment under the HPV Challenge Program must submit the following:

i. Commitment letter;

ii. Test plan, robust summaries of existing studies with full citations of published studies and full copies of unpublished studies; and

iii. Robust summaries of any newly conducted studies, and full copies of these studies.

Commitments must be consistent with the guidance available on the ChemRTK website. Full commitments must specify the names and the Chemical Abstract Service (CAS) numbers of the chemicals to be sponsored, the year in which sponsors will begin the assessment of each chemical, and the name and contact information for the technical person within the company who should be reached for more information. Commitment letters under the voluntary HPV Challenge Program must be submitted to the EPA Administrator according to the instructions on the ChemRTK website (Ref. 35).

EPA encourages industry and other interested parties to identify and provide any additional existing data which are relevant to the hazard characterization to avoid any unnecessary or duplicative testing. Furthermore, anyone may provide any relevant information to the Agency that indicates that certain endpoints need not be tested. If EPA judges the available data to be adequate, the data gap identified in the HPV Initiative will be considered to be filled. To the extent that additional data relevant to the HPV chemicals are known to exist, EPA is interested in receiving this information under the voluntary HPV Challenge Program. In addition to submitting the full citation for published studies and full copies of any unpublished studies, Commenters under the HPV Challenge Program and/or a proposed TSCA section 4 HPV SIDS rule(s) who wish to submit any additional relevant studies, are encouraged to also prepare a robust summary (Ref. 34) for each study to facilitate making the information publicly available, as well as facilitate its review.

EPA plans to include in a final TSCA section 4 HPV SIDS rulemaking any chemical that is listed in a proposed rule, unless a sponsor, in addition to agreeing to making a viable commitment under the voluntary HPV Challenge Program, provides the following additional information:

i. Evidence that work is underway and proceeding in a timely manner;

ii. Data required to complete the SIDS battery are developed within the time frame set by EPA in the proposed rule; and

iii. Robust summaries, and full copies of all final study reports from new studies and existing data submitted to EPA in a timely manner.

Viable commitments that involve SAR and categories and that are consistent with the guidance available on the website (Ref. 30 and 31) regarding SAR and categories under the voluntary component of the HPV Initiative can still be submitted to EPA, but submission as early as possible will best avoid unnecessary or duplicative testing. If a viable commitment is made and kept, and the information is deemed adequate, EPA would not include that chemical in a final TSCA section 4 HPV SIDS rulemaking.

Additional information on the voluntary HPV Challenge Program is available on the ChemRTK website.

2. *Certain international efforts.* To fill any data gaps not addressed as part of the voluntary HPV Challenge Program, EPA is continuing to participate in the international efforts coordinated by the OECD to secure basic hazard information on HPV chemicals in use worldwide, including some of those on the U.S. HPV chemicals list. This includes agreements to sponsor a U.S. HPV chemical under either the OECD HPV SIDS Program, including sponsorship by OECD member countries beyond the United States, or the international HPV Initiative that is being organized by International Council of Chemical Associations (ICCA). The OECD HPV SIDS Program has already been described in Unit III.C. The ICCA consists of representatives of chemical industry trade associations from the United States, Europe, Japan, Australia, Canada, Mexico, Brazil, New Zealand, and Argentina. The ICCA HPV Initiative calls for the testing and screening-level assessment of 1,000 ''high priority'' chemicals by the end of the year 2004. Most of the chemicals on the ICCA working list (Ref. 8) are also U.S. HPV chemicals. The ICCA testing/assessment work will be tied directly to that under

the OECD HPV SIDS Program and to the U.S. HPV Initiative.

Any U.S. HPV chemicals that are handled under the OECD HPV SIDS Program or the ICCA HPV Initiative are considered by EPA to be ''sponsored'' and are not intended to be addressed in either the voluntary HPV Challenge Program or in any TSCA section 4 HPV SIDS rulemaking unless the international commitments are not met.

3. *TSCA rulemaking*. In establishing the HPV Initiative in 1998, the Agency indicated that data needs which remain unmet in the voluntary HPV Challenge Program or through international efforts may be addressed through TSCA rulemaking. This proposed rule is the first rulemaking associated with the HPV Initiative, and addresses the unmet data needs of the 37 chemicals that are included in this proposed rule.

E. What Information is being Collected on HPV Chemicals?

In identifying the data needs for chemicals contained in the HPV Initiative, EPA is utilizing information and sources in EPA's study, the *Chemical Hazard Data Availability Study* (Ref. 2), and ACC's report, i.e, *Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals* (Ref. 3), to determine whether screening level data for characterizing the hazards of these HPV chemicals are publicly available. If no data are available for a SIDS testing endpoint, there cannot be sufficient data to characterize the potential hazards and risks associated with the chemical. As the Agency found in its study, insufficient data are available to characterize the hazards and risks of many of the U.S. HPV chemicals with respect to the internationally accepted SIDS testing endpoints, including acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, genetic toxicity (gene mutations and chromosomal aberrations), ecotoxicity (tests in fish, Daphnia, and algae), and for environmental fate (including five tests for physical chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility], and biodegradation). As a result, EPA and others cannot reasonably determine or predict the human health and environmental effects resulting from manufacture, processing, and use of these chemical substances.

The OECD HPV SIDS Program is part of the OECD overall program on existing chemicals, and includes information on the identity of each chemical, its uses, sources and extent of exposure; physical and chemical properties; environmental fate; and certain limited toxicity data for humans and the environment. The SIDS data set is not intended to describe a chemical thoroughly, but rather is intended to provide enough information to support an initial (or screening level) assessment and to assign a priority for further work, if necessary. To date, the OECD has initiated or completed work on approximately 500 HPV chemicals. The OECD HPV SIDS Program seeks the development of test data, if such data are not already available, related to six health and environmental effects endpoints for international HPV chemicals (see Unit III.B.). The SIDS data set is regarded as the minimum data set required to make an informed preliminary judgment about the hazards of a given HPV chemical.

EPA is implementing the HPV Initiative as part of its domestic industrial chemical screening efforts, in a manner that is consistent with OECD efforts. The information to be gathered under EPA's HPV Initiative comes from the same battery of tests agreed upon by the OECD member countries as being appropriate for screening international HPV chemicals for toxicity and environmental fate (Ref. 4). As conceived by the OECD, the SIDS data set can be used by governments and others worldwide to conduct an initial assessment of the hazards and risks posed by HPV chemical substances and to prioritize chemicals to identify those which are in need of additional, more in-depth testing and assessment, as well as those of lesser concern.

This proposed test rule is intended to obtain needed SIDS testing for 37 of the approximately 2,800 chemicals (excluding polymers and inorganics) that are produced and/or imported at high volumes in the United States. EPA has chosen this group of 37 chemicals for its initial TSCA section 4 HPV SIDS rulemaking because of their high production and/or importation volumes and their potential for exposure to a substantial number of workers.

In developing the list of candidates for this proposed test rule, EPA included only chemical substances which were reported on 1994 TSCA section 8(a) IUR as being manufactured (including imported) in the United States in amounts greater than or equal to one million pounds. In addition, each of the candidate chemical substances listed in this proposed rule was identified in the National Occupational Exposure Survey (NOES) as having a total potential exposure of greater than 1,000 or more workers. A potential exposure of 1,000 or more workers to a chemical substance is a threshold for ''substantial human exposure'' under EPA's ''B'' Policy (Ref. 24).

The data availability study conducted by EPA, discussed in Unit III.B., demonstrated that only a limited number of HPV chemicals have a full set of publicly available SIDS data. For chemicals for which some data are available on one or more SIDS endpoints, EPA is not requiring testing for those endpoints. However, no definitive determination has been made as to the adequacy of those data for an initial assessment of a chemical's hazards or risks to health or the environment. The Agency intends to promulgate additional test rules for any HPV chemicals for which SIDS testing is needed and for which a voluntary commitment to collect, develop, and make publically available the needed data has not been received.

F. What Role do Existing Data Play Under the HPV Initiative?

The HPV Initiative, including this rulemaking, is designed to make maximum use of scientifically adequate existing test data and to avoid unnecessary, duplicative testing, thereby avoiding the excessive use of animal testing. If at any time, including after this rule is finalized, the Agency receives adequate existing data that fulfill a specific data gap, EPA will ensure that unnecessary testing is not required.

During the continued development of the HPV Initiative, EPA was encouraged to consider the relationship between existing data submitted under the HPV Initiative and reporting requirements under TSCA section 8(e). In response to these concerns, and as part of the Agency's efforts to ensure the fullest use of existing test data, EPA intends to consider existing data submissions in the manner described in an October 14, 1999, letter to the voluntary HPV Challenge Program participants (herein after ''the October 14, 1999, letter'') (Ref. 29). EPA's guidance document on literature searches, which deals with part of this issue, is available on the Agency's ChemRTK website (Ref. 36). EPA believes that it is in the economic best interest of companies to identify and make publicly available all relevant existing data in order to reduce possible testing costs.

Studies that have been conducted as specified in appropriate OECD test guidelines (as noted in the SIDS Manual (Ref. 4) or comparable EPA test guidelines (such as the OPPTS Harmonized Guidelines available at http://www.epa.gov/opptsfrs/home/guidelin.htm), and appropriate Good Laboratory Practice Standards (GLPS)

like those for TSCA (40 CFR part 792) consistently generate data adequate to fulfill the HPV Initiative needs. Data from studies that did not follow these procedures, however, may not be adequate.

As stated in the October 14, 1999, letter to the voluntary HPV Challenge Program participants, in analyzing the adequacy of existing data, participants shall conduct a thoughtful and qualitative analysis rather than using a rote checklist approach (Ref. 29). The same principle applies to persons evaluating existing data in connection with this rulemaking. If EPA judges the available data to be adequate, the data gap identified in the HPV Initiative will be considered to be filled. EPA has developed a guidance document on determining data adequacy which is available on EPA's ChemRTK website (Ref. 37).

EPA solicits comment concerning the availability of SIDS data on the chemicals included in the HPV Initiative and encourages industry and other interested parties to identify and provide any additional existing data which are relevant to hazard characterization to avoid any unnecessary or duplicative testing. Anyone may provide any relevant information to the Agency that indicates that certain endpoints need not be tested. If EPA judges the available data to be adequate, the data gap identified in the HPV Initiative will be considered to be filled. To the extent that additional data relevant to the HPV chemicals are known to exist, EPA is interested in receiving this information, including a full citation for publications and full copies of unpublished studies. Although the Agency encourages anyone with such information to submit it to EPA during the early stages of this Initiative in order to avoid any unnecessary testing, such submissions may be made at any time to allow EPA to take appropriate action. Commenters are also encouraged to prepare a robust summary (Ref. 34) for each study to facilitate EPA's review of the full study report or publication. It is important to note that EPA does not intend to include any chemicals which are Generally Recognized as Safe (GRAS) for a particular use by the Food and Drug Administration (FDA) in this initial TSCA section 4 HPV SIDS rulemaking. However, such chemicals may be included in a future TSCA section 4 HPV SIDS rulemaking where SIDS data needs remain unmet.

G. How Would the Data Developed Under this Test Rule be Used?

The availability of hazard information on individual chemicals is fundamental to EPA's ability to accomplish its mission of environmental protection—risk assessment, risk management, safeguarding children's health, expanding the public's right-to-know, and promoting the pollution prevention ethic. Activities to ensure the availability of basic hazard information on HPV chemicals are an integral part of meeting these objectives.

The testing proposed is essentially identical in scope and applicability to that which has been internationally agreed upon by the OECD as providing the minimum needed to screen HPV chemicals and identify priorities for additional testing or assessment. While the SIDS data set does not fully measure a chemical's toxicity, it does provide a consistent minimum set of information that can be used to determine the relative hazards and risks of chemicals and to judge if additional testing or assessment is necessary. Thus, EPA will use the data obtained from this proposed test rule to support development of preliminary hazard and risk assessments for these HPV chemicals. Furthermore, the data obtained under this testing program will be used to set priorities for further testing that will produce hazard information on these chemicals which is needed by EPA , other Federal agencies, the public, industry, and others, to support adequate risk assessments. EPA has used data from test rules to support such activities as the development of water quality criteria, Toxic Release Inventory listings, chemical advisories, and reduction of workplace exposures.

H. What is the Role of this Proposed Rule with Regard to the HPV Initiative?

To fill data gaps not addressed as part of the voluntary HPV Challenge Program or international efforts, EPA indicated in the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27) that it would supplement the voluntary HPV Challenge Program and international efforts with rulemaking under TSCA. Specifically, EPA intends to use its authority under section 4 of TSCA to propose the testing of those chemicals listed at http:/www.epa.gov/chemrtk/hpvchmtl.htm which have an indicator value of ''0,'' which identifies a chemical as a candidate for sponsorship under the voluntary HPV Challenge Program and a sponsorship status value of ''N,'' i.e., not sponsored. EPA intends to issue additional test rules as needed to cover chemicals with unmet data needs or if voluntary HPV Challenge Program commitments are not met. U.S. HPV chemicals that have been or are being handled through the OECD HPV SIDS Program or under a complementary program being coordinated by the ICCA (Ref. 8) will not be listed in any of these follow-up TSCA section 4 HPV SIDS rulemaking, unless commitments under those international programs are not met (see Unit. IV.G. of the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27) for more information on these programs). In addition, as indicated in Unit IV.B.2. of the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27), chemicals identified as GRAS for a particular use by FDA are only intended to be included in a future TSCA section 4 HPV SIDS rulemaking if SIDS data needs remain unmet.

As indicated in the October 14, 1999, letter to the participants in the voluntary HPV Challenge Program (Ref. 29), and restated in the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27), EPA intends for the TSCA section 4 HPV SIDS rulemaking to proceed in a manner that is consistent with the principles outlined in the letter for the participants in the voluntary program. As such, EPA has incorporated the criteria established under the voluntary HPV Challenge Program into this rulemaking to the extent possible, and has also considered improvements based on experiences with implementing that Program.

• *Potential endpoints for testing under test rules.* As with the voluntary HPV Challenge Program, the test data needs that are addressed in this proposed rule pertain to physical/chemical properties, acute toxicity; repeat dose toxicity; developmental and reproductive toxicity; genetic toxicity, ecotoxicity; and environmental fate. Testing for some or all of these endpoints would be required for a particular chemical substance where such data are not already available for that substance. The specific testing, reporting, and recordkeeping requirements contained in this proposed rule are described for each chemical substance in the proposed regulatory text.

• *Potential timetable for testing under test rules.* EPA stated in the October 14, 1999, letter to the participants in the voluntary HPV Challenge Program (Ref. 29), that testing of closed system intermediates shall be deferred until 2003; and that testing of individual chemicals (i.e., those HPV chemicals not proposed for testing in a category) that require further testing on animals shall

be deferred until November 2001. EPA will use these time frames in the effective dates of TSCA section 4 HPV SIDS rulemakings as well.

• *Existing data submissions during the rulemaking phase.* As indicated in Unit III.B., if relevant scientifically adequate existing data are submitted to EPA during the comment period for this proposed rule, EPA does not intend to include that HPV chemical in the final rule. If relevant scientifically adequate existing data are submitted to EPA after the final rule is issued, or at any other time before testing is initiated, the Agency will consider such data to satisfy the testing requirement and will take any necessary action to ensure that unnecessary testing is not required.

• *Treatment of testing endpoints under HPV SIDS test rules.* EPA proposes that testing under this proposed rule be consistent with the voluntary HPV Challenge Program's treatment of the following endpoints:

—Acute aquatic toxicity studies would not always be needed under the TSCA section 4 HPV SIDS rulemaking associated with this Initiative (See Unit V.A.3.).

—Dermal toxicity or terrestrial toxicity testing would not be included in TSCA section 4 HPV SIDS rulemaking associated with this Initiative (See Unit III.I. and Unit V.A.).

—The LD_{50} test (OECD 401) would not be needed for mammalian acute toxicity testing under the TSCA section 4 HPV SIDS rulemaking associated with this Initiative (See Unit V.A.4.).

—EPA will encourage persons subject to the TSCA section 4 HPV SIDS rulemaking to use *in vitro* testing unless there are chemical properties (including chemical class considerations) or other aspects which may call its use into question (see Unit V.A.5.).

—EPA will consider combining some of the mammalian toxicity protocols under TSCA section 4 HPV SIDS rulemaking associated with this Initiative (See Unit V.A.6.).

If necessary for a particular chemical and/or endpoint, any variations are described in detail in this proposed rule.

I. How are Animal Welfare Issues being Considered in the HPV Initiative?

EPA recognizes the concerns that have been expressed about the use of test procedures that require the use of animals. As discussed in Unit II.E. of the document that is published elsewhere in this issue of the **Federal Register** (Ref. 27), EPA is making every effort to ensure that as the HPV Initiative is implemented, unnecessary or duplicative testing is avoided and the use of animals is minimized. As a general matter, EPA does not require that tests on animals be conducted if an alternative scientifically validated method is found acceptable and practically available for use. Where testing must be conducted to develop adequate data, the Agency is committed to reducing the number of animals used for testing, to replacing test methods requiring animals with alternative test methods when acceptable alternative methods are available, and to refining existing test methods to optimize animal use when there is no substitute for animal testing. EPA believes that these reduction, replacement, and refinement objectives are all important elements in the overall consideration of alternative testing methods.

The governmental and non-governmental scientific community is working to design, validate, and employ new methods of toxicity testing that are more accurate, less costly, and that reduce the need to use live animals. Over the years, significant research has been pursued to develop and validate non-animal test methods. U.S. scientists in academia, government, and industry have participated in both domestic and international efforts to develop alternative, non-animal tests. As part of the enterprise, the National Institute of Environmental Health Sciences (NIEHS) established a Federal Interagency Committee, the Interagency Coordinating Committee on Validation of Alternative Methods (ICCVAM), to review the status and validation of toxicological test methods including those that are performed *in vitro*. EPA scientists have contributed significantly to this body of knowledge and are continuing to play a vital role by developing test methods for consideration. Many test methods have begun the process of validation and several have completed the steps leading to government-wide regulatory acceptance. Within the SIDS battery of tests, certain *in vitro* genotoxicity tests, such as the Ames test for gene mutations in bacteria, have received uniform acceptance among regulatory agencies.

In addition, as part of the voluntary HPV Challenge Program, EPA asked participants in that program to observe certain principles laid out in the October 14, 1999, letter, in which the Agency also indicated its intention that related TSCA rulemaking proceed in a manner consistent with the principles (Ref. 29). This letter is available in the public version of the official record for this rulemaking, as well as on EPA's ChemRTK website. In the letter, EPA requested that participants conduct a thoughtful, qualitative analysis of existing data before testing. EPA also asked that all animal testing on individual chemicals (as opposed to testing of categories of chemicals) under the voluntary HPV Challenge Program, or under an associated rule(s), not be initiated earlier than November 2001, and that testing of chemicals solely manufactured as closed system intermediates not begin earlier than 2003. This proposed rule reflects many of the principles presented in the referenced voluntary HPV Challenge Program letter. Certain components of these principles, however, are not pertinent to this proposed rule. For example, this proposed rule does not require any dermal toxicity testing or any terrestrial toxicity testing.

Furthermore, a primary focus of the HPV Initiative, including the voluntary HPV Challenge Program and associated TSCA section 4 HPV SIDS rulemaking is to implement these efforts as contributors to a larger international activity with global involvement and in a manner consistent with meeting the needs of the OECD HPV SIDS program and to further the goals under Programme Area (c) of Agenda 21, Chapter 19 of the United Nations Conference on Environment and Development (UNCED) concerning information exchange on toxic chemicals and chemical risks. EPA solicits comment on the potential approaches that may be used to incorporate the principles contained in the October 14, 1999, letter in the context of TSCA section 4 HPV SIDS rulemakings (Ref. 29).

IV. EPA Findings

A. What is the Basis for EPA's Proposal to Test These Chemical Substances?

As indicated in Unit II., in order to develop a rulemaking under TSCA section 4(a) requiring the testing of chemical substances or mixtures, EPA must make certain findings regarding either risk (TSCA section 4(a)(1)(A)(i)); or production and either chemical release or human exposure (TSCA section 4(a)(1)(B)(i)), with regard to those chemicals. EPA is proposing to require testing of the chemical substances included in this proposed test rule based on its preliminary findings under TSCA section 4(a)(1)(B)(i) relating to ''substantial'' production and ''substantial human exposure,'' as well as findings under TSCA sections 4(a)(1)(B)(ii) and (iii).

In EPA's ''B'' policy (see Unit II.), ''substantial production'' of a chemical substance or mixture is generally interpreted to be aggregate production

(including import) volume equaling or exceeding 1 million pounds per year of that chemical substance or mixture. (Ref. 24 at 28747). For workers, the ''B'' policy threshold for ''substantial human exposure'' is the exposure of 1,000 workers annually to that chemical substance or mixture. (Ref. 24) See EPA's ''B'' policy for further discussion on how EPA makes decisions under TSCA section 4(a)(1)(B)(i). For the reasons set out in the ''B'' policy, EPA believes that the thresholds included in the ''B'' policy are appropriate for use in this proposed rule. (Ref. 24)

EPA has found preliminarily that, under TSCA section 4(a)(1)(B)(i), each of the 37 chemical substances included in this proposed rule is produced in ''substantial'' quantities (see Unit IV.B.) and that there is or may be ''substantial human exposure'' to each chemical substance (see Unit IV.C.). In addition, under TSCA section 4(a)(1)(B)(ii), EPA believes that there are insufficient data and experience to reasonably determine or predict the effects of the manufacture, processing, or use of these chemical substances, or of any combination of such activities, on human health or the environment (see Unit IV.D.). In particular, EPA has preliminarily determined that there are insufficient data on these chemicals. EPA has also found preliminarily that testing the 37 chemical substances identified in this **Federal Register** document is necessary to develop such data (TSCA section 4(a)(1)(B)(iii)) (see Unit IV.E.). EPA has not identified any ''additional factors'' as discussed in the ''B'' policy (Ref. 24 at 28746) to cause the Agency to use decisionmaking criteria other than those described in the policy.

The chemical substances included in this proposed test rule are listed in § 799.5085(j) of the proposed regulatory text along with their CAS numbers.

B. Are These Chemical Substances Produced and/or Imported in Substantial Quantities?

Each of the chemical substances included in this proposal is produced and/or imported in an amount equal to or greater than one million pounds per year (Ref. 9), based on information gathered pursuant to the 1998 TSCA section 8(a) IUR (40 CFR part 710) which is the most recently available compilation of TSCA Inventory data, and which is contained in the TSCA Chemical Update System. EPA also considered the fact that all of these chemicals were produced and/or imported above 1 million pounds annually based on the 1990 and 1994 IUR. EPA believes that these annual production and/or importation volumes are ''substantial'' as that term is used with reference to production in TSCA section 4(a)(1)(B)(i). (See also Ref. 24 at 28746).

C. Are a Substantial Number of Workers Exposed to These Chemicals?

EPA finds that the manufacture, processing, and uses of the chemical substances included in this action result or may result in exposure to a substantial number of workers. These chemical substances are used in a wide variety of industrial applications, which result in potential exposures to workers, as described in the exposure support document for this proposed rule (Ref. 10).

EPA defines chemical exposure as the contact of a chemical with a person's outer boundary (for example, the skin or lungs) (Ref. 11). Worker exposure is the chemical exposure that occurs while a person is working. Exposure to workers may have various causes. Chemical releases are a common cause of exposure. For example, a chemical manufacturing plant can release a chemical from pumps as fugitive emissions, from reactor and condenser vents as stack emissions, and/or as a particulate. Diffusion and air currents may carry a chemical through the air in the plant. Plant workers breathe air containing this chemical, resulting in exposures. Human activity such as manually transferring a chemical from one container to another may cause exposures.

For each of the chemicals in this proposed rule, estimates for the number of exposed workers were identified in the National Occupational Exposure Survey (NOES). The NOES was a nationwide data gathering project conducted by the National Institute for Occupational Safety and Health (NIOSH), which was designed to develop national estimates for the number of workers potentially exposed to various chemical, physical and biological agents and describe the distribution of these potential exposures. Begun in 1980 and completed in 1983, the survey involved a walk-through investigation by trained surveyors of 4,490 facilities in 523 different types of industries. Surveyors recorded potential exposures when a chemical agent was likely to enter or contact the worker's body for a minimum duration. These potential exposures could be observed or inferred. Information from these representative facilities was extrapolated to generate national estimates of potentially exposed workers for more than 10,000 different chemicals (Ref. 12). The NOES survey is the most recent and comprehensive source of this kind of information.

Each of the chemicals in this proposed rule was identified in the NOES as having a total potential worker exposure of greater than 1,000 workers (Ref. 10). EPA believes that an exposure of over 1,000 workers to a chemical substance is ''substantial'' as that term is used with reference to ''human exposure'' in section 4(a)(1)(B)(i) of TSCA. EPA believes, based on experience gained through case-by-case analysis of existing chemicals, that an exposure of 1,000 workers or more to a chemical substance is a reasonable interpretation of the phrase ''substantial human exposure'' in TSCA section 4(a)(1)(B)(i). See 58 FR 28736, 28746.

D. Do Sufficient Data Exist for These Chemical Substances?

In developing the testing requirements for chemicals contained in this proposed rule, EPA utilized information and sources in EPA's study, the Chemical Hazard Data Availability Study (Ref. 2), and in ACC's study, the Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals (Ref. 3), to determine whether screening level data for characterizing the risks of these HPV chemicals are available. Section 799.5085(j) of the proposed regulatory text lists each chemical and the tests for which no data are currently available to the Agency. If no data are available for a SIDS testing endpoint, there cannot be sufficient data to characterize the risk associated with exposure to the chemical. The Agency preliminarily finds that for the SIDS testing endpoints, including acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, genetic toxicity (gene mutations and chromosomal aberrations), ecotoxicity (tests in fish, Daphnia, and algae), and for environmental fate (including five tests for physical chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility], and biodegradation), there are insufficient data and experience to reasonably determine or predict the human health and environmental effects resulting from manufacture, processing, and use of the chemical substances included in this proposal.

EPA solicits comment concerning the availability of SIDS data on these substances and encourages industry and others to identify and provide any additional existing test data which are relevant to the proposed testing. If EPA judges such data to be sufficient, corresponding testing will not be

included in the final rule. To the extent that additional data relevant to the testing proposed in this rulemaking are known to exist, EPA strongly encourages the submission of this information as comments to the proposed rule, including full citations for publications and full copies of unpublished studies. Commenters are also encouraged to prepare a robust summary (Ref. 34) for each such study to facilitate EPA's review of the full study report or publication. EPA has not included any chemicals in this proposal which are GRAS for a particular use by the FDA. As indicated in Unit III.F., such chemicals may be included in a future TSCA section 4 HPV SIDS rulemaking where SIDS data needs remain unmet.

E. Is Testing Necessary for These Chemical Substances?

Of the nearly 3,000 chemicals that the U.S. manufactures at more than 1 million pounds per year, EPA's study concluded that 43% of them have no SIDS data. For the remaining chemicals, generally limited amounts of the data appear to be available (see Unit III.A. and Ref. 2). The lack of available data compromises EPA's and others' ability to determine whether these chemicals pose unreasonable risks to human health or the environment, as well as the public's right to know about the hazards of chemicals that are found in their environment, their homes, their workplaces, and the products that they buy. It is EPA's intent to close this knowledge gap. EPA will use the data obtained from this proposed rule to support development of preliminary hazard and risk assessments for these HPV chemicals and to set priorities for further testing that will produce more definitive hazard information where needed on such chemicals. Such additional information is needed by EPA, other Federal agencies, the public, industry, and others to ensure that adequate hazard and risk assessments can be conducted on these chemicals. EPA has used data from test rules to support such activities as the development of water quality criteria, Toxic Release Inventory listings, chemical advisories, and input for actions resulting in reduction of workplace exposures.

EPA believes that conducting the needed SIDS testing identified for the 37 subject chemicals will provide data relevant to a determination of whether the manufacture, processing, and use of the chemical substances does or does not present an unreasonable risk of injury to human health and the environment.

V. Proposed Rule

A. What Testing is being Proposed in this Action?

EPA is proposing specific testing and reporting requirements for the chemical substances specified in § 799.5085(j) of the proposed regulatory text.

All of the proposed testing requirements are listed in Table 2 in § 799.5085(j) of the proposed regulatory text and consist of a series of test methods covering many of the endpoints in the OECD HPV SIDS testing battery. Most of the proposed testing requirements for a particular endpoint are specified in one test standard, although in the case of certain endpoints, any of one or more listed methods could be used. The following endpoints and proposed test standards would be required under this proposed rule. For several of the proposed test standards, EPA has identified and is proposing certain ''Special Conditions'' as discussed below in this unit. Because terrestrial toxicity testing will normally be considered to belong at the OECD post-SIDS tier, EPA is not proposing any terrestrial toxicity testing (including avian toxicity) in this rulemaking.

1. *Physical/Chemical Properties.*

Melting Point: American Society for Testing and Materials (ASTM) E 324 (capillary tube)

Boiling Point: ASTM E 1719 (ebulliometry)

Vapor Pressure: ASTM E 1782 (thermal analysis)

n-Octanol/Water Partition Coefficient: Method A (40 CFR 799.6755—shake flask)

Method B (ASTM E 1147—liquid chromatography)

Method C (40 CFR 799.6756—generator column)

Water Solubility: Method A: (ASTM E 1148—shake flask)

Method B: (40 CFR 799.6784—shake flask)

Method C: (40 CFR 799.6784—column elution)

Method D: (40 CFR 799.6786—generator column)

For the *n*-Octanol/Water Partition Coefficient and Water Solubility endpoints, EPA is proposing that certain ''Special Conditions'' in the form of the chemical substance's physical/chemical properties or physical state (acute only) be considered by test sponsors in determining the appropriate test method that would be used from among those included for these endpoints in Table 2 in § 799.5085(j) of the proposed regulatory text.

For the ''*n*-Octanol/Water Partition Coefficient'' endpoint, the test method, if any, would be determined by the test substance's estimated *n*-octanol/water partition coefficient (log 10 basis; ''log K_{ow}''). EPA proposes three methods for measuring the substance's *n*-Octanol/Water Partition Coefficient. The method that would be required would be based on the test substance's estimated log K_{ow}. Prior to determining the appropriate standard to use, if any, to measure the *n*-octanol/water partition coefficient, EPA is recommending that the log K_{ow} be quantitatively estimated. EPA suggests that the method described in *Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients* (Ref. 13) be used in making such an estimation. EPA is proposing that test sponsors be required to submit with the final study report the underlying rationale for the test standard selected for this endpoint. EPA is proposing this approach in recognition of the fact that depending on the chemical substance's log K_{ow}, one or more test methods can be expected to provide adequate information for determining the log K_{ow}. In general, EPA believes that the more hydrophobic a subject chemical is, the less well Method A (799.6755—shake flask) will work and Method B (ASTM E 1147) and Method C (799.6756—generator column) become more suitable, especially Method C. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA highly recommends that all required *n*-Octanol/Water Partition Coefficient tests be conducted at pH 7 to ensure environmental relevance. The proposed test standards and log K_{ow} ranges that would determine which tests must be conducted for this endpoint are shown below:

Testing category	Test requirements and references	Special conditions
Physical/Chemical Properties	*n*-Octanol/Water Partition Coefficient: The appropriate *n*-Octanol/Water Partition Coefficient test, if any, would be selected from those listed below—see Special Conditions in the adjacent column. Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147 (liquid chromatography) Method C: 40 CFR 799.6756 (generator column)	*n*-Octanol/Water Partition Coefficient: Which method is required, if any, would be determined by the test substance's estimated *n*-octanol/water partition coefficient (log 10 basis). Test sponsors would be required to submit in the final study report the underlying rationale for the method selected. In order to ensure environmental relevance, EPA is recommending that the selected study be conducted at pH 7. log K_{ow} <0: no testing required. log K_{ow} range 0—1: Method A or B. log K_{ow} range 1–4: Method A or B or C. log K_{ow} range 4—6: Method B or C. log K_{ow}>6: Method C.

For ''Water Solubility,'' the test method, if any among the four proposed, would be determined by the test substance's estimated water solubility. EPA recommends that water solubility be quantitatively estimated prior to initiating this study. One recommended method for estimating water solubility is described in Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient (Ref. 14). EPA is also proposing that test sponsors be required to submit in the final study report the underlying rationale for the test standard selected for this endpoint. The proposed test methodologies have been developed to meet a wide variety of needs and, as such, are silent on experimental conditions related to pH. Therefore, EPA highly recommends that all required Water Solubility tests be conducted at pH 7 to ensure environmental relevance. The estimated water solubility ranges that EPA is proposing for use in selecting an appropriate proposed test standard are shown below:

Testing category	Test requirements and references	Special conditions
Physical/Chemical Properties	Water solubility: The appropriate method to use, if any, to test for Water Solubility would be selected from those listed below—see Special Conditions in the adjacent column . Method A: ASTM E 1148 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	Water Solubility: Which method is required, if any, would be determined by the test substance's estimated water solubility. Test sponsors would be required to submit with the final study report the underlying rationale for the method selected. In order to ensure environmental relevance, EPA recommends that the selected study be conducted at pH 7. >5,000 milligram/Liter (mg/L): Method A or B. <5,000 mg/L but > 10 mg/L: Method A, B, C, or D. <10 mg/L but > 0.001 mg/L: Method C or D. <0.001 mg/L: No testing required.

2. *Environmental Fate and Pathways.*

Inherent Biodegradation: ASTM 1625–94 (Semicontinuous Activated Sludge Test) or International Standards Organization (ISO) 9888 (Zahn-Wellens Method)

3. *Aquatic Toxicity.*

Test Group 1: Acute toxicity to fish (ASTM E 729)

Acute toxicity to Daphnia (ASTM E 729)Toxicity to plants (algae) (ASTM E 1218)

Test Group 2: Chronic toxicity to Daphnia (ASTM E 1193)

Toxicity to plants (algae) (ASTM E 1218)

For ''Aquatic Toxicity,'' the OECD HPV SIDS test battery recognizes that for certain chemicals acute toxicity studies are of limited value in assessing the substances' aquatic toxicity. This issue arises when considering chemicals with high log K_{ow} values. In such cases, toxicity is unlikely to be observed over the duration of acute toxicity studies because of reduced uptake, and the extended amount of time required for such substances to reach toxic concentrations in the test organism. For such situations, the OECD HPV SIDS battery recommends use of chronic toxicity testing in Daphnia in place of acute toxicity testing in fish and Daphnia. EPA is proposing that the testing requirement be determined based on the test substance's log K_{ow} as determined by using the approach outlined in Unit V.A.1. ''*n*-Octanol/Water Coefficient'' and in Table 2 in § 799.5085(j) of the proposed regulatory text. For test substances determined to have a log K_{ow} of less than 4.2, one or more of the following tests (described as ''Test Group 1'' in Table 2 in § 799.5085(j) of the proposed regulatory text) are proposed: Acute toxicity to fish (ASTM E 729); Acute toxicity to Daphnia (ASTM E 729); and Toxicity to plants (algae) (ASTM E 1218). For test substances determined to have a log K_{ow} that is greater than or equal to 4.2, one or both of the following tests (described as ''Test Group 2'' in Table 2 in § 799.5085(j) of the proposed regulatory text) are proposed: Chronic toxicity to Daphnia (ASTM E 1193) and Toxicity to plants (algae) (ASTM E 1218). As outlined in Table 2 in § 799.5085(j) of the proposed regulatory text, depending on the testing proposed in Test Group 1, the Test Group 2 chronic Daphnia test may substitute for either or both the acute fish toxicity test and the acute Daphnia test.

EPA recognizes that in some circumstances, acute aquatic toxicity testing (Test Group 1) may be relevant

for certain chemical substances having a log K_{ow} equal to or greater than 4.2. Using SAR, a log K_{ow} of 4.2 corresponds with a fish bioconcentration factor (BCF) of about 1,000 (Refs. 15, 16, and 17). A chemical with a fish BCF value of 1,000 or more is characterized as having a tendency to accumulate in living organisms relative to the concentration of the chemical in the surrounding environment (Ref. 18). For the purposes of this proposed rulemaking, EPA's use of a log K_{ow} equal to or greater than 4.2 (which corresponds with a fish BCF value of 1,000) is consistent with the approach taken in the Agency's proposed Persistent, Bioaccumulative and Toxic (PBT) Policy Statement under section 5 of TSCA (63 FR 53417, October 5, 1998) (FRL–5771–6) Policy Statement under TSCA section 5 entitled *Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances* (64 FR 60194, November 4, 1999) (FRL–6097–7)] (Ref. 25). EPA has also used a measured BCF that is ''equal to or greater than 1,000x or, in the absence of bioconcentration data, a log P [same as log K_{ow}] value equal to or greater than 4.3'' to help define the potential of a new chemical substance to cause significant adverse environmental effects (Significant New Use Rules; General Provisions For New Chemical Follow-Up under sections 5 and 26(c) of TSCA (54 FR 31307, July 27, 1989; see also 40 CFR 721.3) (Ref. 26). EPA considers the difference between the log K_{ow} of 4.3 cited in the 1989 **Federal Register** document and the log K_{ow} value of 4.2 cited in this proposed TSCA section 4 test rule to be negligible.

Chemical substances that are dispersible in water (e.g., surfactants, detergents, aliphatic amines, and cationic dyes) may have log K_{ow} values greater than 4.2 and may still be acutely toxic to aquatic organisms. One approach for dealing with such chemicals would be to allow test sponsors who wish to conduct Test Group 1 studies on chemicals with a log K_{ow} greater than or equal to 4.2 to submit to EPA for approval a written request to conduct these Test Group 1 studies. The written request would have to include the rationale for conducting these Test Group 1 studies and be approved by the Agency prior to (e.g., 90 days before) initiating these Test Group 1 studies. EPA is soliciting public comment on this approach as well as other alternative approaches in this area.

4. Mammalian Toxicity—Acute.

Acute Inhalation Toxicity (rat): Method A (40 CFR 799.9130)

Acute Oral Toxicity (rat): Method B (ASTM E 1163–98 or 40 CFR 799.9110(d)(1)(i)(A))

For the ''Mammalian Toxicity—Acute'' endpoint, EPA is proposing that certain ''Special Conditions'' in the form of the chemical substance's physical/chemical properties or physical state be considered in determining the appropriate test method that would be used from among those included for this endpoint in Table 2 in § 799.5085(j) of the proposed regulatory text. The OECD HPV SIDS program recognizes that for most chemical substances, the oral route of administration will suffice for this endpoint. However, consistent with the approach taken under the voluntary HPV Challenge Program, EPA is proposing that for test substances that are gases at room temperature (25° C), the acute mammalian toxicity study be conducted using inhalation as the exposure route (described as Method A (40 CFR 799.9130) in Table 2 in § 799.5085(j) of the proposed regulatory text). In the case of a potentially explosive test substance, care must be taken to avoid the generation of explosive concentrations. For all other chemicals (i.e., those that are either liquids or solids at room temperature), EPA is proposing that the acute toxicity testing be conducted via oral administration using an ''Up/Down'' test method (described as Method B (ASTM E 1163–98 or 40 CFR 799.9110(d)(1)(i)(A)) in Table 2 in § 799.5085(j) of the proposed regulatory text). Dermal toxicity testing is not required in this rulemaking, and the Agency does not intend to include any dermal toxicity testing in any TSCA section 4 HPV SIDS rulemakings.

5. Mammalian Toxicity—Genotoxicity.

Gene Mutations:

Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510

Chromosomal Damage:

In Vitro Mammalian Chromosome Aberration Test (40 CFR 799.9537), or use either the *In Vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9538, or the *In Vivo* Mammalian Erythrocyte Micronucleus Test (sampled in bone marrow) (rodents: mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9539.

Persons required to conduct testing for chromosomal damage are encouraged to use *in vitro* genetic toxicity testing (Mammalian Chromosome Aberration Test) to generate needed genetic toxicity screening data, unless known chemical properties preclude its use. These could include, for example, physical chemical properties or chemical class characteristics. A primary focus of both the voluntary HPV Challenge Program and this proposed rule is to implement this program in a manner consistent with the OECD HPV SIDS program and as part of a larger international activity with global involvement. This proposed approach provides the same degree of flexibility as that which currently exists under the OECD HPV SIDS testing program (Ref. 4). A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address this end-point must submit to EPA a rationale for conducting that alternate test in the final study report. EPA solicits comment on whether the Agency should instead require that a subject person wishing to use an alternate testing scheme submit to EPA a notice that includes the rationale for conducting the alternative tests prior to planned initiation of those studies. Comments should include suggestions for efficient procedures for such a notification process.

6. *Mammalian Toxicity—Repeated Dose/Reproduction/Developmental.*

Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9365

Reproduction/Developmental Toxicity Screening Test: 40 CFR 799.9355

Repeated Dose 28-Day Oral Toxicity Study: 40 CFR 799.9305

For ''Mammalian Toxicity—Repeated Dose/Reproduction/Developmental,'' EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). EPA recognizes, however, that there may be reasons to test a particular chemical using both the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9355) and the Repeated Dose 28-Day Oral Toxicity Study (40 CFR 799.9305) instead of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (40 CFR 799.9365). With regard to such cases, a subject person who uses the combination of the Reproduction/Developmental Toxicity Screening Test and the Repeated Dose 28-Day Oral Toxicity Study in place of the Combined Repeated Dose Toxicity Study with Reproduction/Developmental Toxicity Screen must submit to EPA a rationale for conducting these alternate tests in the final study reports. EPA solicits comment on whether the Agency should instead require that a subject person

wishing to use an alternate testing scheme submit to EPA a notice that includes the rationale for conducting the alternative tests prior to planned initiation of those studies. Comments should include suggestions for efficient procedures for such a notification process.

Certain of the chemicals for which Mammalian Toxicity—Repeated Dose/ Reproduction/ Developmental testing is proposed may be used solely as ''closed system intermediates,'' as described in the EPA guidance document developed for the voluntary HPV Challenge Program (Ref. 32). As described in that guidance, such chemicals may be eligible for a reduced testing battery which substitutes a developmental toxicity study for the SIDS requirement to address repeated dose (e.g., subchronic), reproductive, and developmental toxicity. In other words, since only the developmental toxicity study would be conducted for those chemicals that qualify for a reduced testing battery, repeated dose (e.g., subchronic) and reproductive studies would not be conducted. At the present time, EPA does not have sufficient information to know with any degree of certainty which if any of the chemicals that are listed in the proposed regulatory text are solely closed system intermediates as defined by OECD/SIDS guidelines. Persons who believe that a chemical fully satisfies the terms outlined in the guidance document are encouraged to submit appropriate information along with their comments which substantiate this belief. If, based on submitted information and other information available to EPA, the Agency believes that a chemical is considered likely to meet the requirements for use solely as a closed system intermediate, EPA will address any developmental toxicity testing need in a subsequent rulemaking. In those cases in which the Agency can determine that chemicals are solely closed system intermediates, it plans to handle them in accordance with the existing OECD procedures. EPA intends that actual initiation of testing of closed system intermediates be deferred until 2003.

B. When Would any Testing Imposed by this Rulemaking Begin?

The testing requirements contained in this proposed rule are not effective until and unless the Agency issues a subsequent final rule. Based on the effective date of the final rule, which is typically 30 days after the publication of a final rule in the **Federal Register**, the test sponsor may plan the initiation of any required testing as appropriate to submit the required final report by the deadline indicated as the number of months after the effective date that would be shown in § 799.5085(j) of the proposed regulatory text. As indicated previously, in establishing the time frame for testing under this rulemaking, the Agency will consider the time frames used under the voluntary HPV Challenge Program. Specifically, any testing of closed system intermediates (as described in Unit III.I.) will be deferred until 2003; and any testing of individual chemicals (i.e., those HPV chemicals not proposed for testing in a category) that require further testing on animals will be deferred until November 2001.

C. How Would the Studies Proposed Under this Test Rule be Conducted?

Persons required to comply with the final rule would have to conduct the necessary testing in accordance with those testing and reporting requirements, and with the TSCA GLPS (40 CFR part 792).

D. What Substances Would be Tested Under this Rule?

EPA is proposing two distinct approaches for identifying the specific substances that would be tested under this proposed rule, the application of which would depend on whether the substance is considered to be a ''Class 1'' or a ''Class 2'' chemical substance. First introduced when EPA compiled the TSCA Chemical Substance Inventory, the term Class 1 chemical substance refers to a chemical substance having a chemical composition that consists of a single chemical species (not including impurities) that can be represented by a specific, complete structure diagram. By contrast, the term Class 2 chemical substance refers to a chemical substance having a composition that cannot be represented by a specific, complete chemical structure diagram, because such a substance generally contains two or more different chemical species (not including impurities). Table 2 in § 799.5085(j) of the proposed regulatory text identifies the listed substances as either Class 1 or Class 2 substances.

EPA is proposing that, for the Class 1 chemical substances that are listed in the proposed rule, the test substance have a purity of 99% or greater. EPA has generally applied this standard of purity to the testing of Class 1 chemical substances in the past under TSCA section 4(a) testing actions, except for substances where it has been shown that such purity is unattainable. EPA is soliciting comment on whether a purity level of 99% or greater cannot be attained for any of the Class 1 substances listed in this proposed rule. For the Class 2 chemical substances that are listed in the proposed rule, EPA is proposing that the test substance be any representative form of the chemical substance, to be defined by the test sponsor(s).

In proposing a different approach for identifying the substance to be tested with regard to Class 2 substances, EPA recognizes two characteristics which further distinguish Class 1 from Class 2 chemical substances. First, unlike for Class 1 substances, knowledge of the composition of commercial Class 2 substances can vary in quality and specificity from substance to substance. The composition of the chemical species which comprise a Class 2 substance may be:

- Well-characterized in terms of molecular formulae, structural diagrams, and compositional percentages of all species present (for example, methyl phenol);
- Less well-characterized, for example, characterized only by molecular formulae, non-specific structural diagrams, and/or by incomplete or unknown compositional percentages of the species present (for example, C_{12}–C_{14} tert-akyl amines); or
- Poorly characterized because all that is known is the identity of only some of the chemical species present and their percentages of composition, or of only the feedstocks and method of manufacture used to manufacture the substance (for example, nut shell liquor of cashew).

Secondly, the composition of some Class 2 substances may vary from one manufacturer to another, or, for a single manufacturer, from production run to production run, because of small variations in feedstocks, manufacturing methods, or other production variables. A ''Class 2'' designation most frequently represents a group of substances comprising substances that have similar combinations of different chemical species and/or that were prepared from similar feedstocks using similar production methods. By contrast, Class 1 substances generally represent a much narrower group of substances for which the only variables are their impurities.

EPA believes that, for purposes of this proposed rule which would require basic screening-level testing, the testing of any representative form of a subject Class 2 substance would be relevant to a determination of whether the chemical substance would or would not present an unreasonable risk to human health or the environment. However, EPA would encourage the selection of representative forms of test substances

that meet industry or consensus standards, where they exist. In accordance with TSCA GLPS at 40 CFR part 792, the final study report must include test substance identification information, including name, CAS number, strength, purity, and composition, or other appropriate characteristics. See 40 CFR 792.185.

As an alternative to requiring the testing of a representative form of a Class 2 substance designated by a person subject to the final rule, EPA is considering whether the Agency should specify the particular form of each substance that must be tested, and, if so, what criteria EPA should use to identify the particular representative form that would be tested. EPA might specify, for example, a form of a substance that meets an industry or consensus specification, if one exists, or the form with the highest production volume, which could potentially be identified via information reported under a TSCA section 8(a) rule, or by other means.

Under both of the approaches described in this unit, manufacturers and processors of each chemical substance listed in the rule would be jointly responsible for the testing of a representative form of each Class 2 substance.

EPA is also considering whether, for some or all Class 2 substances, more than one form of a substance should be tested. Regardless of which of the above approaches for testing Class 2 substances is ultimately chosen (i.e., persons subject to the rule choosing vs. EPA choosing the forms(s) of the Class 2 substances to be tested), EPA is considering requiring that persons applying for an exemption provide data to EPA that would allow the Agency to determine whether:

1. The form of the Class 2 substance with respect to which an exemption application is being submitted is equivalent to the form of a test substance for which data required under the rule have been or will be submitted; and

2. The submission of the required test data concerning a particular form of a Class 2 substance would be duplicative of data that have been or will be submitted to EPA in accordance with the test rule.

To facilitate EPA's review of exemption applications under this alternative, the Agency would require the submission of certain chemical substance-identifying data, including characteristics and properties of the exemption applicant's substance, such as boiling point, melting point, chemical analysis, additives (if any), and spectral data information.

EPA solicits comment on the proposed alternative approaches to the testing of Class 2 substances included in this proposed rule. Additionally, EPA solicits comment on whether the proposed approach for testing Class 1 substances in the proposed rule, i.e., that Class 1 test substances have a purity of 99% or greater, should be applied to any Class 2 substances in the proposed rule. Similarly, EPA solicits comment on whether the proposed or alternative approaches for the testing of Class 2 substances should be applied to any Class 1 substances.

E. Would I Be Required to Test Under this Rule?

Under TSCA section 4(a)(1)(B)(ii), EPA has made preliminary findings that there are insufficient data and experience to reasonably determine or predict health and environmental effects resulting from the manufacture, processing, or use of the chemical substances listed in this rulemaking. As a result, under TSCA section 4(b)(3)(B), manufacturers and processors of these substances would be subject to the rule with regard to those listed chemicals which they manufacture or process.

1. *Would I be subject to this rule?* You would be subject to this rule and may be required to test if you manufacture or process, or intend to manufacture or process, one or more chemical substances listed in this proposed rule during the time period discussed in Unit V.E.2 , entitled *When would my manufacture or processing (or my intent to do so) cause me to be subject to this rule?* However, if you do not know or cannot reasonably ascertain that you manufacture or process a listed test substance (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you would not be subject to the rule.

2. *When would my manufacture or processing (or my intent to do so) cause me to be subject to this rule?* You would be subject to this rule if you manufacture or process, or intend to manufacture or process, a substance listed in the rule at any time from the effective date of the final test rule to the end of the test data reimbursement period. The term ''reimbursement period'' is defined at 40 CFR 791.3(h) and may vary in length for each substance to be tested under a final TSCA section 4(a) test rule, depending on what testing is required and when testing is completed. See Unit V.E.4. , entitled *How do the reimbursement procedures work?*

3. *Would I be required to test if I were subject to the rule?* It depends on the nature of your activities. All persons who would be subject to this TSCA section 4(a) test rule, which incorporates EPA's generic procedures applicable to TSCA section 4(a) test rules (contained within 40 CFR part 790), would fall into one of two groups, designated here as Tier 1 and Tier 2. Persons in Tier 1 (those who would have to initially comply with the final rule) must either:

- Submit to EPA letters of intent to conduct testing, conduct this testing, and submit the test data to EPA; or
- Apply to and obtain from EPA exemptions from testing.

Persons in Tier 2 (those who would not have to initially comply with the final rule) need not take any action unless they are notified by EPA that they are required to do so, as described in Unit V.E.3.d , entitled *What would my obligations be if I were in Tier 2?* Note that persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who actually conduct the testing, as described in Unit V.E.4. , entitled *How do the reimbursement procedures work?*

a. *Who would be in Tier 1 and Tier 2?* All persons subject to this rule would be considered to be in Tier 1 unless they fall within Tier 2. The following table describes who is in Tier 1 and Tier 2.

TABLE 2.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Tier 1 (Persons initially required to comply)	Tier 2 (Persons not initially required to comply)
Persons who manufacture (as defined at TSCA section 3(7)), or intend to manufacture, a test rule substance, and who are not listed under Tier 2	Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a test rule substance solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3)); —As a naturally occurring substance (as defined at 40 CFR 710.4(b));

TABLE 2.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2—Continued

Tier 1 (Persons initially required to comply)	Tier 2 (Persons not initially required to comply)
	—As a non-isolated intermediate (as defined at 40 CFR 704.3); —As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kg (1,100 lbs) annually (as described at 40 CFR 790.42(a)(4)); or —In small quantities solely for research and development (as described at 40 CFR 790.42(a)(5)) Persons who process (as defined at TSCA section 3(10)) or intend to process a test rule substance (see 40 CFR 790.42(a)(2))

b. *When would it be appropriate for a person in Tier 1 to apply for an exemption rather than to submit a letter of intent to conduct testing?* You may apply for an exemption if you believe that the required testing will be performed by another person (or a consortium of persons formed under TSCA section 4(b)(3)(A)) in Tier 1. You can find procedures relating to exemptions in 40 CFR 790.80 through 790.99, and § 799.5085(c)(2), (c)(5), and (c)(7) of the proposed regulatory text. In this rule, EPA would not require equivalence data (i.e., data demonstrating that your substance is equivalent to the substance actually being tested) as a condition for approval of your exemption. See § 799.5085(j) of the proposed regulatory text for a description of the substances that would be tested under this proposed rule.

c. *What would happen if I were in Tier 1 and I submitted an exemption application?* EPA believes that requiring the collection of duplicative data is unnecessarily burdensome. As a result, if EPA has received a letter of intent to test from another source or has received (or expects to receive) the test data that would be required under this rule, the Agency would conditionally approve your exemption application under 40 CFR 790.87. The Agency would terminate conditional exemptions if a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA. EPA may then require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5085(c)(6) of the proposed regulatory text. Note that persons in Tier 1 who obtain exemptions and persons in Tier 2 would nonetheless be subject to providing reimbursement to persons who do actually conduct the testing, as described in Unit V.E.4., entitled *How do the reimbursement procedures work?*

d. *What would my obligations be if I were in Tier 2?* If you are in Tier 2, you would be subject to the rule and you would be responsible for providing reimbursement to persons in Tier 1, as described in Unit V.E.4. You are considered to have an automatic conditional exemption. You would not need to take any action unless you are notified by EPA that you are required to do so.

If a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA, the Agency may require you to submit a notice of intent to test or an exemption application. See 40 CFR 790.93 and § 799.5085(c)(6) of the proposed regulatory text.

In addition, you would need to submit a notice of intent to test or an exemption application if:

• No manufacturer in Tier 1 has notified EPA of its intent to conduct testing; and

• EPA has published a document in the **Federal Register** directing all persons in Tier 2 to submit to EPA letters of intent to conduct testing or exemption applications. See 40 CFR 790.48(b) and § 799.5085(c)(4) and (c)(5) of the proposed regulatory text. The Agency would conditionally approve an exemption application under 40 CFR 790.87 if EPA has received a letter of intent to test or has received (or expects to receive) the test data required under this rule.

e. *How did EPA decide who would be in Tier 1 and Tier 2 and who would be excluded from the rule?*

Under 40 CFR 790.2, EPA may establish procedures applying to specific test rules that differ from the generic procedures governing TSCA section 4 test rules in 40 CFR part 790. For the purposes of this proposed rule, EPA is proposing to set forth certain requirements that differ from those under 40 CFR part 790.

Under 40 CFR part 790, in TSCA section 4(a) test rules EPA traditionally has treated the persons specified below as being in Tier 2. (These rules are found at 40 CFR part 799, subparts B and D.):

• Processors (40 CFR 790.42(a)(2));

• Manufacturers of less than 500 kg (1,100 lbs) per year (''small-volume manufacturers'') (40 CFR 790.42(a)(4)); and

• Manufacturers of small quantities for research and development (''R&D manufacturers'') (40 CFR 790.42(a)(5)).

EPA has historically placed processors in Tier 2 because the Agency ''expected that, in most cases, testing will be performed by the manufacturers and that part of the cost of testing will be passed on to processors through the pricing mechanism, thereby enabling them to share in the costs of testing'' (50 FR 20652, 20654, May 17, 1985). In addition, ''[t]here are so many processors that it would be difficult to include them all in the technical decisions about the tests and in the financial decisions about how to allocate the costs'' (48 FR 31786, 31789, July 11, 1983).

EPA has historically placed small-volume manufacturers and R&D manufacturers in Tier 2 because this type of manufacturing ''normally represents a small percentage of the overall production volume [and] test sponsors are not expected to expend the administrative resources to recover the small proportional amounts of the testing costs from these manufacturers'' (55 FR 18881, May 7, 1990).

In this proposed test rule, EPA has reconfigured these tiers. EPA has added the following persons to Tier 2: Byproduct manufacturers; impurity manufacturers; manufacturers of naturally occurring substances; manufacturers of non-isolated intermediates; and manufacturers of components of Class 2 substances. The Agency took administrative burden and complexity into account in determining who was to be in Tier 1 in this proposed rule. EPA believes that those persons in Tier 1 who would conduct testing under this proposed rule, when finalized, would generally be large chemical manufacturers who, in the experience of the Agency, have traditionally conducted testing or participated in

testing consortia under previous TSCA section 4(a) test rules.

TSCA section 4(b)(3)(B) requires all manufacturers and processors of a chemical substance to test that chemical substance if EPA has made findings for that chemical substance, and therefore issued a TSCA section 4(a) test rule requiring testing. However, practicality must be a factor in determining who is subject to a particular test rule. Thus, persons who do not know or cannot reasonably ascertain that they are manufacturing or processing a substance would not be subject to the proposed rule. See Unit V.E.1. and § 799.5085(b)(2) of the proposed regulatory text.

Under 40 CFR 790.42(a)(4), certain small-quantity manufacturers (i.e., those who manufacture less than 500 kg (1,100 lb) of the test rule chemical annually) do not initially need to submit letters of intent to test or exemption applications under a test rule unless EPA specifically requires them to do so. EPA established this provision because such small-quantity manufacturing normally represents a small percentage of the overall production volume, so that test sponsors are not expected to expend the administrative resources necessary to seek reimbursement of the associated small proportional amounts of the testing costs from these small-quantity manufacturers. As a result, EPA determined that the reason for requiring an exemption application to be filed did not exist for these manufacturers (55 FR 18881, at 18881, May 7, 1990).

During interagency review, it was suggested that EPA consider increasing the small-quantity amount in this proposed rule in order to eliminate the need for certain persons subject to the rule to initially submit a letter of intent to test or an exemption application. As a result this group of persons would be shifted to Tier 2. As with the existing tiering system, these persons would still be subject to reimbursement requirements and could potentially be required to conduct testing (for example, if Tier 1 entities do not submit letters of intent to test).

EPA is interested in receiving comment on whether the 1,100 lb (500 kg) small-quantity threshold in this proposed rule should be raised (e.g., to 5,000, 10,000, or 25,000 lbs) in order to shift certain small-quantity manufacturers from Tier 1 to Tier 2. These persons would represent a small percentage of the overall production volume of a chemical in the test rule such that test sponsors would not be expected to expend the administrative resources necessary to seek reimbursement from these manufacturers. EPA is particularly interested in comments on the appropriate annual production amount at which test sponsors would not be expected to seek reimbursement such that the reason for requiring an exemption application to be filed by these manufacturers would not exist. Please provide a rationale and supporting information for any alternative threshold(s) suggested.

EPA is also soliciting comment on who should be included in Tier 1 and Tier 2. The Agency may define these categories differently in response to comments received. EPA is also soliciting comment on who should not be subject to the rule. The latter persons are described in Unit V.E.1. and § 799.5085(b)(2) of the proposed regulatory text.

4. *How do the reimbursement procedures work?* In the past, persons subject to test rules have independently worked out among themselves their respective financial contributions to those persons who have actually conducted the testing. However, if persons are unable to agree privately on reimbursement, they may take advantage of EPA's reimbursement procedures at 40 CFR part 791, promulgated under the authority of TSCA section 4(c). These procedures include: The opportunity for a hearing with the American Arbitration Association; publication by EPA of a document in the **Federal Register** concerning the request for a hearing; and the appointment of a hearing officer to propose an order for fair and equitable reimbursement. The hearing officer may base his or her proposed order on the production volume formula set out at 40 CFR 791.48, but is not obligated to do so. Under this proposed rule, amounts manufactured as impurities would be included in production volume (40 CFR 791.48(b)), subject to the discretion of the hearing officer (40 CFR 791.40(a)). The hearing officer's proposed order may become the Agency's final order, which is reviewable in federal court (40 CFR 791.60).

F. What are the Reporting Requirements Proposed Under this Test Rule?

You would be required to submit a final report for a specific test by the deadline indicated as the number of months after the effective date of the final rule, which would be shown in § 799.5085(j) of the proposed regulatory text.

G. What Would I Need to do If I Cannot Complete the Testing Required by the Final Rule?

A company who submits a letter of intent to test under the final rule and who subsequently anticipates difficulties in completing the testing by the deadline set forth in the final rule may submit a modification request to the Agency, pursuant to 40 CFR 790.55. EPA will determine whether modification of the test schedule is appropriate, and may first seek public comment on the modification.

H. Would There be Sufficient Test Facilities and Personnel To Undertake the Testing Proposed Under this Test Rule?

Yes. In 1996, EPA conducted a study of TSCA testing laboratories to evaluate the expected capacity of these laboratories to conduct various tests through the year 2000 (Ref. 19). The results suggest that laboratory capacity is expected to expand at a rate such that the testing that would be required by this proposed rule should be readily accommodated by testing laboratories (Ref. 9).

I. Might EPA Seek Further Testing of the Chemicals in this Proposed Test Rule?

If EPA determines that it needs additional data regarding any of the chemical substances included in this proposed rule, the Agency might seek further health and/or environmental effects testing for these chemical substances. Should the Agency decide to seek such additional testing, EPA would initiate a separate action for this purpose.

VI. Export Notification

Any person who exports, or intends to export, one of the chemical substances contained in this proposed rule in any form will be subject to the export notification requirements in TSCA section 12(b)(1) and at 40 CFR part 707, subpart D, but only after the final rule is issued and only if the chemical is contained in the final rule. However, export notification would generally not be required for articles, as provided by 40 CFR 707.60(b).

VII. Public Comment

As discussed in Unit III.D, EPA is interested in comments regarding specific procedures for incorporating the use of categories and SAR into this proposed rule.

Comments which identify existing data that may meet the requirements of studies under this proposed rule should include the data with the submission of comments to EPA. Data submitted to

EPA to meet the requirements of testing under this proposed rule must be in the form of full copies of unpublished studies or full citations of published studies, and may be accompanied by a robust summary (Ref. 34). To the extent that studies required under this proposed rule are currently available, and the data are judged sufficient by EPA, testing for the endpoint/chemical combination will not be required in the final rule based on this proposed rule.

EPA solicits public comment on the test methods proposed in this, the approach discussed in Unit V.E. entitled *Would I be required to test under this rule?*, and the analysis detailing the burdens and costs for the regulatory impacts resulting from this rule.

In addition, EPA solicits comment on the proposed and alternative approaches to the testing of Class 2 substances, whether the proposed approach for testing Class 1 substances (i.e., that each Class 1 substance be tested at a purity of 99% or more) should be applied to any Class 2 substances, and whether the proposed or alternative approaches for the testing of Class 2 substances (i.e. that a representative sample of each Class 2 substance be tested) should be applied to any Class 1 substances.

VIII. Documents in the Official Record

The official record for this proposed rule has been established under docket control number OPPTS–42213A, and the public version of the official record is available for inspection as specified in Unit I.B.2. The following is a listing of the documents that have already been placed in the official record for this proposed rule, including those specifically referenced in this document. For your convenience, EPA may have also provided some non-EPA internet addresses to allow you to access the electronic version of the referenced document. In doing so, the Agency has verified the accuracy of these addresses at the time of signature. However, since EPA is not responsible for these non-EPA sites, the Agency does not have any control over these web addresses. A paper copy of any document referenced in this way has been included in the public version of the official record for this document as described in Unit I.B.2.

1. EPA, OPPT. ChemRTK, HPV Challenge Program Chemical List. (This list is updated periodically, and is available electronically at http://www.epa.gov/chemrtk/hpvchmlt.htm).

2. EPA, OPPT. Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals? (April 1998) (An electronic copy of this document is available on the EPA website at http://www.epa.gov/opptintr/chemtest/hazchem.htm).

3. ACC (formerly CMA). Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals (June 12, 1998). Copies of ACC's report can be obtained by writing to ACC at 1300 Wilson Blvd., Arlington, VA 22209 or by calling ACC at (703) 741-–226.

4. OECD Secretariat. *SIDS Manual*. Third Ed. Screening Information Data Set Manual of the OECD Programme on the Co-Operative Investigation of High Production Volume Chemicals. Paris, France (July 1997). Electronic copies of this Manual can be obtained from OECD at http://www.oecd.org/ehs/sidsman.htm, or by accessing EPA's ChemRTK website at http://www.epa.gov/chemrtk/sidsappb.htm.

5. OECD. Decision-Recommendation on the Co-Operative Investigation and Risk Reduction of Existing Chemicals—C(90)163/FINAL (January 31, 1991).

6. ACC. Comments on EPA's TSCA section 4(a)(1)(B) Proposed Statement of Policy submitted to the TSCA Public Docket Office, EPA (September 17, 1991).

7. Epoxy Resin Systems Task Group of the Society of the Plastics Industry, Inc. Comments on EPA's TSCA section 4(a)(1)(B) Proposed Statement of Policy TSCA Public Docket Office, EPA (September 17, 1991).

8. ICCA. ICCA HPV Working List 22–040–1999; Chemicals Common to 2 or more of the Regions: Canada, European Union (EU), Japan, and USA (1999). (Electronic copies of this list can be obtained from the ICCA website at http://www.icca-chem.org/hpv).

9. EPA, OPPT. Economic Impact Analysis of a Section 4 Test Rule for High Production Volume Chemicals (December 2000).

10. EPA. Comparison of 1990 High Production Volume (HPV) Chemicals with National Occupational Exposure Survey (NOES) Database (November 13, 1998).

11. EPA. Guidelines for Exposure Assessment, **Federal Register** (57 FR 28888, May 29, 1992).

12. Seta, J.A. et al., National Exposure Survey Field Guidelines. Cincinnati Ohio: National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 88–106 (1988).

13. Meylan WM, and Howard PH. Atom/Fragment Contribution for Estimating Octanol-Water Partition Coefficients. *Journal of Pharmaceutical Sciences*. Vol.84, No.1 (January 1995).

14. Meylan WM, Howard PH, and Boethling, RS. Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient. *Environmental Toxicology and Chemistry*. Vol. 15, No.2, pp. 1006–106 (1996).

15. Veith GD and Kosian P. Estimating bioconcentration potential from octanol/water partition coefficients, in Physical Behavior of PCB's in the Great Lakes (MacKay, Paterson, Eisenreich, and Simmons, eds.), Ann Arbor Science, Ann Arbor, MI. (1982).

16. Bintein S, DeVillers J, and Karcher W. Nonlinear dependence of fish bioconcentration on *n*-octanol/water partition coefficient. SAR and QSAR in Environmental Research, Vol.1, pp. 29–39 (1993).

17. Meylan WM, Howard PH, Boethling RS, Aronson D, Printup H, and Gouchie S. Improved method of estimating bioconcentration/bioaccumulation factor from octanol/water partition coefficient. *Environmental Toxicology and Chemistry*, Vol.18, No.4, pp 664–672) (1999).

18. Smrchek JC and Zeeman MG. Assessing Risks to Ecological Systems from Chemicals, pp. 24–90. In. P. Callow (ed.), *Handbook of Environmental Risk Assessment and Management*, Blackwell Science Ltd., Oxford, UK. (1998).

19. EPA. EPA Census of TSCA Laboratories, Washington, DC (October 10, 1996).

20. EPA. Treatment of 12(b) Export Notification Unit Costs for Section 4 Test Rule Analyses, OPPT/EETD/EPAB, Washington, DC (April 1, 1999).

21. EPA. Economic Analysis in Support of the TSCA 12(b) Information Collection Request, OPPT/EETD/EPAB, Washington, DC (October 30, 1998).

22. EPA. April 1999 Agenda of Regulatory and Deregulatory Actions; Semiannual regulatory agenda. Chemical Right-to-Know, sequence #3424 (64 FR 21898, April 26, 1999) (FRL–6238–9).

23. EPA. TSCA section 4(a)(1)(B) Proposed Statement of Policy (56 FR 32297, July 15, 1991).

24. EPA. TSCA section 4(a)(1)(B) Final Statement of Policy (58 FR 28736, May 14, 1993).

25. EPA. Document containing EPA's Policy Statement under TSCA section 5 entitled *Category for Persistent, Bioaccumulative, and Toxic New Chemical Substances* (64 FR 60194, November 4, 1999) (FRL–6097–7). (An electronic copy is available at http://www.epa.gov/opptintr/newchems/pbtpolcy.htm).

26. EPA. Significant New Use Rules; General Provisions for New Chemical Followup under sections 5 and 26(c) of TSCA (54 FR 31307, July 27, 1989).

27. Document describing the HPV Initiative, entitled *Data Collection/ development on High Production Volume (HPV) Chemicals; Notice*, which is published elsewhere in this issue of the **Federal Register** (FRL–6754–6). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/fedrgstr/).

28. Environmental Defense (formerly EDF). Toxic Ignorance. New York, New York (Summer 1997). Copies of Toxic Ignorance can be obtained by accessing Environmental Defense's website (http://www.environmentaldefense.org/Reports/ToxicIgnorance) or by calling 1–800–684–3322.

29. EPA, Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Letter from Susan H. Wayland, Deputy Assistant Administrator, to participants in the voluntary HPV Challenge Program (October 14, 1999) (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/ceoltr2.htm).

30. EPA, OPPT. The Use of Structure-Activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program (August 26, 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/sarfinl1.htm).

31. EPA, OPPT. Development of Chemical Categories in the HPV Challenge Program (Draft) (August 25, 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/categuid.htm).

32. EPA, OPPT. Guidance for Testing Closed System Intermediates for the HPV Challenge Program (Draft) (March 17, 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/closed9.htm).

33. EPA, OPPT. Procedures for Removing Chemicals that are No longer HPV and Not Likely to Become HPV Again from the HPV List (Draft) (March 17, 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/nolohpv8.htm).

34. EPA, OPPT. Draft Guidance on Developing Robust Summaries (October 27, 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/robsumgd.htm).

35. EPA, OPPT. ChemRTK HPV Challenge Program Making Commitments (June 29, 2000). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/makecom.htm).

36. EPA, OPPT. Draft Guidance on Searching for Chemical Information and Data (August 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/srchguid.htm).

37. EPA, OPPT. Determining the Adequacy of Existing Data (February 10, 1999). (An electronic copy of this document is available on the EPA website at http://www.epa.gov/chemrtk/datadfin.htm).

38. SBA. Office of Advocacy-Statistics-Major Industry, Firms, Establishment, Employment, Payroll and Receipts, 1995. Information from the Small Business Administration on the Internet (http://www.sba.gov/advo/stats/us-ind95.html. Downloaded on December 10, 1998).

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under E.O. 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has designated this proposed rule a ''significant regulatory action'' subject to review by OMB under E.O. 12866, because this action may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in section 3(f)(4) of the E.O. EPA therefore submitted this proposed rulemaking to OMB for review under E.O. 12866, and any comments or changes made during that review have been documented in the public version of the official record for this rulemaking.

In addition, EPA has prepared an economic assessment entitled *Economic Impact Analysis for the Proposed Section 4 Test Rule for High Production Volume Chemicals* (Ref. 9), a copy of which has been placed in the public version of the official record for this rulemaking. This economic assessment evaluates the potential for significant economic impacts as a result of the testing that would be required by this proposal. The analysis covers 49 chemicals, 12 more than identified in the proposal, therefore, the costs presented here are expected to be an overestimate. The total social cost of providing test data on the 49 chemicals that were evaluated in this economic analysis is estimated to be $13 million (Ref. 9).

While legally subject to this test rule, processors of a subject chemical would be required to comply with the requirements of the rule only if they are directed to do so by EPA as described in § 799.5085(c)(5) and (c)(6) of the proposed regulatory text. EPA would only require processors to test if no person in Tier 1 has submitted a notice of its intent to conduct testing, or if under 40 CFR 790.93, a problem occurs with the initiation, conduct, or completion of the required testing, or the submission of the required data to EPA. Because EPA has identified at least one manufacturer in Tier 1 for each subject chemical, the Agency assumes that, for each chemical in this proposed rule, at least one such person will submit a letter of intent to conduct the required testing and that person will conduct such testing and will submit the test data to EPA. Because processors would not need to comply with the proposed rule initially, the economic assessment does not address processors.

To evaluate the potential for an adverse economic impact of testing on manufacturers of the chemical substances in this proposed rule, EPA employed a screening approach that estimated the impact of testing requirements as a percentage of each chemical's sale price. This measure compares annual revenues from the sale of a chemical to the annualized testing costs for that chemical to assess the percentage of testing costs that can be accommodated by the revenue generated by that chemical. Annualized testing costs divide testing expenditures into an equivalent, constant yearly expenditure over a longer period of time. To calculate the percent price impact, testing costs (including laboratory and administrative expenditures) are annualized over 15 years using a 7% discount rate. Annualized testing costs are then divided by the estimated annual revenue of the chemical to derive the cost-to-sales ratio. EPA estimates the total annualized compliance cost of testing for the 49 chemicals evaluated in the economic analysis to be $ 1.5 million under the average cost scenario. In addition, the TSCA section 12(b) export notification requirements (included in the total and annualized cost estimates) that would be triggered by the final rule are expected to have a negligible impact on exporters. The estimated cost of the TSCA section 12(b) export notification requirements, which, under the final rule, would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $83.38 for the first time that an exporter must comply with TSCA section 12(b) export notification requirements, and $19.08 for each subsequent export notification submitted by that exporter (Refs. 9, 20, and 21). The Agency's estimated total costs of testing (including both

laboratory and administrative costs) annualized testing cost, price impacts, and public reporting burden hours for this proposed rule are presented in the economic assessment.

Under a least cost scenario, 28 out of the 45 chemicals for which price data were available (62%) would have a price impact at less than the 1% level. Similarly, 28 out of the 45 chemicals (58%) would be impacted at less than the 1% level under an average cost scenario. Thus, the potential for adverse economic impact due to the proposed test rule is low for at least 58% of the chemicals in this proposed rule. Approximately 17 (19) chemicals (38% (42%)) of the 45 chemicals for which price data are available would have a price impact at a level greater than or equal to 1% under the least (average) cost scenario.

The Agency computed ''critical prices'' for all 49 chemicals, including the 37 chemicals included in this proposed TSCA section 4 HPV SIDS rule. Using chemical specific volume and test cost data, the critical price per pound that would result in a 1% impact on the annual revenue of the chemical was estimated. The critical prices are particularly informative for the 4 chemicals for which price data are unavailable because they represent the minimum price that is required to support testing at the 1% level.

Of the 4 chemicals for which price data were unavailable, an approximate price range could be inferred for 2 chemicals based on the knowledge of the nature of these chemicals. Based on the critical prices and basic information on their nature or use, it is expected that neither of these chemicals is likely to be impacted at greater than the 1% level. For the remaining 2 chemicals without price information, it is unclear whether they will be impacted at greater than the 1% level.

EPA believes, on the basis of these calculations, that the proposed testing of the chemicals presents a low potential for adverse economic impact for the majority of chemicals. Because the subject chemical substances have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenue, are very small for most chemicals. There are, however, some chemicals for which the price impact is expected to exceed 1% of the revenue from that chemical. The potential for adverse economic impact is expected to be higher for these chemicals. In these cases, companies may choose to use revenue sources other than the profits from the individual chemicals to pay for testing. Therefore, the Agency also compared the costs of compliance to company sales for small businesses.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(b) *et seq.*, the Agency hereby certifies that this rulemaking, if promulgated as proposed, will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this rule (Ref. 9), and is briefly summarized here.

Two factors are examined in EPA's small entity impact analysis (Ref. 9) in order to characterize the potential small entity impacts of this rule:

1. The size of the adverse impact (measured as the ratio of the cost to sales or revenue), and

2. The total number of small entities that experience the adverse impact.

Section 601(3) of the RFA establishes as the default definition of ''small business'' the definition used in section 3 of the Small Business Act, 15 U.S.C. 632, under which the Small Business Administration (SBA) establishes small business size standards (13 CFR 121.201). For this rulemaking, EPA has analyzed the potential small business impacts using the size standards established under this default definition. The SBA size standards, which are primarily intended to determine whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), ''seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. In analyzing potential impacts, the RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of the RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. Even though the Agency has used the default SBA definition of small business to conduct its analysis of potential small entity impacts for this proposed rule, EPA does not believe that the SBA size standards are generally the best size standards to use in assessing potential small entity impacts with regard to TSCA section 4(a) test rules.

The SBA size standard is generally based on the number of employees an entity in a particular industrial sector may have. For example, in the chemical manufacturing industrial sector (i.e., SIC 28 and SIC 29), approximately 98% of the firms would be classified as small businesses under the default SBA definition. The SBA size standard for 75% of this industry sector is 500 employees, and the size standard for 23% of this industry sector is 750, 1,000, or 1,500 employees. As a result, when assessing the potential impacts of test rules on chemical manufacturers, EPA believes that a standard based on total annual sales may provide a more appropriate means to judge the ability of a chemical manufacturing firm to support chemical testing without significant costs or burdens.

EPA is currently determining what level of annual sales would provide the most appropriate size cutoff with regard to various segments of the chemical industry usually impacted by TSCA section 4(a) test rules, but has not yet reached a determination. As stated above, therefore, the factual basis for the RFA determination for this proposed rule is based on an analysis using the default SBA size standards. Although EPA is not currently proposing to establish an alternate definition for use in the analysis conducted for this proposed rule, the analysis for this proposed rule also presents the results of calculations using a standard based on total annual sales (40 CFR 704.3). EPA is interested in receiving comments on whether the Agency should consider establishing an alternate definition for small business to use in the small entity impact analyses for future TSCA section 4(a) test rules, and what size cutoff may be appropriate.

The SBA has developed 6 digit NAICS code-specific size standards based on employment thresholds. These size standards range from 500 to 1,500 employees for the various 6 digit NAICS codes that are potentially impacted (Ref. 9). For a conservative estimate of the number of small businesses affected by the HPV rule, the Agency chose an employment threshold of less than employees 1,500 for all businesses regardless of the NAIC-specific threshold to determine small business status.

For each manufacturer of the 49 chemicals in the economic analysis, the parent company (ultimate corporate entity, or UCE) was identified and sales and employment data were obtained for companies where data was available. The search determined that there were 103 affected UCEs. Sales and employment data could be found for 102 of these UCEs (99%).

Parent company sales data were collected to identify companies that qualified for ''small business'' status.

Based on the SBA size standard applied, 35 companies were identified as small. Employment data were unavailable for 1 company. A separate analysis, contained in the economic assessment prepared for this proposed rule, was conducted for these companies to determine the potential economic impact of this proposed rule.

The significance of this proposed HPV rule's impact on small businesses was analyzed by examining the number of small entities that experienced different levels of costs as a percentage of their sales. Small businesses were placed in the following categories on the basis of cost-to sales ratios: less than 1%, greater than 1%, greater than 3%. This analysis was conducted under both the least and the average cost scenarios.

Of the 35 companies that qualified for small business status per the SBA size standards, only 1 had cost-to-sales ratios of greater than 1% under least and average cost scenarios. None were impacted at greater than the 3% level. Given these results, there does not appear to be a significant impact on a substantial number of small entities as a result of this proposed rule.

As stated earlier in this unit, employment data were unavailable for 1 of the identified 103 companies (1%). While data on their company level sales were also unavailable, the volumes of the chemicals included in this proposed rule that it produced could be identified from the 1994 IUR database. Combining secondary data on chemical prices with production volume data, the sales value of these chemicals could be estimated for this company. In addition, the minimum critical sales level that would be needed to avoid an impact at the 1% and the 3% levels was calculated. These critical sales were then compared to the sales estimated using the method described in this unit. Using these estimates, EPA concluded that this company is not impacted at greater than 1% of sales in the least or average cost scenarios

The estimated cost of the TSCA section 12(b)(1) export notification, which, as a result of the final rule, would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $83.38 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $19.08 for each subsequent export notification submitted by that exporter (Refs. 9, 20, and 21). EPA has concluded that the costs of TSCA section 12(b)(1) export notification would have a negligible impact on exporters of the chemicals in the final rule, regardless of the size of the exporter.

Therefore, the Agency certifies that this proposed rule, if finalized, would not have a significant economic impact on small entities. Information relating to this determination has been included in the public version of the official record for this proposed rule. This information will also be provided to the SBA Chief Counsel for Advocacy upon request. Any comments regarding the impacts that this action may impose on small entities, or regarding whether the Agency should consider establishing an alternate definition of small business to be used for analytical purposes for future test rules and what size cutoff may be appropriate, should be submitted to the Agency in the manner specified under **ADDRESSES**.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to chemical testing under TSCA section 4(a) have already been approved under OMB control number 2070–0033 (EPA ICR No.1139), and the information collection activities related to export notification under TSCA section 12(b)(1) are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). This action does not contain any new information collection activities requiring additional OMB review and approval.

Although the information collection activities contained in this proposed rule have already been approved by OMB, the total burden hours currently approved for the information collection activities related to chemical testing may not reflect the estimated burden hours specifically related to the activities contained in this proposed rule because the total number of chemicals included in this proposed rule exceeds the total number of chemicals estimated in the ICR. As described in the information collection instrument for chemical testing (EPA ICR No. 1139), the Agency's total burden estimate specifically accounts for the potential issuance of approximately three average test rules per year, each assumed to involve five chemicals and three sponsors. With an estimated burden of approximately 263 hours for each study, the Agency estimated an average burden of 14,444 hours per test sponsor . When a final rule based on this proposed rule is issued, EPA will verify that the approved burden hours contained in the ICR are sufficient to cover the estimated burden for the final rule. If not, EPA will request that the total approved burden hour for the ICR be increased accordingly.

The standard chemical testing program involves the submission of letters of intent to test (or exemption applications), study plans, administering the tests, progress reports, and test results. For this proposed rule, EPA estimates that the information collection activities related to chemical testing for all chemicals in this proposal (representing the submission of letters of intent or exemption applications, administering the tests, and submitting the final reports—the study plan is represented by this proposed rule and progress reports are not required by this proposed rule because testing will be completed within 1 year) would result in an annual public reporting burden of approximately 12,942 hours per sponsor, assuming seven chemicals per sponsor.

The annual public reporting burden related to export notification is estimated to be 0.5–1.5 burden hours for each chemical/country combination (Ref. 9). In estimating the total burden hours approved for the information collection activities related to export notification, the Agency has included sufficient burden hours to accommodate any export notifications that may be required by the Agency's issuance of final chemical test rules. As such, EPA does not expect to need to request an increase in the total burden hours approved by OMB for export notifications.

As defined by the PRA and 5 CFR 1320.3(b), ''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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified under ADDRESSES. In the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rulemaking 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. It is estimated that the total aggregate costs of this proposed rule, which are summarized in Unit XI.A. , would be $13 million. The total annualized costs of this proposed rule are estimated to be $1.5 million. In addition, EPA has determined that this proposed rule does not significantly or uniquely affect small governments. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

Under E.O. 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA has determined that this proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. This determination is based on the Agency's experience over the years which indicates that, as a practical matter, the burden of chemical testing under TSCA section 4(a) rules has traditionally fallen on large, private sector manufacturers rather than on tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule. Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In the history of the TSCA section 4(a) testing program, the Agency has never received a letter of intent to test or an exemption application from a State, local, or tribal government. EPA is requesting comment on whether any State, local, or tribal government is engaged in the manufacture or processing of these HPV chemicals such that they might be subject to the requirements of this proposed rule. On the basis of these comments, EPA may determine that it is appropriate to consult with representatives of potentially affected State, local, or tribal governments prior to promulgating the final rule.

E. Executive Order 12898

This proposed rule does not involve special considerations of environmental-justice issues pursuant to E.O. 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Executive Order 13045

E.O. 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this proposed rule, because it is not designated as an ''economically significant'' regulatory actions as defined under E.O. 12866, and it does not establish an environmental standard that is intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. EPA interprets E.O. 13045 as applying only to those regulatory actions that establish an environmental standard intended to mitigate health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

Although this proposed rule is not subject to this E.O., the information obtained by the testing proposed in this rule will be used to inform the Agency's decision making process regarding chemicals to which children may be disproportionately disposed. This information will also assist the Agency and others in evaluating these chemical substances for potential health or safety risk concerns, and will serve to further the Agency's goal of identifying and controlling human and environmental risks as well as provide greater protection and knowledge to the public.

In addition, in a separate **Federal Register** document (64 FR 46673, August 26, 1999), EPA announced the initiation of a stakeholder involvement process to involve stakeholders in the design and development of a voluntary program to test commercial chemicals to which children may have a high likelihood of exposure. The purpose of the voluntary testing program is to obtain toxicity data needed to assess the potential risks resulting from childhood exposure to certain commercial chemicals.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

If the Agency has made findings under TSCA section 4(a), EPA is required by TSCA section 4(b) to include specific standards for the development of data in test rules. For some of the testing that would be required by this rule, EPA is proposing the use of voluntary consensus standards issued by the ASTM and ISO which evaluate the same type of toxicity as the TSCA and OECD test guidelines, where applicable. Copies of the ASTM and ISO standards referenced in this proposed rule have been placed in the public version of the official record for this rulemaking. In the final rule, EPA intends to seek approval from the Director of the **Federal Register** for the incorporation by reference of the ASTM and ISO standards used in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA is not aware of any potentially applicable voluntary consensus standards which evaluate partition coefficient (*n*-octanol/water) generator column, water solubility (column elution and generator column), acute inhalation toxicity, bacterial reverse mutations, in vivo mammalian bone marrow chromosomal aberrations, combined repeated dose with reproductive/developmental toxicity screen, repeated dose 28-day oral toxicity screen, or the reproductive developmental toxicity screen which could be considered in lieu of the TSCA guidelines, 40 CFR 799.6756, 799.6784, 799.6786, 799.9130, 799.9510, 799.9538, 799.9365, 799.9305, and 799.9355, respectively, upon which the test standards in this proposed rule are

based. The Agency invites comment on the potential use of voluntary consensus standards in this rulemaking, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

H. Executive Order 12630

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

I. Executive Order 12988

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

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: December 14, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.5085 to subpart D of part 799 that would read as follows:

§ 799.5085 Testing of certain High Production Volume (HPV) chemicals.

(a) *What substances will be tested under this section?* Table 2 in § 799.5085(j) identifies the chemical substances that must be tested under this section. For the chemical substances identified as ''Class 1'' substances in Table 2, the purity of each substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as ''Class 2'' substances, a representative form of each substance must be tested.

(b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 in 799.5085(j) at any time from the effective date of the final rule to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.

(2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 in § 799.5085(j) during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.

(c) *If I am subject to this section, when must I comply with it?* (1) (i) Persons subject to this section are divided into two groups, as set forth in Table 1: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1.

TABLE 1.—PERSONS SUBJECT TO THE RULE: PERSONS IN TIER 1 AND TIER 2

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section.	Persons that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following: —As a byproduct (as defined at 40 CFR 791.3(c)); —As an impurity (as defined at 40 CFR 790.3); —As a naturally occurring substance (as defined at 40 CFR 710.4(b)); —As a non-isolated intermediate (as defined at 40 CFR 704.3); — As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i)); —In amounts of less than 500 kilograms (kg) (1,100 lbs) annually (as described at 40 CFR 790.42(a)(4)); or —For research and development (as described at 40 CFR 790.42(a)(5)). Persons that process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

(ii) Table 1 expands the list of persons specified in 40 CFR 790.42(a)(2), (a)(4) and (a)(5), who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4) and (c)(5) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in § 799.5085(j), you will be required to comply with this section with regard to that chemical substance, as described in paragraph (d) of this section, no later than 30 days after the effective date of the final rule. Sections 790.45(a) and 790.80(b)(1) of this chapter do not apply to this section.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2 in § 799.5085(j), you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5) or (c)(6) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in § 799.5085(j) within 30 days after the effective date of the final rule, EPA will publish a **Federal Register** document that will specify the test and the chemical substance for which no letter of intent has been submitted.

Section 790.48(b)(2) of this chapter does not apply to this section.

(5) If you are in Tier 2 with respect to a chemical substance listed in Table 2 in § 799.5085(j), and if you manufacture or process this chemical as of the effective date of the final rule, or within 30 days after publication of the **Federal Register** document described in paragraph (c)(4) of this section, you must do the following: For each test on that chemical specified in the **Federal Register** document described in paragraph (c)(4) of this section, either notify EPA by letter of your intent to test or submit to EPA an exemption application. You must comply within 30 days after the date of publication of the **Federal Register** document described in paragraph (c)(4) of this section. Sections 790.48(b)(3), and 790.80(a)(2) and (b)(1) of this chapter do not apply to this section.

(6) If a problem occurs with the initiation, conduct, or completion of the required testing or the submission of the required data with respect to a chemical substance listed in Table 2 in § 799.5085(j), under the procedures in 40 CFR 790.93 and 790.97 EPA will terminate all testing exemptions with respect to that substance and may notify persons in Tier 1 and Tier 2 that they are required to submit letters of intent to test or exemption applications within a specified period of time. Notification will be given by certified letter or by publication in the **Federal Register**.

(7) If you are required to comply with this section, but your manufacture or processing of a chemical substance listed in Table 2 in § 799.5085(j) begins after the applicable compliance date referred to in paragraphs (c)(2), (c)(5) or (c)(6) of this section, you must comply by submitting a letter of intent to test or an exemption application as of the day you begin manufacture or processing. Sections 790.45(d)(1) and (d)(2), and 790.80(b)(2) and (b)(3) of this chapter do not apply to this section.

(d) *What must I do to comply with this section?* (1) To comply with this section you must either:

(i) submit to EPA a letter of intent to test, conduct the testing specified in Table 2 in § 799.5085(j), and submit the test data to EPA; or

(ii) apply to and obtain from EPA an exemption from testing.

(2) You must also comply with the procedures governing test rule requirements in part 790 of this chapter, as modified by this section, including the submission of letters of intent to test or exemption applications, the conduct of testing, and the submission of data; Part 792—Good Laboratory Practice Standards of this chapter; and this section.

(e) *If I do not comply with this section, when will I be considered in violation of it?* You will be considered in violation of this section as of one day after the date by which you are required to comply with this section. Sections 790.45(e) and (f) of this chapter do not apply to this section.

(f) *How are EPA's data reimbursement procedures affected for purposes of this section?* If persons subject to this section are unable to agree on the amount or method of reimbursement for test data development for one or more chemical substances included in this section, any person may request a hearing as described in 40 CFR part 791. In the determination of fair reimbursement shares under this section, if the hearing officer chooses to use a formula based on production volume, the total production volume amount will include amounts of a chemical substance produced as an impurity.

(g) *Who must comply with the export notification requirements?* Any person who exports, or intends to export, a chemical substance listed in Table 2 in § 799.5085(j) is subject to part 707, subpart D, of this chapter.

(h) *What test standards must I follow?* Follow the guidelines and other test methods described in Table 2 in § 799.5085(j).

(i) *Reporting requirements.* A final report for a specific test must be submitted by the deadline indicated in Table 2 in § 799.5085(j).

(j) *Designation of specific chemical substances and applicable testing requirements.* The substances identified by name and the Chemical Abstract Service (CAS) number in Table 2 of this section must be tested in accordance with the designated testing requirements, the requirements described in Part 792—Good Laboratory Practice Standards of this chapter, and any additional requirements and limitations specified in the following Table 2:

TABLE 2—CHEMICAL SUBSTANCES AND APPLICABLE TESTING REQUIREMENTS

CAS No.	Chemical name	Chemical class	Required tests (See Key)	Deadline for final report (Months from effective date of final rule)
55–63–0	1,2,3-Propanetriol, trinitrate	1	A, C6, E2, F2.	13
62–56–6	Thiourea	1	A.	13
74–95–3	Methane, dibromo-	1	A, C1, E2, F2.	13
75–36–5	Acetyl chloride	1	A, B, C2, E2, F1.	13
75–75–2	Methanesulfonic acid	1	A, C1, E1, E2, F1.	13
78–11–5	1,3-Propanediol, 2,2-bis[(nitrooxy)methyl]-, dinitrate (ester)	1	A, B, C6, F2.	13
84–65–1	9,10-Anthracenedione	1	A, F2.	13
84–69–5	1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester	1	A, E2, F2	13
88–18–6	Phenol, 2-(1,1-dimethylethyl)-	1	A, C2, D, E1, E2, F1.	13
90–00–6	Phenol, 2-ethyl-	1	A, B, C1, E2, F2.	13
90–15–3	1-Naphthalenol	1	A, C5, F2	13
98–11–3	Benzenesulfonic acid	1	A, C3, E2, F1.	13
105–67–9	Phenol, 2,4-dimethyl-	1	A, C6, E2, F2.	13
107–16–4	Acetonitrile, hydroxy-	1	A, B, C1, E2, F2.	13
107–18–6	2-Propen-1-ol	1	A, C6, E2.	13
108–19–0	Imidodicarbonic diamide	1	A, B, C1, D, E1, E2, F1.	13
110–44–1	2,4-Hexadienoic acid, (E,E)-	1	A, C4, F2.	13
112–52–7	Dodecane, 1-chloro-	1	A, B, C3, D, E1, E2, F1	13
118–82–1	Phenol, 4,4'-methylenebis[2,6-bis(1,1-dimethylethyl)-	1	A, B, D, E1, E2, F2.	13

TABLE 2—CHEMICAL SUBSTANCES AND APPLICABLE TESTING REQUIREMENTS—Continued

CAS No.	Chemical name	Chemical class	Required tests (See Key)	Deadline for final report (Months from effective date of final rule)
131–57–7	Methanone, (2-hydroxy-4-methoxyphenyl)phenyl-	1	A, C1, D, E2, F2.	13
149–44–0	Methanesulfinic acid, hydroxy-, monosodium salt	1	A, B, C1, E2, F1.	13
409–02–9	Heptenone, methyl-	2	A, B, C1, D, E1, E2, F1.	13
594–42–3	Methanesulfenyl chloride, trichloro-	1	A, B, C1, E1, E2, F2.	13
624–83–9	Methane, isocyanato-	1	A, C1.	13
732–26–3	Phenol, 2,4,6-tris(1,1-dimethylethyl)-	1	A, C2, E1, E2, F1.	13
870–72–4	Methanesulfonic acid, hydroxy-, monosodium salt	1	A, B, C1, E1, E2, F1.	13
1324–76–1	Benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-	2	A, B, C1, D, E1, E2, F1.	13
1333–39–7	Benzenesulfonic acid, hydroxy-	2	A, B, C1, E1, E2, F1.	13
2941–64–2	Carbonochloridothioic acid, S-ethyl ester	1	A, B, C1, E2, F1.	13
3622–84–2	Benzenesulfonamide, N-butyl-	1	A, B, C1, E1, E2, F2.	13
6473–13–8	2-Naphthalenesulfonic acid, 6-[(2,4-diaminophenyl)azo]-3-[[4-[[4-[[7-[(2,4-diaminophenyl)azo]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]phenyl]amino]-3-sulfophenyl]azo]-4-hydroxy-, trisodium salt	1	A, B, C1, D, E1, E2, F1.	13
8005–02–5	C.I. Solvent Black 7	2	A, B, C1, D, E2, F1.	13
28188–24–1	Octadecanoic acid, 2-(hydroxymethyl)-2-[[(1-oxooctadecyl)oxy]methyl]-1,3-propanediyl ester	1	A, B, C1, D, E1, E2, F1.	13
65996–78–3	Light oil, coal, coke-oven	2	A, B, C1, D, E1, E2, F1.	13
68153–30–0	Quaternary ammonium compounds, benzylbis(hydrogenated tallow alkyl)methyl, salts with bentonite	2	A, B, C1, D, E1, E2, F1.	13
68611–64–3	Urea, reaction products with formaldehyde	2	A, B, C1, D, E1, E2, F1.	13
68953–58–2	Quaternary ammonium compounds, bis(hydrogenated tallow alkyl)dimethyl, salts with bentonite	2	A, B, C1, D, E1, E2, F1.	13

KEY TO THE TEST REQUIREMENTS FOR THE CHEMICALS LISTED IN TABLE 2 AND SPECIFIED BY ALPHANUMERIC SYMBOLS (E.G., A OR C5)

Testing category	Test symbol	Test requirements and references[1]	Special conditions
Physical/Chemical Properties	A	1. Melting Point: ASTM E 324 (capillary tube) 2. Boiling Point: ASTM E 1719 (ebulliometry)	*n*-Octanol/Water Partition Coefficient: Which method is required, if any, is determined by the test substance's estimated[2] *n*-octanol/water partition coefficient (log 10 basis). Test sponsors are required to provide in the final study report the underlying rationale for the method selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7.
		3. Vapor Pressure: ASTM E 1782 (thermal analysis)	
		4. *n*-Octanol/Water Partition Coefficient: (See Special Conditions for the *n*-Octanol/Water Partition Coefficient test requirement and select the appropriate method to use, if any, from those listed below.) Method A: 40 CFR 799.6755 (shake flask) Method B: ASTM E 1147 (liquid chromatography) Method C: 40 CFR 799.6756 (generator column)	log K_{ow} <0: no testing required. log K_{ow} range 0–1: Method A or B. log K_{ow} range 1–4: Method A or B or C. log K_{ow} range 4–6: Method B or C. log K_{ow} >6: Method C.

KEY TO THE TEST REQUIREMENTS FOR THE CHEMICALS LISTED IN TABLE 2 AND SPECIFIED BY ALPHANUMERIC SYMBOLS (E.G., A OR C5)—Continued

Testing category	Test symbol	Test requirements and references[1]	Special conditions
		5. Water Solubility: (See Special Conditions for the Water Solubility test requirement and select the appropriate method to use, if any, from those listed below.) Method A: ASTM E 1148 (shake flask) Method B: 40 CFR 799.6784 (shake flask) Method C: 40 CFR 799.6784 (column elution) Method D: 40 CFR 799.6786 (generator column)	*Water Solubility*: Which method is required, if any, is determined by the test substance's estimated[3] water solubility. Test sponsors are required to provide in the final study report the underlying rationale for the method selected. In order to ensure environmental relevance, EPA highly recommends that the selected study be conducted at pH 7. >5,000 mg/L: Method A or B. < 5,000 mg/L but > 10 mg/L: Method A, B, C, or D. <10 mg/L but > 0.001 mg/L: Method C or D. < 0.001 mg/L: no testing required.
Environmental Fate and Pathways—Inherent Biodegradation	B	For B, choose either of the following methods: 1. ASTM 1625 (semicontinuous activated sludge test) OR 2. ISO 9888 (Zahn-Wellens method)	None
Aquatic Toxicity	C1	For C1, Test Group 1 or Test Group 2 below must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C1*: 1. Acute Toxicity To Fish: ASTM E 729 2. Acute Toxicity To Daphnia: ASTM E 729 3. Toxicity To Plants (Algae): ASTM E 1218 *Test Group 2 for C1*: 1. Chronic Toxicity To Daphnia: ASTM E 1193 2. Toxicity To Plants (Algae): ASTM E 1218	The following are the Special Conditions for C1, C2, C3, C4, C5, and C7 testing; there are no Special Conditions for C6. log K_{ow} <4.2: Test Group 1 is required log K_{ow} ≥ 4.2: Test Group 2 is required Which test group is required is determined by the test substance's log K_{ow} as obtained under A.
	C2	For C2, Test Group 1 or Test Group 2 below must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C2*: 1. Acute Toxicity To Daphnia: ASTM E 729 2. Toxicity To Plants (Algae): ASTM E 1218 *Test Group 2 for C2*: 1. Chronic Toxicity To Daphnia: ASTM E 1193 2. Toxicity To Plants (Algae): ASTM E 1218	
	C3	For C3, Test Group 1 or Test Group 2 below must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C3*: 1. Acute Toxicity To Fish: ASTM E 729 2. Toxicity To Plants (Algae): ASTM E 1218 *Test Group 2 for C3*: 1. Chronic Toxicity To Daphnia: ASTM E 1193 2. Toxicity To Plants (Algae): ASTM E 1218	

KEY TO THE TEST REQUIREMENTS FOR THE CHEMICALS LISTED IN TABLE 2 AND SPECIFIED BY ALPHANUMERIC SYMBOLS (E.G., A OR C5)—Continued

Testing category	Test symbol	Test requirements and references[1]	Special conditions
	C4	For C4, Test Group 1 or Test Group 2 below must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C4*: 1. Acute Toxicity To Fish: ASTM E 729 2. Acute Toxicity To Daphnia: ASTM E 729 *Test Group 2 for C4*: 1. Chronic Toxicity To Daphnia: ASTM E 1193	
	C5	For C5, Test Group 1 or Test Group 2 below must be used to fulfill the testing requirements—See Special Conditions. *Test Group 1 for C5*: 1. Acute Toxicity To Daphnia: ASTM E 729 *Test Group 2 for C5*: 1. Chronic Toxicity To Daphnia: ASTM E 1193	
	C6	Toxicity To Plants (Algae): ASTM E 1218	
	C7	For C7, Test Group 1 or Test Group 2 below must be used to fulfill the testing requirements See Special Conditions. *Test Group 1 for C7*: 1. Acute Toxicity To Fish: ASTM E 729 *Test Group 2 for C7*: 1. Chronic Toxicity To Daphnia: ASTM E 1193	
Mammalian Toxicity—Acute	D	See Special Conditions for this test requirement and select the required method to use from those listed below. *Method A*: Acute Inhalation Toxicity (rat): 40 CFR 799.9130 *Method B*: EITHER: 1. Acute (Up/Down) Oral Toxicity (rat): ASTM E 1163 OR 2. Acute (Up/Down) Oral Toxicity (rat): 40 CFR 799.9110(d)(1)(i)(A)	Which testing method is required is determined by the test substance's physical state at room temperature (25oC). For those test substances that are gases at room temperature, Method A is required; otherwise, use of either of the two methods listed under Method B is required. In Method B, 40 CFR 799.9110(d)(1)(i)(A) refers to the OECD 425 Up/Down test methodology. NOTE: In the case of a potentially explosive test substance, care must be taken to avoid the generation of explosive concentrations.
Mammalian Toxicity—Genotoxicity	E1	Bacterial Reverse Mutation Test (*in vitro*): 40 CFR 799.9510	None
	E2	Conduct any *one* of the following three tests for chromosomal damage: *In vitro* Mammalian Chromosome Aberration Test: (40 CFR 799.9537) OR *In vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: Mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9538 OR *In vivo* Mammalian Erythrocyte Micronucleus Test [sampled in bone marrow] (rodents: Mouse (preferred species), rat, or Chinese hamster): 40 CFR 799.9539	Persons required to conduct testing for chromosomal damage are encouraged to use the *in vitro* Mammalian Chromosome Aberration Test to generate the needed data unless known chemical properties (e.g., physical/chemical properties, chemical class characteristics) preclude its use. A subject person who uses one of the *in vivo* methods instead of the *in vitro* method to address this end-point must submit to EPA a rationale for conducting that alternate test in the final study report.

KEY TO THE TEST REQUIREMENTS FOR THE CHEMICALS LISTED IN TABLE 2 AND SPECIFIED BY ALPHANUMERIC SYMBOLS (E.G., A OR C5)—Continued

Testing category	Test symbol	Test requirements and references[1]	Special conditions
Mammalian Toxicity—Repeated Dose/Reproduction/Developmental	F1	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test: (40 CFR 799.9365) OR Reproduction/Developmental Toxicity Screening Test: (40 CFR 799.9355) (Identified as F2 below) AND Repeated Dose 28-Day Oral Toxicity Study in rodents: 40 CFR 799.9305) (Identified as F3 below)	EPA recommends use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test. However, EPA does recognize that there may be valid reasons to test a particular chemical using both F2 and F3 to fill Mammalian Toxicity Repeated Dose/Reproduction/Developmental data needs. A subject person who uses the combination of F2 and F3 in place of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test must submit to EPA a rationale for conducting these alternate tests in the final study reports.
	F2	Reproduction/Developmental Toxicity Screening Test: (40 CFR 799.9355)	
	F3	Repeated Dose 28-Day Oral Toxicity Study in rodents: (40 CFR 799.9305)	

[1] Copies of the ASTM and ISO standards referenced in this proposed rule have been placed in the public version of the official record for this rulemaking. For the final rule, EPA intends to seek approval from the Director of the Federal Register for the incorporation by reference of the ASTM and ISO standards used in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

[2] EPA recommends, but does not require, that log K_{ow} be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating log K_{ow} is described in Atom/Fragment Contribution Method for Estimating Octanol-Water Partition Coefficients (Ref. 1).

[3] EPA recommends, but does not require, that water solubility be quantitatively estimated prior to initiating this study. One method, among many similar methods, for estimating water solubility is described in Improved Method for Estimating Water Solubility From Octanol/Water Partition Coefficient (Ref. 2).

(k) *Effective date.* (1) The effective date of this section is [*insert effective date of the final rule.*]

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of this section. You can apply for a modification under 40 CFR 790.55.

[FR Doc. 00–32497 Filed 12–22–00]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42213; AR–201; FRL–6754–6]

Data Collection and Development on High Production Volume (HPV) Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Although HPV chemicals are produced or imported in large quantities in the United States, there is little or no publicly available information regarding the potential hazards associated with most HPV chemicals. In order to obtain such information, EPA has established a data collection and development program for existing HPV chemicals. Through the HPV Initiative, which includes the voluntary HPV Challenge Program, certain international efforts, and potential rulemaking under the Toxic Substances Control Act (TSCA), basic screening level hazard data necessary to provide critical information about the environmental fate and potential hazards associated with HPV chemicals will be collected or, where necessary, developed. A primary component of this HPV Initiative is the voluntary HPV Challenge Program, which was created in cooperation with industry, environmental groups, and other interested parties, and is designed to assemble basic screening level test data on the potential hazards of HPV chemicals while avoiding unnecessary or duplicative testing. Data needs which remain unmet in the voluntary HPV Challenge Program, may be addressed through the international efforts or rulemaking. Data collected and/or developed under the HPV Initiative will provide critical basic information about the environmental fate and potential hazards associated with these chemicals which, when combined with information about exposure and uses, will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate follow up action. EPA has taken steps, as described in this document, to consider animal welfare and to provide instructions on ways to reduce or in some cases eliminate animal testing, while at the same time ensuring that the public health is protected.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCAHotline@epa.gov.

For technical information contact: Barbara Leczynski, Existing Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3945; fax number: (202) 260–1096; e-mail address: chem.rtk@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Document Apply to Me?

This document applies to the public in general and, in particular, those companies that manufacture (defined by statute to include import) industrial chemicals for which the aggregate U.S. production/importation volumes meet or exceed 1 million pounds per year. Those chemicals that meet these criteria are referred to as HPV chemicals. The HPV chemicals that are included in the voluntary HPV Challenge Program are listed in *ChemRTK HPV Challenge Program Chemical List* (Ref. 1). 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 Additional Information, Including Copies of this Document and Support Documents?

1. *Electronically*. You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

You may also access additional information about the Chemical Right-to-Know Program at http://www.epa.gov/chemrtk/ or about the TSCA testing program at http://www.epa.gov/opptintr/chemtest/sct4main.htm.

For your convenience, EPA has also provided some non-EPA internet addresses. In doing so, the Agency has verified the accuracy of these addresses at the time of signature. However, since EPA is not responsible for these non-EPA sites, the Agency does not exercise any control over these addresses. A paper copy of any document referenced in this way has been included in the public version of the official record for this document as described in Unit I.B.2.

2. *In person*. The official record for this document, which includes the public version, has been established under docket control number OPPTS–42213 and administrative record number AR–201. This official record consists of the documents referenced in this document, as well as any comments received, and other information related to this document, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as all documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted, is available for inspection in the TSCA Nonconfidential Information Center, Northeast Mall, Rm. NE B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open to the public from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. Can I Submit Comments Under the Voluntary HPV Challenge Program?

Yes. Although this document does not establish a specific comment period, you may submit comments at various times throughout the voluntary HPV Challenge Program. This document describes the various opportunities that are available for you to submit comments under the voluntary HPV Challenge Program. In addition, specific information about the voluntary HPV Challenge Program and the opportunities for you to submit comments is provided on the Agency's web site identified in Unit I.B.1.

In general, you may submit comments under the voluntary HPV Challenge Program via the following methods: The mail, in person, or electronically. To ensure proper receipt by EPA, please identify the docket control number OPPTS–42213 and the administrative record number AR–201 in the subject line on the first page of your response. In addition, Challenge Program sponsors should reference the unique seven-digit registration number they were assigned

when the Agency verified the information presented in their original commitment letters. Sponsors who need to confirm their registration numbers should call (202) 260–6199.

1. *By mail.* Submit your comments to: Carol Browner, Administrator, Environmental Protection Agency, P.O. Box 1473, Merrifield, VA 22116, Attention: Chemical Right-to-Know Program.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. 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) 260–7093.

3. *Electronically.* Submit your comments electronically by e-mail to oppt.ncic@epa.gov, hpv.crtk@epa.gov, and chem.rtk@epa.gov (please be sure to send your e-mail to all three addresses). (Note: To submit comments on a test plan, please go to http://www.epa.gov/chemrtk/viewsrch.htm.) Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard computer disks in WordPerfect 6.1/8 or ASCII file format, mailed or delivered to the address identified in Unit I.C. All comments in electronic form must be identified by docket control number OPPTS–42213 and administrative record number AR–201. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Comments that I Want to Submit to the Agency?

Considering that one of the goals of the HPV Initiative is to provide information needed to meet the public's right-to-know about the hazards that may be posed by exposure to HPV chemicals, EPA encourages companies and other interested parties not to make CBI claims in submitted comments. If you do choose to submit CBI in your comments, adhere to the following procedures. Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Why is EPA Pursuing Hazard Information on HPV Chemicals?

EPA found that, of those non-polymeric organic substances produced or imported in amounts equal to or greater than 1 million pounds per year based on 1990 reporting for EPA's Inventory Update Rule (IUR) (40 CFR part 710), only 7% have a full set of publicly available internationally recognized basic health and environmental fate/effects screening test data (Ref. 2). Of the over 2,800 HPV chemicals based on 1990 data, 43% have no publicly available basic hazard data. For the remaining chemicals, limited amounts of the data are available. This lack of available hazard data compromises EPA's and others' ability to determine whether these HPV chemicals pose potential risks to human health or the environment, as well as the public's right-to-know about the hazards of chemicals that are found in their environment, their homes, their workplaces, and the products that they buy. It is EPA's intent to close this knowledge gap. EPA believes that for most of the HPV chemicals, insufficient data are readily available to reasonably determine or predict the effects on health or the environment from the manufacture (including importation), distribution in commerce, processing, use, or disposal of the chemicals, or any combination of these activities. EPA has concluded that a program to collect and, where needed, develop basic screening level toxicity data is necessary and appropriate to provide information in order to assess the potential hazards/risks that may be posed by exposure to HPV chemicals.

On April 21, 1998, a national initiative, known as the ''Chemical Right-To-Know'' Program, was announced in order to empower citizens with knowledge about the most widespread chemicals in commerce—chemicals that people may be exposed to in the places where they live, work, study, and play. EPA's Chemical Right-To-Know (ChemRTK) initiative is being designed in such a way as to make certain basic information about HPV chemicals available to the public.

EPA plans to make available to the public the summarized data obtained on HPV chemicals. In addition, any subsequent information that EPA receives will be shared with the public, other Federal agencies, and any other interested parties. As appropriate, this information will be used to ensure a scientifically sound basis for risk assessment/management actions. This initiative will serve to further the Agency's goal of identifying and controlling human and environmental risks as well as providing greater protection and knowledge to the public. In addition, EPA and other parties agreed to work with other nations and international groups to ensure commensurate increases in the pace of complementary voluntary international data collection and development efforts on HPV chemicals.

This ChemRTK initiative is consistent with the U.S. policy as presented in section 2(b)(1) of TSCA, 15 U.S.C. 2601(b)(1), which states that it is the policy of the United States that ''adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.''

B. What do we Currently Know about the Basic Health and Environmental Hazards of HPV Chemicals?

The information relevant to understanding the basic health and environmental hazards of HPV chemicals is derived from a battery of tests agreed upon by the international community as appropriate for screening international HPV chemical substances for toxicity. Six basic testing endpoints have been adopted by the Organization for Economic Cooperation and Development (OECD) as the minimum required to screen international HPV chemical substances for toxicity (Ref. 3). The agreed-upon testing endpoints, known as the OECD's ''Screening Information Data Set'' (SIDS) include: Acute toxicity; repeat dose toxicity; developmental and reproductive toxicity; mutagenicity (gene mutation and chromosomal aberration/damage assays); ecotoxicity (studies in fish, invertebrates, and algae); and environmental fate (including physical/chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility], photolysis, hydrolysis, transport/distribution, and

biodegradation). As conceived by the OECD, the ''SIDS battery'' of tests can be used by governments to conduct an initial assessment of the hazards and risks posed by HPV chemical substances and prioritize HPV chemicals to identify those in need of additional, more in-depth testing and assessment.

A need for basic screening level data on HPV chemicals has been identified and supported by various data availability studies conducted by EPA and others. *Toxic Ignorance*, which was prepared by Environmental Defense (formerly the Environmental Defense Fund), raised a variety of concerns about the untested chemicals that are produced and/or imported into the United States (Ref. 4). Environmental Defense found that baseline data on health effects were not publicly available for a selected set of 100 HPV chemicals.

In April 1998, EPA completed a study entitled *Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals?* (Ref. 2) that evaluated the ''public availability'' of health hazard data and environmental hazard/fate data on HPV chemicals. EPA's study found major gaps in the basic information on HPV chemicals that is readily available to EPA and to the public, and reinforced the need for governmental leadership on this issue. The study analyzed the availability of test data for 2,863 HPV chemicals (defined as those organic substances produced in or imported into the United States in amounts equal to or greater than 1 million pounds per year based on 1990 reporting for EPA's IUR). EPA searched for publicly available data on these chemicals and learned that most of them may never have been tested for any or most of the SIDS endpoints. The search strategy used a total of 11 publicly accessible databases in its analysis. Details of the search strategy can be found in the report (Ref. 2). The major conclusions of EPA's study are described in Unit II.A.

In June 1998, the American Chemistry Council (ACC, formerly the Chemical Manufacturers Association (CMA)) issued a report (Ref. 5) regarding public data availability for HPV chemicals based on a study conducted with 11 main data sources, including data sources other than those searched by EPA for its study. The ACC report, entitled *Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals* (Ref. 5), reached conclusions similar to EPA, that is, that only limited toxicity and environmental fate testing data appear to exist in the public domain for many HPV substances. Details of the search strategy used can be found in the ACC report (Ref. 5).

EPA recognizes that additional data may exist beyond those identified through either the EPA, ACC, or Environmental Defense studies. To the extent that additional relevant data are known to exist, EPA is particularly interested in receiving this information as part of the HPV Initiative, including, where possible, a full citation for publications and ''robust'' (i.e., detailed) summaries of pertinent published and unpublished studies. Guidance on the preparation of robust summaries is available on EPA's ChemRTK web site (Ref. 6). In developing the testing requirements for chemicals contained in the HPV Initiative, EPA is utilizing information and sources in EPA's study, the *Chemical Hazard Data Availability Study* (Ref. 2), and ACC's report, i.e, *Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals* (Ref. 5), to determine whether screening level data for characterizing the hazards of these HPV chemicals are publicly available. Under the voluntary HPV Challenge Program, EPA is utilizing the 120 day comment period for test plans to allow for further identification of existing data. If no data are available for a SIDS testing endpoint, there cannot be sufficient data to characterize the potential hazards/risks associated with the chemical. As the Agency found in its study, insufficient data are available to characterize many of the HPV chemicals with respect to the internationally accepted SIDS testing endpoints, including acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, mutagenicity (gene mutation and chromosomal aberration assays), ecotoxicity (tests in fish, Daphnia, and algae), and for environmental fate (including five tests for physical chemical properties [melting point, boiling point, vapor pressure, *n*-octanol/water partition coefficient, and water solubility], and biodegradation). As a result, EPA and others cannot reasonably determine or predict the human health and environmental effects resulting from manufacture, processing, and use of these chemical substances.

EPA solicits comment concerning the availability of SIDS data on the chemicals included in the HPV Initiative and encourages industry and other interested parties to identify and provide any additional existing data which are relevant to the hazard characterization to avoid any unnecessary or duplicative testing. Furthermore, anyone may provide any relevant information to the Agency that indicates that certain endpoints need not be tested. If EPA judges the available data to be adequate, the data gap identified in the HPV Initiative will be considered to be filled. To the extent that additional data relevant to the HPV chemicals are known to exist, EPA is interested in receiving this information under the voluntary HPV Challenge Program, including a full citation for publications and full copies of unpublished studies. Although the Agency encourages anyone with such information to submit it to EPA during the early stages of this initiative in order to avoid any unnecessary testing, such submissions may be made at any time. Commenters are also encouraged to prepare a robust summary (Ref. 6) for each study to facilitate EPA's review of the full-study report or publication. It is important to note that EPA does not intend to include any chemicals which are Generally Recognized as Safe (GRAS) for a particular use by the Food and Drug Administration (FDA) in its initial TSCA section 4 HPV SIDS rulemaking for certain HPV chemicals. However, such chemicals may be included in a future TSCA section 4 HPV SIDS rulemaking where SIDS data needs remain unmet.

C. Why is EPA Focusing on HPV Chemicals?

It is generally accepted that chemicals having a high level of production have an increased potential for exposure in comparison to low production volume chemicals. The HPV focus of the HPV Initiative is derived from the experience gained over the past 15 years by EPA and the OECD. The OECD is an intergovernmental organization consisting of 29 developed countries, including the United States, with advanced worldwide market economies. The OECD is helping coordinate a cooperative, international effort to secure basic toxicity information on HPV chemicals in use worldwide.

The OECD, after considering a variety of priority-setting approaches, concluded in 1990 that consideration of HPV status provided a useful and effective organizing focus for a voluntary testing and assessment effort to screen and thereby identify priorities among international HPV chemicals.

III. HPV Chemical Data Collection and Development Initiative

A. What is the HPV Initiative?

Through the HPV Initiative, which includes the voluntary HPV Challenge Program, certain international efforts, and potential rulemaking under TSCA,

basic screening level hazard data necessary to provide critical information about the environmental fate and potential hazards associated with HPV chemicals will be collected or, where necessary, developed. These data, when combined with information about exposure and uses, will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate follow up. Created in cooperation with industry, environmental groups, and other interested parties, a primary component of this initiative is the voluntary HPV Challenge Program. To fill any data gaps not addressed as part of the voluntary HPV Challenge Program, EPA is continuing to participate in the international efforts coordinated by the OECD to secure basic hazard information on HPV chemicals in use worldwide, including some of those on the HPV chemicals list. The voluntary HPV Challenge Program and the international efforts will be supplemented by rulemaking under TSCA, which the Agency intends to use to collect or develop data on those HPV chemical substances for which data needs remain unmet in the voluntary HPV Challenge Program, or as part of the international efforts.

Although an important component of the HPV Initiative is the potential for TSCA rulemaking to address any data needs identified that are not met by either the voluntary HPV Challenge Program or international efforts, the focus of this document is the voluntary HPV Challenge Program. The specific requirements for any associated TSCA section 4 HPV SIDS rulemaking will be addressed in that rulemaking.

The voluntary HPV Challenge Program and any associated rulemaking, will generally be carried out in a manner consistent with the OECD HPV SIDS Program to ensure that the data and information generated can be contributed to the international efforts and, conversely, that international SIDS testing and assessments can be used to fulfill the data gaps identified as part of the voluntary HPV Challenge Program or in related TSCA section 4 HPV SIDS rulemaking thus avoiding unnecessary or duplicative testing and its associated costs. The elements of this strategy and the overall approach that EPA is using to address data collection needs for HPV chemicals are discussed in this document, along with the components of the voluntary HPV Challenge Program.

B. Which Industrial Chemicals are Covered in this HPV Initiative?

1. *How were chemicals identified for inclusion in the HPV Initiative?* The industrial chemicals covered by the HPV Initiative are those non-polymeric organic chemicals that are produced in, or imported into, the United States in amounts equal to, or greater than, 1 million pounds per year according to the 1990 IUR. This list of HPV chemicals can be viewed at EPA's ChemRTK web site (Ref. 1).

2. *How will chemicals that are solely produced as closed system intermediates be included in the HPV Initiative?* Chemicals which meet the requirements for ''closed system intermediates'' as described in an available guidance document (Ref. 7 and Unit IV.B.1.) on this topic, will be eligible for a reduced SIDS testing battery. For further information you should check EPA's ChemRTK web site (Ref. 7) to obtain a copy of this document. EPA's guidance is based on section 3.6 of the *Screening Information Data Set (SIDS) Manual* which concerns ''intermediates contained in closed systems.'' The requirements for classification as a closed system intermediate must be met by all U.S. manufacturers (including importers) for a chemical to be eligible for a reduced level of testing. Under the voluntary HPV Challenge Program, EPA asked that participants in that program observe certain principles laid out in an October 14, 1999, letter (Ref. 8). One principle is that participants shall not develop sub-chronic or reproductive toxicity data for the HPV chemicals that are solely closed system intermediates as defined by the OECD/SIDS guidelines, and that testing of closed system intermediates shall be deferred until 2003.

3. *Are HPV Chemicals that are no longer produced or imported included in this HPV Initiative?* EPA previously issued guidance for verifying that a chemical is ''no longer HPV'' (based on national aggregate production/importation volume) and is not likely to become HPV in the future. This guidance document can be found on the Agency's ChemRTK web site (Ref. 9).

For EPA to conclude that a ''no longer HPV'' claim is valid, a chemical cannot be produced by any company or group of companies at a total aggregate production volume of 1 million pounds per year or greater, and the chemical must be shown as not likely to become an HPV chemical in the future, based on business plans, past production patterns, and credible trends in the market. These conditions are intended to satisfy the terms of the voluntary HPV Challenge Program Framework Document, as quoted on the EPA Chemical Right-to-Know web site: ''Substances that sponsors verify are no longer ''HPV'' and are not likely to become HPV again will not require testing and will be removed from the list.''

In accordance with the policy announced in the guidance document (Ref. 9), EPA has set the minimum criteria for identifying chemicals as no longer HPV as a total annual aggregate production volume below 1 million pounds for the last two IUR reporting cycles (i.e., 1994 and 1998).

Written documentation demonstrating that the current aggregate U.S. production/importation volume of a chemical was substantially less than 1 million pounds per year and was likely to remain so was required as described in the guidance document (Ref. 9). This justification had to have been provided for all U.S. producers and importers of the chemical. Once it has been established via specific requests received before the end of the voluntary HPV Challenge Program sign up period that a chemical is ''no longer HPV'' and is not likely to become an HPV chemical again, EPA would remove the chemical from the HPV Initiative.

4. *How will EPA handle HPV chemicals that do not warrant any further SIDS testing?* As of November 9, 2000, EPA has determined that for 44 HPV chemicals, SIDS level testing is not warranted. These chemicals are identified on the Agency's web site at http://www.epa.gov/chemrtk/hpv_1990.htm. EPA's preliminary review of these chemicals indicates that testing using the SIDS base set would not further our understanding of the chemicals' properties. These chemicals are identified on the voluntary HPV Challenge Program Chemical List (Ref. 1) with an indicator value of ''1.'' EPA has invited, and continues to invite, industry and other interested parties to identify additional chemicals that might be appropriate for this designation. This identification process would take the form of a review of the available information which shows that, for a given chemical, conducting the SIDS battery of tests would not be of value in furthering an understanding of the chemical's properties including physical/chemical, environmental fate, environmental toxicity, and mammalian toxicity endpoints. Alternatively, for well-tested chemicals, companies are encouraged to provide the information in a ''no test'' test plan along with robust summaries of the existing data which indicate that no testing is required. In addition, as part of EPA's

efforts under the OECD HPV SIDS Program, the Agency will be working with other OECD member countries to identify chemicals for which adequate data may have been produced in the context of foreign regulatory or testing regimes.

C. What Information is Being Collected on HPV Chemicals?

The OECD member countries reached consensus in 1990 on a set of basic screening-level tests deemed needed for all international HPV chemicals. This OECD understanding was captured in a formal 1991 OECD decision (Ref. 10) with which the United States concurred. This decision resulted in the OECD HPV SIDS Program, which is part of the OECD overall program on existing chemicals. The OECD HPV SIDS review process includes information on the identity of each chemical, its uses, sources and extent of exposure; physical and chemical properties; environmental fate; and certain limited toxicity data for humans and the environment. The SIDS data set is not intended to describe a chemical thoroughly, but rather is intended to provide enough information to support an initial (or screening level) assessment and to assign a priority for further work, if necessary. To date, the OECD has initiated or completed work on over 350 HPV chemicals. The OECD HPV SIDS Program seeks the development of test data, if such data are not already available, related to six health and environmental effects endpoints for international HPV chemicals (see Unit II.B.). The SIDS test guidelines are regarded as the minimum data set required to make an informed preliminary judgment about the hazards of a given HPV chemical.

EPA is implementing the HPV Initiative as part of its domestic industrial chemical screening efforts, in a manner that is consistent with OECD efforts. The information to be gathered under EPA's HPV Initiative comes from the same battery of tests agreed upon by the OECD member countries as being appropriate for screening international HPV chemicals for toxicity and environmental fate (Ref. 3). As conceived by the OECD, the SIDS data set can be used by governments and others worldwide to conduct an initial assessment of the hazards and risks posed by HPV chemical substances and to prioritize chemicals to identify those which are in need of additional, more in-depth testing and assessment, as well as those of lesser concern.

In addition to addressing the six basic screening endpoints, basic exposure information including general and occupational use patterns, and sources and levels of exposure, can be submitted under the HPV Initiative. The basic exposure information could be similar to that gathered as part of the OECD HPV SIDS Program. EPA encourages companies to provide exposure information to help place the hazard information into an appropriate context. Additional guidance may be made available at EPA's ChemRTK web site or through other means. In the interim, the voluntary HPV Challenge Program sponsors are encouraged to consult Annex 5 of the SIDS Manual (Ref. 3) which presents the exposure information recommendations developed by the Use and Exposure Information Project (UEIP) in the United States.

The OECD HPV SIDS Program includes the step of preparing an initial assessment of the SIDS data. Although this step is not formally included as an element in the voluntary HPV Challenge Program commitment, EPA encourages sponsors to prepare an initial assessment using the OECD's procedure for preparing a SIDS Initial Assessment Report (SIAR) that can be subsequently reviewed through the OECD HPV SIDS Program. The International Council of Chemical Associations' (ICCA) (Ref. 11) HPV Initiative, which complements the OECD's HPV SIDS Program, has committed to completing the full SIDS battery and preparing a SIAR.

D. What Role do Existing Data Play Under the HPV Initiative?

The HPV Initiative is designed to make maximum use of scientifically adequate existing test data and to avoid unnecessary, duplicative testing, thereby avoiding the excessive use of animal testing. Opportunities to comment on identified data gaps or submit any available adequate data are being provided during the voluntary HPV Challenge Program, in response to this document, and in response to any future proposed TSCA section 4 HPV SIDS rulemaking. EPA will also post the test plans submitted under the voluntary Program to allow for a 120 day review period before testing begins. It is also EPA's intention for the comment period in the associated TSCA section 4 HPV SIDS rulemaking to run for 120 days to allow for an equivalent review to occur before the rulemaking requirements are finalized. If at any time the Agency receives adequate existing data that fulfill a specific data gap, EPA will ensure that unnecessary testing is not conducted.

During the continued development of the HPV Initiative, EPA was encouraged to consider the relationship between existing data submitted under the HPV Initiative and reporting requirements under TSCA section 8(e). In response to these concerns, and as part of the Agency's efforts to encourage the fullest use of existing test data, EPA intends to consider existing data submissions under the voluntary HPV Challenge Program in the manner described in an October 14, 1999, letter to program participants (herein after ''the October 14, 1999, letter'') (Ref. 8). EPA's voluntary HPV Challenge Program guidance document on literature searches deals with part of this issue (Ref. 18). EPA believes that it is in the economic best interest of companies to identify and make publicly available all relevant existing data in order to reduce possible testing costs. To the extent that data exist which address any SIDS endpoints, the voluntary HPV Challenge Program is designed to ensure that sponsors identify and use such data to fill the related data gap(s) identified. In addition, EPA plans to post an announcement on its ChemRTK web site for incoming test plans. Many of these test plans will also be submitted electronically by sponsors to the ''US HPV Chemical Tracking System'' (Ref. 19).

Studies that have been conducted as specified in appropriate OECD test guidelines (as noted in the SIDS Manual (Ref. 3) or comparable EPA test guidelines (such as the OPPTS Harmonized Guidelines (http://www.epa.gov/opptsfrs/home/guidelin.htm)), and appropriate Good Laboratory Practice Standards (GLPS) (e.g., see the TSCA GLPS at 40 CFR part 792) consistently generate data adequate to fulfill the HPV Initiative needs. Data from studies that did not follow these procedures, however, may not be adequate.

As indicated in the October 14, 1999, letter to the voluntary HPV Challenge Program participants, in analyzing the adequacy of existing data, EPA encouraged participants to conduct a thoughtful and qualitative analysis rather than using a rote checklist approach. If EPA judges the available data to be adequate, the data gap identified in the HPV Initiative will be considered to be filled. In addition, participants in the voluntary HPV Challenge Program may conclude that certain endpoints need not be tested if, given the totality of what is known about a chemical, including human experience, there is sufficient existing data that is consistent with the Agency's guidance on determining the data adequacy. EPA has developed a guidance document on determining data adequacy which is available on EPA's ChemRTK web site (Ref. 12). This

guidance document is useful in assessing whether a study design used in generating existing data is sufficient to meet the needs of the HPV Initiative. For example, summary information, such as that taken from Material Safety Data Sheets (MSDSs), is not considered adequate to meet the needs of the HPV Initiative. Where relevant existing studies are identified, companies should provide information at the level of a ''robust summary'' for each study (Ref. 6).

E. How are Animal Welfare Issues Being Considered in this Initiative?

EPA recognizes the concerns that have been expressed about test procedures that require the use of animals. EPA is making every effort to ensure that as the HPV Initiative is implemented, unnecessary or duplicative testing is avoided and the use of animals is minimized. As a general matter, EPA does not require that tests on animals be conducted if an alternative scientifically validated method is found acceptable and practically available for use. Where testing must be conducted to develop adequate data, the Agency is committed to reducing the number of animals used for testing, to replacing test methods requiring animals with alternative test methods when acceptable alternative methods are available, and to refining existing test methods to optimize animal use when there is no substitute for animal testing. EPA believes that these reduction, replacement, and refinement objectives are all important elements in the overall consideration of alternative testing methods.

The governmental and non-governmental scientific community is working to design, validate, and employ new methods of toxicity testing that are more accurate, less costly, and that reduce the need to use live animals. Over the years, significant research has been pursued to develop and validate non-animal test methods. United States scientists in academia, government, and industry have participated in both domestic and international efforts to develop alternative, non-animal tests. As part of the enterprise, the National Institute for Environmental Health Science (NIEHS) established a Federal interagency committee, the Interagency Coordinating Committee on Validation of Alternative Methods (ICCVAM), to review the status and validation of toxicological test methods including those that are performed *in vitro*. EPA scientists have contributed significantly to this body of knowledge and are continuing to play a vital role by developing test methods for consideration. Many test methods have begun the process of validation and several have completed the steps leading to government-wide regulatory acceptance. Within the SIDS battery of tests, a number of *in vitro* genotoxicity tests, such as the Ames test for gene mutations in bacteria, have received uniform acceptance among regulatory agencies.

In addition, as part of the voluntary HPV Challenge Program, EPA asked participants in that Program to observe certain principles laid out in the October 14, 1999, letter. In its letter, EPA also indicated that it is the intention of the Agency that the HPV Initiative, including the voluntary HPV Challenge Program and any associated TSCA section 4 HPV SIDS rulemaking, proceed in a manner consistent with these principles and concerns. One of the principles in the October 14, 1999, letter to participants in the voluntary HPV Challenge Program, is that participants shall conduct a thoughtful, qualitative analysis of existing data before testing and that all animal testing on individual chemicals (as opposed to testing of categories of chemicals) under the voluntary HPV Challenge Program or under an associated rule(s) be deferred until November 2001 and that testing of chemicals solely manufactured as closed system intermediates be deferred until 2003.

Under the voluntary HPV Challenge Program structure, alternatives to help further reduce animal testing are available. For example, under the OECD HPV SIDS Program, some instances have been identified where, using chemical category approaches, less than a full set of SIDS data for every chemical in the category has been judged sufficient for screening purposes. In addition, the OECD HPV SIDS Program allows some use of structure activity relationships (SAR) analysis for individual chemicals. These strategies have the potential to reduce the time required to complete the program, the number of tests actually conducted, and the number of test animals needed. One of the principles in the October 14, 1999, letter is that participants in the voluntary HPV Challenge Program shall maximize the use of scientifically appropriate categories of related chemicals and SAR. Those who wish to use these alternative approaches should seriously consider handling the chemical voluntarily, by submitting a viable commitment as described in Unit IV.C. A viable commitment involving these alternate approaches can still be submitted during the regulatory phase of the HPV Initiative, but submission in the earlier phases of this initiative will best avoid unnecessary or duplicative testing.

F. How Will Data Collected on HPV Chemicals be Used?

The availability of hazard information on individual chemicals is fundamental to EPA's ability to accomplish its mission of environmental protection—risk assessment based on sound science, risk management, safeguarding children's health, transparency, expanding the public's right-to-know, and promoting the pollution prevention ethic. Activities to ensure the availability of basic hazard information on HPV chemicals are an integral part of meeting these objectives.

The approach to collection of information and conducting testing for identified needs on HPV chemicals is essentially identical in scope and applicability to the OECD HPV SIDS Program that has been internationally agreed upon by the 29 OECD member countries as providing the minimum data set needed to screen HPV chemicals and identify priorities for additional testing or assessment. While the SIDS data set does not fully measure a chemical's toxicity, it does provide a consistent minimum set of information that can be used to assess the relative hazards and risks of chemicals and to judge if additional testing or assessment is necessary or if a chemical may be considered of lesser concern. EPA and others will use the data obtained from this program to support the development of preliminary risk assessments for these HPV chemicals. Data in addition to those provided through the SIDS battery of tests may be needed to provide sufficient understanding to adequately assess the hazards and risks presented by some HPV chemicals. The data obtained on HPV chemicals under the HPV Initiative will be used to develop initial risk assessments that will allow EPA, other Federal agencies, the public, industry, and others to set priorities for further data collection/development and to identify chemicals of lesser concern. EPA has used data from previous data collection/development activities to support a variety of EPA and other Federal agency programs and actions including the development of water quality criteria, Toxics Release Inventory listings, chemical advisories, and reduction of workplace exposures.

G. Are There Other Voluntary Means to Address the Data Needs for HPV Chemicals?

Yes. These approaches include agreements to sponsor a HPV chemical under either the OECD HPV SIDS

Program, including sponsorship by OECD member countries beyond the United States, or the international HPV Initiative that is being organized by the ICCA. The OECD HPV SIDS Program has already been described in Unit II.B. The ICCA consists of representatives of chemical industry trade associations from the Argentina, Australia, Brazil, Canada, Europe, Japan, Mexico, New Zealand, and United States. The ICCA HPV Initiative calls for the testing and screening-level assessment of 1,000 ''high priority'' chemicals by the end of the year 2004. Most of the chemicals on the ICCA working list (Ref. 11) are also HPV chemicals. The ICCA testing/assessment work will be tied directly to that under the OECD HPV SIDS Program.

Sponsorship under either the OECD HPV SIDS Program or the ICCA HPV Initiative also includes the step of preparing the SIAR that provides a screening level assessment of chemical hazards and includes the reporting of limited exposure information on each HPV chemical. While the submission of exposure information and the preparation of the SIAR are not required elements under the voluntary HPV Challenge Program, EPA encourages industry sponsors to include these elements in their submissions under the voluntary HPV Challenge Program.

Any HPV chemicals that are handled under the OECD HPV SIDS Program or the ICCA HPV Initiative are considered by EPA to be ''sponsored'' and are not intended to be addressed in either the voluntary HPV Challenge Program or in any associated TSCA section 4 HPV SIDS rulemaking unless the international commitments are not met.

IV. Voluntary HPV Challenge Program

A. What is the Voluntary HPV Challenge Program?

As a part of the Chemical Right-to-Know initiative that was announced in April, 1998, EPA, in partnership with industry and environmental groups, announced a voluntary chemical data collection effort called the HPV Challenge Program. This program challenges industry to make publicly available a complete set of baseline health and environmental effects data (i.e., the SIDS data set) on HPV chemicals. Under the voluntary HPV Challenge Program, data are to be collected for each chemical on EPA's list of 1990 U.S. HPV chemicals. For the voluntary HPV Challenge Program, production volumes were derived from reporting under the 1990 IUR (Ref. 2). Testing will be necessary only when data do not exist or when existing data are not adequate.

The voluntary HPV Challenge Program will generally be carried out in a manner consistent with the OECD HPV SIDS Program to ensure that the data and information generated can be contributed to the international effort and, conversely, that international SIDS testing and assessments can be used to fulfill the data gaps identified as part of the HPV Initiative. (See also Refs. 1 and 3). Robust summaries of all of the data collected through the voluntary HPV Challenge Program will be made available by EPA to the public via the Internet in a timely manner, fulfilling the Agency's commitment to the public's right-to-know about chemical hazard information. The collected data will also be used to support efforts by EPA and others to evaluate and prioritize potential HPV chemical risks.

On October 9, 1998, the voluntary HPV Challenge Program was announced as a major new effort to close a gap in the public's right-to-know about possible risks related to HPV chemicals, prompting companies to make more informed and sensible decisions about chemical use. In this announcement, EPA was joined by the American Petroleum Institute (API), ACC, and Environmental Defense. The following three elements comprise the voluntary HPV Challenge Program:

1. *Fixed timetable and fixed list of chemicals.* Information gathering for the chemicals in the voluntary HPV Challenge Program will begin in 2000, with voluntary participants indicating commitments to provide the needed data for specific HPV chemicals. After relevant existing data have been identified, and EPA has judged their adequacy, participants will analyze the status of existing data fulfilling the SIDS data set and prepare a test plan which identifies needed testing based on this analysis. The test plans that are submitted by the voluntary participants will be posted for 120 days before any testing is initiated, providing an opportunity for interested parties to review and provide comments on the test plans, including technical comments regarding alterations to the proposed test plans. EPA will also review the test plans during the 120 day period, and will judge the adequacy of any existing data submitted with the test plan. In addition, as indicated in the October 14, 1999, letter, because validated non-animal tests for some SIDS endpoints may be available soon, participants in the voluntary HPV Challenge Program shall make the following revisions to the sequence of testing:

i. Testing of closed system intermediates (as described in Unit III.B.2.), which present less risk of exposure, shall be deferred until 2003; and

ii. Individual chemicals (i.e., those HPV chemicals not proposed for testing in a category) that require further testing on animals shall be deferred until November 2001.

The Agency also stated in the October 14, 1999, letter that these revisions should not be construed to suggest that delay or deferral is appropriate with respect to testing of scientifically appropriate categories of related chemicals.

If adequate existing data are submitted to EPA during the 120 day test plan review period under the voluntary HPV Challenge Program, or at any other time before testing has begun, such that EPA can determine that certain endpoints need not be tested, EPA will consider the specific data gap to be filled. As indicated previously, the Agency strongly encourages participants and any other interested parties to maximize the use of existing and scientifically adequate data by submitting such data in the early stages of the voluntary HPV Challenge Program so that the Program does not lead to the unnecessary use of animals in tests, and in order to minimize testing costs.

2. *Continuous public access to program status and results.* The public will be able to follow the status and progress of the chemicals in the voluntary HPV Challenge Program over time. This will be done by making information publicly available on the Internet. EPA and other parties have committed to help the public stay informed about progress in the voluntary HPV Challenge Program, with an emphasis on the status of data collection and testing efforts. EPA will have responsibility for making the data available in ways which are useful to diverse stakeholders.

3. *International sharing of testing responsibility.* A significant increase in the pace of information gathering and testing by chemical manufacturers in other countries is needed. To encourage this, EPA and other parties agreed to work with other nations and international groups to assure commensurate increases in the rate of these efforts on HPV chemicals.

B. What are the Goals and Principles for the Voluntary HPV Challenge Program?

1. *HPV Challenge Program goals.* The original goals established for the voluntary HPV Challenge Program are as follows:

i. Ensure full public availability of screening level data on HPV chemicals.

ii. Determine the adequacy of existing published and unpublished data to maximize its use for HPV chemicals in order to avoid repeat testing.

iii. Conduct needed testing to ensure the availability of screening level data on HPV chemicals.

EPA intends to make available to the public all the summarized data obtained on HPV chemicals. In addition, any subsequent information that EPA receives on HPV chemicals would be shared with the public, other Federal agencies, and any other interested parties.

The voluntary HPV Challenge Program is designed to make maximum use of scientifically adequate existing test data and to avoid unnecessary, duplicative testing, thereby avoiding the excessive use of animal testing. EPA encourages industry in general and other interested parties to identify and provide any additional adequate existing data about these HPV chemicals that are relevant to the hazard characterization. If at any time, the Agency receives adequate existing data that fulfill a specific data gap, EPA will ensure that unnecessary testing is not conducted.

The Agency will provide additional opportunities in the voluntary HPV Challenge Program to minimize the participant's burden where there is a need to develop new test data. These opportunities will include:

• Providing guidance for the use of SAR.

• Encouraging the maximum use of category approaches to handle groups of HPV chemicals with similar structures or functionalities.

• Identifying those HPV chemicals that do not need further screening level testing because additional testing will not enhance understanding of the potential health or environmental hazards/risks.

• Allowing reduced data sets for closed system intermediates.

• Allowing parties to identify and substantiate that certain chemicals are ''no longer HPV.''

Guidance documents have been developed for:

• *The Use of Structure Activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program* (Ref. 13).

• *Development of Chemical Categories in the HPV Challenge Program* (Ref. 14).

• *Determining the Adequacy of Existing Data* (Ref. 12).

• *Guidance for Testing Closed System Intermediates for the HPV Challenge Program* (Ref. 7).

• *Procedures for Removing Chemicals that are No Longer HPV and are not Likely to Become HPV Again from the HPV List* (Ref. 9).

2. *HPV Challenge Program principles.* EPA supplemented these goals in the October 14, 1999, letter to the companies participating in the voluntary HPV Challenge Program (Ref. 11), by asking the participants to observe several principles as they proceed with the program. These principles, which were developed after consultation with the organizations involved in developing the framework for the program, are intended to address concerns raised by certain animal advocacy organizations who wish to ensure that the HPV Initiative not lead to the excessive use of animals in tests and that attention is paid to existing information and alternative testing methods that do not require animals as test subjects. A copy of the October 14, 1999, letter is available on the ChemRTK web site (Ref. 8) and the public version of the official record for this document. As indicated in the letter, animal experiments should not be performed if another validated method—not involving the use of animals—is reasonably and practically available for use.

The October 14, 1999, letter to participants in the voluntary HPV Challenge Program, indicates that participants shall maximize the use of existing and scientifically adequate data to minimize further testing. EPA also stated that participants, in analyzing the adequacy of existing data, shall conduct a thoughtful and qualitative analysis rather than use a rote checklist approach. The letter also indicated that participants may conclude that there are sufficient data, given the totality of what is known about a chemical, including human experience, that certain endpoints need not be tested, and that participants shall maximize the use of SAR analysis and scientifically appropriate category approaches where feasible to address the data needs under the voluntary HPV Challenge Program. The letter further suggests that participants reviewing the adequacy of existing data for GRAS chemicals should specifically consider whether the information available makes it unnecessary to proceed with further testing involving animals.

As discussed in Unit IV.H., the letter states that participants in the voluntary HPV Challenge Program shall not conduct any terrestrial toxicity testing, and should generally not develop any new dermal toxicity data. In the letter and as discussed in Unit IV.F.5., EPA also encourages participants to use *in vitro* genetic toxicity testing to generate any needed genetic toxicity screening data, unless known chemical properties preclude its use.

In addition, as indicated in Unit IV.A., the letter states that individual chemicals (i.e., those HPV chemicals not proposed for testing in a category) that require further testing on animals shall be deferred until November 2001. The October 14, 1999, letter also indicates that testing of chemicals which are determined to meet the requirements of closed system intermediates shall be deferred until 2003, and that participants shall not develop sub-chronic or reproductive toxicity data for the HPV chemicals that are solely closed system intermediates, as defined by OECD/SIDS Guidelines.

As indicated in Unit IV.A., and discussed in more detail in Unit IV.C.2., the letter indicates that participating companies shall allow 120 days between the posting of test plans and the implementation of any testing plans.

C. What Does Participation in the Voluntary HPV Challenge Program Specifically Involve?

The voluntary HPV Challenge Program contained two phases during which sponsors made commitments. The first phase ended on March 15, 1999, and the second commitment phase ended on December 1, 1999. EPA is not currently planning to include in a TSCA section 4 HPV SIDS rulemaking any chemicals which were sponsored during these first two phases. EPA, however, intends to issue proposed TSCA section 4 HPV SIDS rulemaking to address unmet data needs for a portion of those chemicals which were not sponsored during these phases. Although the commitment phase of the voluntary HPV Challenge Program has ended, EPA can accept viable commitments to sponsor additional chemicals, even though the chemical may have been included in a proposed rule. Such commitments must be consistent with the ''viable commitment'' guidance available on the EPA's ChemRTK web site (Ref. 15). EPA does not intend to include a chemical covered by a viable commitment in a final TSCA section 4 HPV SIDS rulemaking, if, during the regulatory phase of the Program, the sponsor, in addition to agreeing to meeting all of the commitments that would have been necessary under the voluntary phase of the Program, provides the following additional information:

• Evidence that work is underway and proceeding in a timely manner.

• Data required to complete the SIDS battery are developed within the time frame set by EPA in the proposed rule.

• Robust summaries and full copies of all study reports from new studies and existing data are submitted to EPA in a timely manner.

Viable commitments can include categories and SAR consistent with the available guidance (Refs. 13 and 14). If a viable commitment is made and fulfilled, and the information is deemed adequate, EPA would not include that chemical in a multi-chemical HPV TSCA rulemaking for SIDS testing.

The following are expected to be provided by those wishing to participate as viable commitment sponsors in the voluntary HPV Challenge Program:

1. *A simple commitment letter*. The letter lists those HPV chemicals, including those included in categories, for which SIDS data will be supplied by the company(s). The letter identifies chemicals by CAS numbers and chemical names, proposes a ''start year'' for evaluation of each chemical, and identifies a technical contact (including name and phone number) with whom EPA can consult. Full commitments under the voluntary HPV Challenge Program must specify the names and CAS numbers of the chemicals to be sponsored, the year test plans will be submitted, and the name and other contact data for the technical person within the company who should be reached for more information. Commitment letters under the voluntary HPV Challenge Program were due to the Agency by December 1, 1999. EPA has posted the voluntary HPV Challenge Program commitment letters on its ChemRTK web site (http://www.epa.gov/chemrtk/smrestbl.htm). EPA anticipates that many companies will also submit their commitments electronically to a third-party Internet database, the ''US HPV Chemical Tracking System'' (Ref. 19), the initial development of which was supported by the ACC. For more information on making commitments to the voluntary HPV Challenge Program, consult the EPA web site (Ref. 15).

2. *Test plans*. Test plans submitted electronically at a pace that is specified in the commitment letter. The test plans and accompanying robust summaries will be submitted in the year indicated, will identify existing adequate test data on the SIDS endpoints, and will propose the tests deemed necessary to complete the SIDS testing requirements. For those chemicals for which the sponsor determines that existing test data are inadequate, needed tests included in the test plan will be conducted in accordance with OECD guidelines. The Agency anticipates that test plans will be submitted electronically to the ''US HPV Chemical Tracking System'' (Ref. 19). To ensure adequate public notice about the proposed test plan, a principle in the October 14, 1999, letter is that sponsors shall allow 120 days between the posting of a test plan and the implementation of any testing plans. EPA will post specific reference as to the public availability of the submitted test plan and robust summary information on the ChemRTK web site.

3. *A ''Robust Summary.''* A ''robust summary'' prepared in a standardized electronic format for each existing and new study. These summaries will be submitted to EPA and will be posted on the Agency's ChemRTK web site to ensure public access to detailed synopses of the studies for the SIDS endpoints. Guidance on the content/format of a ''robust'' summary can be found on the ChemRTK web site (Ref. 6).

D. How Will the Test Data Collected Under the Voluntary HPV Challenge Program be Managed?

Most information associated with the voluntary HPV Challenge Program will be submitted electronically in order to better allow both efficient analysis of the data by EPA and real-time public access to the collected data. Many submissions will be made electronically via the Internet. EPA intends to post the information on the Internet immediately following a simple quality control check to ensure the information is complete and in a form that can be uploaded on the web, and will note that it has not been critically reviewed for adequacy by EPA. The web posting will be updated following the Agency's review of the information. EPA will provide the public with more complete and detailed information via its web site (http://www.epa.gov/chemrtk/elecsubm.htm) about EPA's approach to data management as the voluntary HPV Challenge Program progresses.

E. How Many HPV Chemicals Have Been Sponsored Thus Far Under the Voluntary HPV Challenge Program?

As of November 9, 2000, EPA has received full or provisional commitments from 469 companies, individually or as part of 187 consortia (see Unit III.G.) to sponsor 2,155 chemicals under the voluntary HPV Challenge Program. A provisional commitment is one that is lacking one or more of the specific elements (e.g., name and phone number of a technical contact) required for a commitment to be considered a ''full'' commitment to sponsor a chemical under the voluntary HPV Challenge Program. EPA anticipates that most, if not all, of the provisional commitments received thus far will be upgraded to full commitments upon the Agency's receipt of the needed additional information. Continually updated information regarding the chemicals being sponsored under the voluntary HPV Challenge Program and the names of company sponsors and consortia can be found on EPA's ChemRTK web site (http://www.epa.gov/chemrtk/sumresp.htm), and on the ''US HPV Chemical Tracking System'' (Ref. 19).

F. What Specific Testing Endpoints are Called for in the Voluntary HPV Challenge Program?

Definitive test guidance can be found in the third edition of the *Screening Information Data Set Manual of the OECD Programme on the Co-operative Investigation of High Production Volume Chemicals*, published in July 1997 (Ref. 3). The SIDS basic screening-level endpoints are listed in section 2.2 of the SIDS Manual (Ref. 3). Because terrestrial toxicity testing will normally be considered to belong to the OECD post-SIDS tier, terrestrial toxicity testing (including avian toxicity) is not included in the voluntary HPV Challenge Program. The actual OECD test guideline for each of the SIDS tests can be found at http://www.oecd.org/ehs/guide/index.htm. The EPA-recommended screening level tests (with their OECD test guideline numbers) under the voluntary HPV Challenge Program are as follows:

1. *Physical/chemical property tests*:

• Melting Point (OECD 102).

• Boiling Point (OECD 103).

• Vapor Pressure (OECD 104).

• *n*-Octanol/Water Partition Coefficient Method (OECD 107 or OECD 117).

• Water Solubility (OECD 105 and OECD 112, if applicable).

2. *Environmental fate tests*:

• Photodegradation (determined via estimation, see guidance document on data adequacy at EPA's ChemRTK web site (Ref. 12).

• Hydrolysis-Stability in Water (OECD 111).

• Transport/Distribution (determined via modeling, see guidance document on data adequacy at EPA's ChemRTK web site (Ref. 12).

• Biodegradation (OECD 301 or OECD 302).

3. *Ecotoxicity tests*:

• Acute Toxicity to Fish (OECD 203).

• Acute Toxicity to Daphnia (OECD 202).

• Toxicity to Plants (Algae) (OECD 201).

• Chronic Toxicity to Daphnia, when appropriate (OECD 211).

4. *Mammalian toxicity—acute*:

• Acute Oral Toxicity Test (rat)(OECD 425).

• Acute Inhalation Toxicity Test (OECD 403).

For the ''Mammalian Toxicity—Acute'' endpoint, certain ''Special Conditions'' in the form of a chemical substance's physical/chemical properties or physical state should be considered in determining the appropriate test method that would be used from among those included for this endpoint. The OECD HPV SIDS Program recognizes that for most chemical substances, the oral route of administration will suffice for this endpoint. Under the voluntary HPV Challenge Program, for test substances that are gases at room temperature (25°C), the acute mammalian toxicity study should be conducted using inhalation as the exposure method. In the case of a potentially explosive test substance, care should be taken to avoid the generation of explosive concentrations. For all other chemicals (i.e., those that are either liquids or solids at room temperature), acute toxicity testing should be conducted via oral administration. Dermal toxicity testing is not included in the voluntary HPV Challenge Program.

5. *Mammalian toxicity—genotoxicity*:

i. Gene mutations.

• Bacterial Reverse Mutation Test: (OECD 471) [or use the *In Vitro* Mammalian Cell Mutation Test (OECD 476)].

ii. *Chromosomal damage*.

• *In Vitro* Mammalian Chromosomal Aberration Test (OECD 473) [or use either the *In Vivo* Mammalian Bone Marrow Chromosomal Aberration Test (rodents: mouse (preferred species), rat, or Chinese hamster) (OECD 475), or the *In Vivo* Mammalian Erythrocyte Micronucleus Test (sampled in bone marrow) (rodents: mouse (preferred species), rat, or Chinese hamster) (OECD 474)].

Persons who conduct testing for chromosomal damage are encouraged to use *in vitro* genetic toxicity testing (Mammalian Chromosomal Aberration Test) to generate needed genetic toxicity screening data, unless known chemical properties preclude its use. These could include, for example, physical properties or chemical class characteristics. With regard to such cases, test sponsors are asked to submit to EPA the rationale for conducting one of these alternative tests (OECD 474 or OECD 475) as part of the test plan. A primary focus of the voluntary HPV Challenge Program is to implement this program in a manner consistent with the OECD HPV SIDS Program and as part of a larger international activity with global involvement. This approach provides the same degree of flexibility as that which currently exists under the OECD HPV SIDS Program (Ref. 2).

6. *Mammalian toxicity—repeated dose/reproductive/developmental*:

• Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (OECD 422) [or use these two tests: Reproduction/Developmental Toxicity Screening Test (OECD 421) and Repeated Dose 28-Day Oral Toxicity Screen (OECD 407)].

For ''Mammalian Toxicity—Repeated Dose/Reproductive/Developmental,'' EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (OECD 422). EPA recognizes, however, that there may be reasons to test a particular chemical using both the Reproduction/Developmental Toxicity Screening Test (OECD 421) test guideline and the Repeated Dose 28-Day Oral Toxicity Screen (OECD 407) test guideline instead of the OECD 422 test guideline. With regard to such cases, test sponsors are asked to submit to EPA the rationale for conducting these alternative tests as part of the test plan.

Certain of the chemicals for which Mammalian Toxicity—Repeated Dose/Reproductive/Developmental data are needed may be used solely as ''closed system intermediates,'' as described in the EPA guidance document developed for the voluntary HPV Challenge Program (Ref. 7). As described in this guidance document, such chemicals may be eligible for a reduced testing battery which substitutes a developmental toxicity study for the SIDS requirement to address repeated dose, reproductive, and developmental toxicity. At the present time, EPA does not have sufficient information to know with any degree of certainty which if any of the chemicals that are included in the voluntary HPV Challenge Program are solely closed system intermediates as defined by the OECD/SIDS guidelines. Persons who believe that a chemical fully satisfies the terms outlined in the guidance document are encouraged to submit appropriate information which substantiates this belief. If, based on submitted information and other information available to EPA, the Agency believes that a chemical substance is considered likely to meet the requirements for use solely as a closed system intermediate, EPA will handle that chemical substance in accordance with the existing OECD procedures. A principle in the October 14, 1999, letter to participants in the voluntary HPV Challenge Program is that participants shall not develop sub-chronic or reproductive toxicity data for the HPV chemicals that are solely closed system intermediates as defined by the OECD/SIDS guidelines. Actual initiation of testing for chemicals that are solely closed system intermediates would be deferred until 2003, if adequate existing data are not otherwise available.

G. Are Acute Aquatic Toxicity Studies Always Needed Under the Voluntary HPV Challenge Program?

No, acute aquatic toxicity studies are not always needed under the voluntary HPV Challenge Program. For ''Ecotoxicity Tests,'' the OECD HPV SIDS Program recognizes that, for certain HPV chemicals, acute toxicity studies are of limited value in assessing the substances' aquatic toxicity. This issue arises when considering chemicals with higher *n*-octanol/water partition coefficients (log K_{ow} or log P) values. In such cases, toxicity is less likely to be observed over the duration of acute toxicity studies because of the reduced uptake and the extended amount of time required for such substances to reach toxic concentrations in the test organism. For such situations, the OECD HPV SIDS Program recommends use of chronic toxicity testing in Daphnia (OECD 211) in place of acute toxicity testing in fish (OECD 203) and Daphnia (OECD 202). For the purposes of the voluntary HPV Challenge Program, EPA recommends that the need for longer term tests be judged based on log K_{ow} and other factors. In general, EPA believes that for chemicals determined to have a log K_{ow} equal to or greater than 4.2 (which corresponds to a fish bioconcentration factor (BCF) of approximately 1,000), the following tests should be conducted: Chronic Toxicity to Daphnia study (in place of the acute toxicity tests in fish and Daphnia) and Toxicity to Plants (Algae; OECD 201). For chemicals determined to have a log K_{ow} less than 4.2, EPA believes that Acute Toxicity to Fish, Acute Toxicity to Daphnia and Toxicity to Plants (Algae) testing should be conducted. EPA recognizes that in some circumstances, however, acute aquatic toxicity testing may be relevant for certain chemical substances having high log K_{ow} values. For example, chemical substances that are dispersible in water (e.g., surfactants, detergents, aliphatic amines, and cationic dyes) may have high log Kow values and yet may still be acutely toxic to aquatic organisms. Sponsors under the voluntary HPV

Challenge Program are encouraged to consider these factors in developing test plans. Thus, a sponsor who believes that acute aquatic testing is appropriate for an HPV chemical with a high log K_{ow} should provide in its submitted test plan the rationale for conducting such testing. Public comments on test plans relating to this issue will be considered on a chemical by chemical basis.

The OECD HPV SIDS Program includes testing on terrestrial organisms if ''significant exposure is expected in the terrestrial environment.'' Under the voluntary HPV Challenge Program, exposure information need not be collected/submitted on each HPV chemical as is done under the OECD HPV SIDS Program. In addition, OECD is limiting the collection of exposure information to that obtained from the sponsor country/countries; in the past, each OECD member country was expected to provide this exposure information. In recognition of the changing role of exposure information in the OECD HPV SIDS process, EPA raised the issue of changing the OECD's approach to terrestrial toxicity testing at the 8th Meeting of the OECD's workgroup on existing chemicals (October 25–28, 1999, Paris). EPA proposed that the OECD move consideration of the need for terrestrial toxicity testing to a subsequent step in its process (known as ''post-SIDS'' testing). This proposal was accepted in part by the OECD. Avian toxicity testing was moved to the post-SIDS tier but the OECD retained the element of considering the need for soil toxicity testing (earthworms and plants) based on the potential for terrestrial exposure. For the purposes of the voluntary HPV Challenge Program, EPA is not asking sponsors to include consideration of soil toxicity testing. This aspect, however, will need to be considered for HPV chemicals which enter the OECD HPV SIDS Program.

H. Are Dermal Toxicity or Terrestrial Toxicity Testing Required Under the Voluntary HPV Challenge Program?

No. Another principle in the October 14, 1999, letter, is that participants in the voluntary HPV Challenge Program shall not conduct any terrestrial toxicity testing and generally should not develop any new dermal toxicity data. See also Unit IV.F. Dermal toxicity testing is not included in the voluntary HPV Challenge Program.

I. Are Acute LD_{50} Tests Always Needed for Mammalian Acute Toxicity Testing Under the Voluntary HPV Challenge Program?

No, acute LD_{50} tests are not always needed for mammalian acute toxicity testing under the voluntary HPV Challenge Program. In fact, as was discussed in the proposal (Ref. 16) which was submitted by the United States to the February 1999, meeting of the OECD workgroup on existing chemicals, EPA recommends the use of the ''Up and Down Procedure'' (OECD 425) in the voluntary HPV Challenge Program for those chemicals in need of acute toxicity testing. This particular test greatly reduces the number of test animals required and provides a point estimate of the lethal dose that is adequate for screening assessments on industrial chemicals. The OECD's Joint Meeting, at its 29th Session in June 1999, agreed with the general approach to use alternative methods for acute oral toxicity testing on industrial chemicals and ''specifically encourages this for work under the OECD's Existing Chemicals [(i.e., SIDS)] Program'' (Ref. 17).

As this topic is discussed in section 3.4 of the OECD HPV SIDS Manual, ''All substances, except gases and vapors, should be tested by the oral route. . . .Gases should be tested by the inhalation route alone'' (Ref. 3). The SIDS Manual also notes that ''dependent upon the physical-chemical properties . . . and the most important route of human exposure, the dermal or the inhalation route could also be considered.'' EPA raised a question regarding this guidance for consideration by the OECD at the October 1999, meeting of the OECD's workgroup on existing chemicals. As originally presented, the United States proposed to delete the reference to dermal testing in the SIDS data set; however, comments indicated that this would not be accepted by other countries. The United States modified its proposal, based on comments from other countries, to indicate that acute testing need be done by one route of exposure only, such that, where appropriate, dermal testing could be done as an alternative to oral testing. This revision also failed to gain the needed support. The basis for rejection of the revised proposal was that oral testing is necessary to satisfy hazard classification requirements and that if dermal exposure (or inhalation exposure) was an issue, countries should still consider the need for testing by an additional route at the SIDS level. Thus, the OECD workgroup did not agree to modify the SIDS battery requirements for acute toxicity. As indicated in Unit IV.H., dermal toxicity testing is not included in the voluntary HPV Challenge Program.

Recognizing that exposure information need not be collected/submitted under the voluntary HPV Challenge Program, and the contingent nature of the need for acute toxicity testing by a second route of exposure, EPA recommends that acute toxicity testing conducted under the voluntary HPV Challenge Program be limited to a single route of exposure. Decisions regarding the need for acute toxicity testing by a second route would be need to be considered for HPV chemicals which enter the OECD HPV SIDS Program.

J. Are Both In Vitro and In Vivo Genotoxicity Tests Needed Under the Voluntary HPV Challenge Program?

Sponsors are encouraged to use *in vitro* testing unless there are chemical properties (including chemical class considerations) or other aspects which may call its use into question. EPA has recommended certain *in vitro* protocols, and, as appropriate and to the extent possible, will review test plans submitted by sponsors of HPV chemicals to promote use of such protocols. Participants in the voluntary HPV Challenge Program are encouraged to use *in vitro* genetic toxicity testing to generate any needed genetic toxicity screening data, unless known chemical properties preclude its use.

In February 1999, at the meeting of the OECD workgroup on existing chemicals, EPA made a proposal (Ref. 16) for the use of the male rats from the combined repeated dose/reproductive/developmental toxicity screen (OECD 422) for the purpose of running the mammalian erythrocyte micronucleus test (OECD 474). This would reduce the number of animals needed, and, if the protocol can be successfully developed, would also increase the amount of information which would be received from this single study. Initial consideration of this approach suggested that while this strategy might be acceptable with mice, the use of this approach with rats (the species typically used in SIDS testing) appeared to present technical issues. Because there seemed to be technical problems with this modification of the *in vitro* micronucleus protocol, EPA initiated a review of its approach to this SIDS endpoint under the voluntary HPV Challenge Program. Following this review, EPA has decided to remove its preference for the use of the *in vivo* chromosomal effects test and to accept

either *in vitro* or *in vivo* studies, as is allowed under the OECD procedure for this endpoint. Sponsors are encouraged to use *in vitro* testing unless there are chemical properties (including chemical class considerations) or other aspects which may call its use into question.

K. Can Some of the Mammalian Toxicity Protocols Included in the Voluntary HPV Challenge Program be Combined?

For the purposes of the voluntary HPV Challenge Program, EPA strongly recommends the use of the combined protocol for repeat dose, reproductive, and developmental toxicity (OECD 422) for chemicals where data are needed for these endpoints (see Unit IV.F.6.). This particular test guideline was initially developed by the United States in the late 1980's and early 1990's for use in the OECD HPV SIDS Program. This screening test guideline provides limited information on systemic toxicity following repeated exposure over a limited time period. In addition, it provides initial information on developmental and reproductive toxicity. The United States has been and remains one of its strongest supporters within the OECD and strongly recommends its use. Historically, EPA has relied on this combined protocol for HPV chemicals needing this type of testing under the OECD HPV SIDS effort.

EPA also recognizes that the OECD HPV SIDS Program allows for other approaches that can be used to meet the repeat dose, reproductive and developmental toxicity endpoint needs covered by the combined protocol. EPA can also envision circumstances where other such approaches might make sense. These can include, for example, situations concerning existing data wherein only certain of these endpoints require testing or in cases where there is a particular need identified by a sponsor (e.g., high-exposure potential) such that a different testing approach is indicated. In these cases, voluntary HPV Challenge Program sponsors are asked to provide the rationale for conducting such testing in their submitted test plans. EPA, as appropriate and to the extent possible, plans to follow up with sponsors who propose in their test plans to use approaches other than OECD 422 to ensure that their decision to do so is an informed one.

In those cases for which adequate data are available for reproductive and developmental toxicity but not for repeat dose toxicity, EPA recommends that the 28-day repeated dose toxicity test (OECD 407) be used by sponsors to meet the repeat dose data need for the voluntary HPV Challenge Program.

In cases for which adequate data are available for the repeat dose endpoint, but not for reproductive and/or developmental toxicity, EPA recommends that the combined reproductive and developmental toxicity guideline (OECD 421) be used in lieu of separate testing for reproductive toxicity (OECD 415) and/or developmental toxicity (OECD 414) unless there is information indicating that separate testing may be advisable. This point was raised by the United States at the February 1999 meeting of the OECD's Working Party on Existing Chemicals and further discussions will be pursued in that forum.

L. How do the Rulemaking Efforts Relate to the Voluntary HPV Challenge Program?

In the October 14, 1999, letter to participants in the voluntary HPV Challenge Program, EPA stated that it was the intention of the Agency that the TSCA section 4 HPV SIDS rulemaking proceed in a manner that is consistent with the principles and concerns outlined in the letter for the participants in the voluntary program. As such, EPA would incorporate in the TSCA section 4 HPV SIDS rulemaking the criteria established under the voluntary HPV Challenge Program to the extent possible in the context of a rulemaking, and would also consider improvements based on experiences with implementing that program. The specific requirements of any associated TSCA section 4 HPV SIDS rulemaking will be addressed in future proposed rulemaking.

V. Administrative Requirements

As indicated previously, this action describes the HPV Initiative, focusing on the Agency's strategy and overall approach to addressing data collection needs for HPV chemicals, along with the components of the voluntary HPV Challenge Program. Although the Agency has indicated that the HPV Initiative may also involve rulemaking under TSCA, any TSCA rulemaking associated with the HPV Initiative will be addressed in that rulemaking, rather than in this document. Since this action is not a regulatory action and does not impose any requirements, the regulatory assessment requirements that apply when an agency imposes requirements do not apply to this action.

A. Was this Action Reviewed by the Office of Management and Budget?

Yes. The Agency submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), because OMB determined that this document may result in a ''significant regulatory action'' subject to review by OMB. Any comments or changes made during that review have been documented in the public version of the official record.

B. Does the Agency Have Approval for this Information Collection Activity?

Yes. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. In general, the OMB control numbers for EPA's regulations, after appearing in the preamble of a final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to chemical testing under TSCA section 4(a), which includes activities related to chemical testing under a consent order, a voluntary program, or a TSCA rulemaking, have already been approved under OMB control number 2070–0033 (EPA ICR No.1139). This action does not contain any new information collection activities requiring additional OMB review and approval.

As described in this document, the voluntary HPV Challenge Program involves the submission of a commitment letter, study or testing plans, and a final report. In general, the average annual per chemical burden estimate approved under OMB Control number 2070–0033 is about 488 hours per response, including time for preparing letter of intent and study plans, conducting laboratory testing, submitting progress reports (if applicable), and preparing final reports on each study. For recordkeeping, the average burden is estimated to be 330 hours per recordkeeper. As defined by the PRA and 5 CFR 1320.3(b), ''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.

VI. Materials in the Public Docket

As indicated in Unit I.B.2., the official record for this document has been established under docket control number OPPTS–42213 and the administrative record number AR–201. The following is a listing of documents that are specifically referenced in this document and which have already been placed in the public version of the official record for this action. For your convenience, EPA has also provided some non-EPA internet addresses to allow you to access the electronic version of the referenced document. In doing so, the Agency has verified the accuracy of these addresses at the time of signature. However, since EPA is not responsible for these non-EPA sites, the Agency does not exercise any control over these addresses. A paper copy of any document referenced in this way has been included in the public version of the official record for this document as described in Unit I.B.2.

1. EPA, Office of Pollution Prevention and Toxics (OPPT). ChemRTK HPV Challenge Program Chemical List. (May 1999) (This list is updated periodically and is available electronically at http://www.epa.gov/chemrtk/hpvchmlt.htm).

2. EPA, OPPT. Chemical Hazard Data Availability Study: What Do We Really Know About the Safety of High Production Volume Chemicals? (April 1998) (http://www.epa.gov/opptintr/chemtest/hazchem.htm).

3. OECD Secretariat. *SIDS Manual*. Third Ed. Screening Information Data Set Manual of the OECD Programme on the Co-Operative Investigation of High Production Volume Chemicals. Paris, France; July 1997. Copies this Manual can be obtained by accessing EPA's web site at http://www.epa.gov/chemrtk/sidsappb.htm, as well as directly from OECD at http://www.oecd.org/ehs/sidsman.htm (non-EPA site).

4. Environmental Defense. *Toxic Ignorance*. New York, New York, (Summer 1997). Copies of ''Toxic Ignorance'' can be obtained by accessing ED's web site (non-EPA site) at http://www.edf.org/pubs/reports/toxic ignorance/ or by calling 1–800–684–3322.

5. ACC. Public Availability of SIDS-Related Testing Data for U.S. High Production Volume Chemicals (June 12, 1998). Copies of ACC's report can be obtained by writing to ACC at 1300 Wilson Blvd., Arlington, VA 22209 or by calling ACC at (703) 741–5226.

6. EPA, OPPT. Draft Guidance on Developing Robust Summaries (October 22, 1999) (http://www.epa.gov/chemrtk/robsumgd.htm).

7. EPA, OPPT. Guidance for Testing Closed System Intermediates for the HPV Challenge Program (Draft, March 17, 1999) (http://www.epa.gov/chemrtk/closed9.htm).

8. EPA, Office of Prevention, Pesticides and Toxic Substances (OPPTS). Letter from Susan H. Wayland, Deputy Assistant Administrator, to participants in the voluntary High Production Volume Challenge Program (October 14, 1999) (http://www.epa.gov/chemrtk/ceoltr2.htm).

9. EPA, OPPT. Procedures for Removing Chemicals that are No longer HPV and Not Likely to Become HPV Again from the HPV List (Draft, March 17, 1999) (http://www.epa.gov/chemrtk/nolohpt8.htm).

10. OECD. Decision-Recommendation of the Council on the Cooperative Investigation and Risk Reduction of Existing Chemicals (January 31, 1991).

11. ICCA. ICCA HPV Working List (July 1, 2000). Copies of this List can be obtained by accessing ICCA's web site (non-EPA site): http://www.icca-chem.org/hpv.

12. EPA, OPPT. Determining the Adequacy of Existing Data (May 17, 2000) (http://www.epa.gov/chemrtk/datadfin.htm).

13. EPA, OPPT. The Use of Structure-Activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program (August 26, 1999) (http://www.epa.gov/chemrtk/sarfinl1.htm).

14. EPA. OPPT. Development of Chemical Categories in the HPV Challenge Program (Draft, August 25, 1999) (http://www.epa.gov/chemrtk/categuid.htm).

15. EPA, OPPT. ChemRTK HPV Challenge Program Making Commitments (June 29, 2000) (http://www.epa.gov/chemrtk/makecom.htm).

16. EPA. Proposal Made at the Organization for Economic Cooperation and Development (OECD) Working Party Meeting on Existing Chemicals (February 1999).

17. OECD. Acute Oral Toxicity Testing: Data Needs and Animal Welfare Considerations Agreement Reached by the 29th Joint Meeting of the Chemicals Committee and the Working Party on Chemicals (ENV/JM/HCL/RD(99)6; June 1999).

18. EPA, OPPT. Draft Guidance on Searching for Chemical Information and Data (April 1999, rev. May 1999) (http://www.epa.gov/chemrtk/srchguid.htm).

19. ACC. U.S. HPV Chemical Tracking System. Non-EPA site: http://www.hpvchallenge.com.

List of Subjects

Environmental protection, Hazardous chemicals, Reporting and recordkeeping.

Dated: December 14, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–32498 Filed 12–22–00; 8:45am]

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December 26, 2000

Part V

Environmental Protection Agency

Voluntary Children's Chemical Evaluation Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00274D; FRL–6758–5]

Voluntary Children's Chemical Evaluation Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the Voluntary Children's Chemical Evaluation Program (VCCEP) and asking manufacturers (including importers) of 23 chemicals to volunteer to sponsor their chemical(s) in the first tier of a pilot of this Program. Developed after considering various comments and concerns voiced by a number of individuals through a stakeholder involvement process, the VCCEP is a program designed to provide data to enable the public to better understand the potential health risks to children associated with certain chemical exposures. EPA has also taken steps, as described in this document, to consider animal welfare and to provide instructions on ways to reduce or in some cases eliminate animal testing, while at the same time ensuring that the public health is protected. The Program is also designed to ensure that health effects and exposure data are made available to allow EPA and others to evaluate the risks of these chemicals so that mitigation measures may be taken as appropriate.

DATES: To be included in Tier 1 of the pilot VCCEP, EPA must receive a letter of commitment from a company volunteering to sponsor a chemical(s) between January 25, 2001 and June 25, 2001.

Volunteering for Tier 1 means sponsors would begin to develop Tier 1 information not later than 6 months after the end of the Tier 1 sign up period. The sign up period ends June 25, 2001. Sponsors may make separate commitments to upper tiers of the pilot program at a later time.

ADDRESSES: Commitment letters may be submitted by mail or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274D in the subject line on the first page of your commitment letter.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ward Penberthy, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1730; e-mail address: penberthy.ward@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of special interest to those chemical manufacturers, importers, and processors who produce or use chemical substances that are covered by the Toxic Substances Control Act (TSCA), individuals or groups concerned with chemical testing and children's health, and animal welfare groups. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the VCCEP, the previously held stakeholder meetings, or relevant documents, you may go directly to the web site at http://www.epa.gov/chemrtk/childhlt.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00274D. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center (NCIC), North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit a Commitment Letter?

A commitment letter to sponsor a chemical(s) may be submitted through the mail or in person. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274D in the subject line on the first page of your letter.

1. *By mail*. Submit your letter to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your letter to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. 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) 260–7093.

D. What Must I Include in My Commitment Letter?

The commitment letter must provide the name and Chemical Abstract Service Registry Number (CAS No.) of the chemical being sponsored, a commitment to start the development of the information no later than 6 months after the end of the sign up period, and an anticipated start date and submission date to EPA. The commitment letter must also identify the entity (company or consortium of companies) sponsoring the chemical and provide the name, address, e-mail address, telephone, and fax numbers of a technical contact.

II. Background

A. What Action is the Agency Taking?

EPA is asking manufacturers (hereinafter manufacturers include importers) of 23 chemicals to commit to sponsor the chemical(s) in a pilot of the

VCCEP for the purpose of making health effects, exposure, and risk information on these chemicals available to both EPA and the public. EPA is taking this action in the form of a pilot program so it can gain insight into how best to design and implement the VCCEP in order to effectively provide the Agency and the public with the means to understand the potential health risks to children associated with exposure to these and ultimately other chemicals to which children may be exposed. The VCCEP is a component of EPA's Chemical Right-to-Know initiative which committed EPA to ''....review and report on what new testing may be needed to assess the special impact industrial chemicals may have on children.''

Volunteering to sponsor a chemical in any tier of the VCCEP pilot requires the companies sponsoring chemicals (hereinafter ''sponsors'') to make chemical-specific public commitments to make certain hazard, exposure, and risk assessment data and analyses publicly available. The information will be provided by the sponsors in a maximum of three tiers and will be used to make judgements about the risks to children. Companies, through this process, have the opportunity to sponsor chemicals at Tier 1 during the sign up period which will begin January 25, 2001 and end on June 25, 2001. After the submission of Tier 1 information and its review by a Peer Consultation Group, a third party contractor will compile and forward the results of the Peer Consultation to EPA. EPA will announce if additional information is needed to assess a chemical's risk to children and will indicate what information in Tier 2 should be provided. Companies will then be given an opportunity to sponsor chemicals at Tier 2. EPA plans to use the same process to review Tier 2 information to determine if Tier 3 information is needed and companies will then be given an opportunity to sponsor chemicals at Tier 3. Detailed information on how the VCCEP will operate is presented in Unit III. EPA expects to modify the design of the VCCEP based on the results of the pilot.

B. What is the Agency's Authority for Taking this Action?

Congress gave EPA the authority to implement TSCA for the purpose of protecting human health and the environment by requiring testing and, if necessary, restricting the use of certain chemical substances. The VCCEP is a voluntary program which focuses on developing data and assessments necessary to protect children. This document describes the design of the VCCEP and initiates this program in the form of a pilot. If some chemicals are not sponsored in the VCCEP, EPA will consider whether a test rule under section 4 of TSCA is appropriate.

C. What Process has EPA Used to Develop this Program?

In initiating a chemical evaluation program, decisions need to be made regarding the appropriate chemicals to consider and the appropriate toxicology and exposure studies to conduct. To address these issues, EPA initiated a public stakeholder involvement process to bring together individuals with a broad range of interests in children's health issues to provide input, on an individual basis, into the design of a voluntary program to obtain needed data. The stakeholders in this process have included chemical manufacturers who could be required to conduct testing of chemical substances under section 4 of TSCA, individuals or groups concerned with chemical testing, children's health, and/or environmental protection, other Federal government agencies, and animal welfare groups. EPA held three public meetings to obtain individual comments and concerns from these stakeholders for the development of the VCCEP. These meetings were held September 22, 1999, November 30–December 1, 1999, and April 26–27, 2000. EPA also considered comments submitted by stakeholders throughout the process (Refs. 1–29 and 35). Details of this process and summaries of the public meetings can be found at http://www.epa.gov/chemrtk/childhlt.htm.

D. How Were Candidate Chemicals for the VCCEP Identified?

After considering the individual comments offered by some of the stakeholders during the public meetings or in comments submitted to the docket (Refs. 28 and 29), EPA decided to focus this program on chemicals which have been found to be present as contaminants in:

- Human tissues or fluids (e.g., adipose tissue, blood, breast milk, breath).
- Food and water children may eat and drink.
- Air children may breathe, including residential or school air.

In an effort to identify chemicals to which children would have the highest likelihood of exposure, EPA selected chemicals which were found by biomonitoring data to be present in the human body (adipose tissue/blood/breast milk/breath) and found by environmental data to be present in a person's environment (in food, drinking water, breast milk, air). If a chemical were listed in at least one biomonitoring database and at least one environmental database, it was identified as a candidate for the VCCEP.

The biomonitoring databases EPA used in chemical identification are:

- National Health and Nutrition Examination Survey III (NHANES III).
- National Human Adipose Tissue Survey (NHATS).
- National Human Exposure Assessment Survey (NHEXAS).
- Total Exposure Assessment Methodology (TEAM).

The environmental databases EPA used in chemical identification are the following:

- The Food and Drug Administration (FDA) database of Everything Added to Food in the United States (EAFUS).
- National Contaminant Occurrence Database (NCOD) (includes unregulated drinking water contaminants).
- National Human Exposure Assessment Survey (NHEXAS).
- Total Exposure Assessment Methodology (TEAM).
- EPA Office of Research and Development studies and other published indoor air data.

EPA used additional criteria to remove chemicals as candidates for the VCCEP. Among these criteria were:

- They were not chemicals produced in or imported into the United States in an amount sufficient to meet TSCA Inventory Update Rule (IUR) reporting criteria.
- They are chemicals being phased out under the Montreal Protocol.
- They are chemicals whose risks to children are believed by EPA to be adequately managed by other ongoing programs.

A list of the over 150 chemicals found in the biomonitoring databases as well as a working list of candidate chemicals for VCCEP can be found in *Methodology for Selecting Chemicals for the Voluntary Children's Chemical Evaluation Program (VCCEP) Pilot* (Ref. 38). Descriptions of the databases used for chemical selection and additional details regarding the selection process are also included in this reference.

There was an exception to the identification process which was raised and discussed during the last stakeholder meeting. This exception relates to the identification of three polybrominated diphenyl ethers for the VCCEP without relying on the use of the databases. Polybrominated diphenyl ethers, as a class of chemicals, were found to be increasing in concentration in human breast milk in a recent Swedish study (Ref. 30). EPA used this

study and TSCA IUR reporting, which indicates that chemicals are manufactured in the United States, to identify specific chemicals in this chemical class to include in this program (Ref. 50). Although EPA did not rely on the databases for the identification of these chemicals, it believes that the study provides biomonitoring evidence of exposure of the mother and also environmental evidence of the potential exposure via a food source of the child.

The VCCEP candidate chemicals identified and screened by the criteria described in this Unit II.D. were further evaluated to select chemicals for the pilot as described in Unit III.A.

E. What is the Significance of a Chemical's Being Identified for the VCCEP?

The identification of chemicals for the VCCEP was one of the more challenging aspects of the program's development. Both EPA and some stakeholders agreed that available data sources provided limited insight on children's exposure to chemicals. Consequently, to identify chemicals for the VCCEP, EPA used existing data sources believed to be especially relevant to children's chemical exposures, such as presence of the chemical in human tissues/blood, in food and water children eat and drink and in air children breathe. EPA acknowledges that the chemical identification process does not take into account the unique aspects of children's potential for exposure, based on their behaviors and activities. For this reason, EPA wishes to make clear what the list of chemicals selected for the VCCEP represents and what it does not represent.

Identification for the VCCEP does not mean that the existing hazard and exposure data have been or will be determined to be inadequate. EPA has not made judgements regarding the adequacy or significance of existing hazard or exposure data for any of the chemicals selected for the pilot. While EPA recognizes that many of these chemicals are known to be relatively ''data rich,'' assessment of the adequacy and significance of hazard and exposure information will be a task of the sponsors participating in the voluntary program.

Identification for the VCCEP also does not mean that EPA has made or will make a determination that any uses of the chemical pose significant risks to children's health. The level of potential risk to children will be determined as part of the VCCEP. The chemical identification process for the VCCEP did not make this determination. It is also important to note that for any given chemical in the VCCEP, EPA may ultimately determine that reasonably anticipated exposures and risks from expected uses do not pose any unique or other concerns for children's health and safety.

F. How did EPA Decide Which Tests are Necessary to Evaluate a Chemical's Risk to Children?

EPA has undertaken significant technical efforts to define an appropriate test battery for the VCCEP over the last 2 years. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel and invited members of the EPA Science Advisory Board (SAB) convened in late May 1999 to review the recommendations of the Toxicology Working Group of the 10X Task Force. The Toxicology Working Group had developed recommendations for a core data set necessary to assess the potential hazards to children following exposure to conventional food use pesticides (Ref. 32). These recommendations were prepared for consideration in developing the implementation policy for the Food Quality Protection Act's (FQPA) 10-fold Safety Factor. EPA's OPPT sought input and advice from this EPA advisory group about the appropriateness of using a selected subset of the 10X battery to address industrial chemicals to which children were likely to be exposed. The subset of tests which EPA proposed included the following types of studies:

- Acute studies (oral, dermal, or inhalation).
- Subchronic (90-day) feeding studies in rodents.
- Oncogenicity studies in two species of rodents (rats and mice preferred).
- Prenatal developmental toxicity studies in rodents and nonrodents (rats and rabbits preferred).
- 2-Generation reproduction study in rodents.
- General metabolism study in rodents.
- Mutagenicity studies (*in vivo* and *in vitro* assays of gene mutations and structural chromosomal aberrations).
- Acute and subchronic neurotoxicity in rats.
- Immunotoxicity study in rodents.
- Developmental neurotoxicity study in rodents (usually rats).

The SAP's comments were supportive with respect to the subset of tests which EPA proposed as the test battery for the VCCEP:

> The Panel could not conclusively determine whether the proposed Children's Health Testing Program (now the VCCEP) battery was appropriate to evaluate the potential hazards of industrial/commercial chemicals to which children may have high potential exposure. In any event, the Panel concluded that the Agency should retain the standard toxicology protocols and add the more specific developmental neurotoxicity, immunotoxicity, and neurotoxicity tests now proposed for pesticides . . . and that it was appropriate for the proposed battery of tests to be viewed as a single tier of studies. In addition, the Panel believes that non pesticide (industrial/commercial) chemicals be considered in the same manner as pesticides with regard to their potential to impact the health of children . . . and that being the case, it would be prudent for the Agency to require the same or similar types of toxicity data on chemicals of industrial/commercial use as pesticides. (Ref. 33)

These tests and the appropriate guidelines for conducting these tests in the VCCEP are discussed in Unit III.D.

G. Why does the VCCEP Need Exposure Assessments?

Although the biomonitoring data used in chemical selection (discussed in Unit II.D. and III.B.) provide strong qualitative evidence that human exposure to the VCCEP chemicals has occurred, not all of the data were obtained recently and there are questions regarding the quality of some of the data, causing some to question their relevance. Although EPA believes the biomonitoring data are still relevant, more information would be valuable to assure a full understanding of current exposure patterns and levels, especially as they relate to children. The VCCEP will provide sponsors the opportunity to submit exposure data that reflect current exposures. Submission of exposure information to EPA is included as a component in Tier 1, Tier 2, and Tier 3 of the VCCEP, as described in Unit III.H., III.J., III.K., and III.L.

An equally important reason for collecting exposure data in the VCCEP is its need in risk assessment. To assess risk, exposure data are needed as much as hazard data. Hazard data may indicate a chemical's potential to cause adverse health effects, but exposure data are needed to put those data in context. A chemical may test as potentially hazardous, but if there is no or very low exposure to the chemical, there may be a low risk of the chemical causing adverse health effects. Likewise, exposure data which indicate low or no exposure can support an argument that additional hazard data may not be necessary, thus avoiding unnecessary expenditures of testing resources. The VCCEP includes this principle in its design by requiring the consideration of exposure, hazard, and risk data before deciding whether data from the next tier of information are needed.

III. The VCCEP

A. How Were VCCEP Candidate Chemicals Further Culled to Identify Chemicals for the VCCEP Pilot?

The names of the 23 chemicals identified for the VCCEP pilot program are listed in Table 1 of this unit in CAS No. order. These chemicals were identified using the criteria discussed in Unit II.D. Table 1 of this unit indicates the specific databases which were the source of the biomonitoring data and the environmental monitoring data which together supported the selection of a chemical.

An additional factor which influenced which candidate chemicals were selected for the pilot program was the availability of hazard data. For reasons discussed in Unit III.C., EPA wanted to select chemicals for the pilot which have available Tier 1 hazard data. To identify such chemicals, EPA used two primary indications of data availability:

1. Data were available from the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) Program, and

2. Chemicals with commitments in the High Production Volume (HPV) Challenge Program that had early start years, i.e., 2000 or 2001.

Table 1 of this unit indicates which chemicals have early start years in the HPV Challenge Program and which chemicals have available or soon to be available SIDS data.

In the final selection for the VCCEP pilot, several chemicals otherwise meeting the hazard data availability selection criterion were not included in the pilot.

• Several chemicals were deferred because the only biomonitoring data supporting their selection were from NHATS or the only environmental data supporting their selection were from EAFUS. This is because several stakeholders questioned whether these data sets were appropriate for this chemical selection application.

• Several phthalate esters are included in the working list of candidate chemicals for VCCEP presented in the *Methodology for Selecting Chemicals for the Voluntary Children's Chemical Evaluation (VCCEP) Program Pilot* (Ref. 38). EPA is aware that phthalates are used in a wide variety of products, including some that present opportunities for exposure to children, which has been an important consideration in the selection of candidate substances for the VCCEP. EPA also is aware that several phthalates are currently the subjects of assessments being performed by other government agencies, including some assessments that are specifically addressing potential exposures and hazards to children. These other assessments include:

1. The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) which is preparing detailed assessments of the scientific evidence for whether a given exposure or exposure circumstance may pose a hazard to reproduction and the health and welfare of children for seven phthalates—dibutyl phthalate (DBP), butylbenzyl phthalate (BBP), di-n-hexyl phthalate (DnHP), di-n-octyl phthalate (DnOP), di(2-.ethylhexyl) phthalate (DEHP), diisononyl phthalate (DINP), and diisodecyl phthalate (DIDP). A separate assessment is being prepared for each phthalate by an expert panel chosen specifically for the phthalates. Each assessment will be an evaluation of the scientific evidence for whether adverse reproductive/developmental health effects are associated with exposures to the phthalate and will include the expert panel's conclusions about knowledge gaps for the phthalate. (Ref. 53). Additional information is available on web site http://ntp-server.niehs.nih.gov/htdocs/liason/CERHRPhthalatesAnnct.html.

2. The Consumer Product Safety Commission (CPSC) has convened a Chronic Hazard Advisory Panel (CHAP) to evaluate the existing information regarding whether chronic hazards (cancer, birth defects, and gene mutations) may be posed by DINP and the implications of these hazards on risks to children. The CHAP expert panel will evaluate available hazard and exposure information, including data generated by the CPSC in its testing laboratory on the amount of DINP that is likely to come out of a toy when chewed or mouthed by a young child. (Ref. 54).

3. The FDA is preparing a risk assessment of DEHP in medical devices, including medical devices that result in exposure to infants and newborn babies. (Ref. 55).

Additional information is available on web site http://www.fda.gov/cdrh/present/DEHP_GHTF.pdf.

In addition, risk assessments of DBP, BBP, DEHP, DINP, and DIDP are being conducted by scientists in the European Union (EU).

Most of these assessments are close to being complete. It would be neither practical nor efficient to attempt to repeat all of the work of these other assessments under the VCCEP program, but EPA believes the outcome of these assessments will provide helpful information for deciding whether the risks of phthalates to children have been adequately characterized, and which, if any, of the phthalates are appropriate for inclusion in the VCCEP. In some cases, the work of these other bodies may facilitate review of phthalates under the VCCEP. In other cases, EPA may determine that in light of these hazard and risk assessments, further review under the VCCEP is either unnecessary or a low priority. Accordingly, EPA is not deciding whether to include phthalates in the VCCEP Pilot at this time. Instead, EPA will reevaluate the phthalates in approximately 6–9 months, after many of the assessments have been completed. The producers of phthalates have agreed to provide the assessments to EPA once they are completed, and to include in that submission their assessment of the extent to which further evaluation under the VCCEP is or is not necessary. EPA will review these materials when they are received to determine which phthalates, if any, the Agency believes are appropriate for further evaluation under the VCCEP at that time. The materials submitted by the producers will be made publicly available and EPA will invite input from other stakeholders before making its decisions.

• Styrene was deferred from the pilot program because of ongoing assessments which are well advanced and substantially equivalent to the VCCEP in that they address potential exposures and hazards to children. The assessments underway are listed below:

1. The Styrene Information and Research Center (SIRC), which is composed of styrene manufacturers and users, has sponsored toxicological research covering nearly all the health endpoints to be addressed by the VCCEP and has funded additional 2-generation reproduction and developmental neurotoxicity testing (Ref. 23).

2. The Center for Risk Analysis at the Harvard School of Public Health has created a risk assessment panel on styrene. The panel is undertaking an exposure assessment and an independent hazard analysis of styrene and is expected to include an evaluation of risks to children's health in its review (Ref. 23). The SIRC was asked to submit exposure data to support the assessment being conducted at Harvard (Ref. 23) which is expected to be available to EPA by July 2001.

3. EPA's Integrated Risk Information System (IRIS) program is currently conducting an assessment of available hazard data on styrene which will address all of the health endpoints included in the VCCEP. The IRIS assessment will address children as a

subpopulation in its review and may include both short-term and long-term health values for children in the IRIS summary document which EPA will issue for styrene (Ref. 23).

EPA believes these assessments will provide helpful information for whether the risks of styrene to children have been adequately characterized. EPA may determine after receipt of these hazard, exposure, and risk assessments, that further review under the VCCEP is either unnecessary or a low priority. As with the case with phthalates, materials submitted by the producers will be made publicly available and EPA will invite input from other stakeholders before making its decision.

Additional details on how chemicals were selected for the pilot are provided in the document *Methodology for Selecting Chemicals for the Voluntary Children's Chemical Evaluation Program (VCCEP) Pilot* (Ref. 38).

TABLE 1.—CHEMICALS IDENTIFIED FOR THE VCCEP PILOT

CAS No.	Chemical name	HPV Chall. Commit. [1]	SIDS[2]	Chemicals found in human biological samples				Chemicals found in human environment	
				NHANES	NHEXAS	TEAMS	Human milk [3]	NCOD	Indoor air
67–64–1	Acetone		Y	Y					Y
71–43–2	Benzene		Y	Y	Y	Y		Y	Y
75–35–4	Vinylidenechloride	Y				Y		Y	Y
78–93–3	Methyl ethyl ketone		Y	Y					Y
79–01–6	Trichloroethylene		Y	Y		Y		Y	Y
80–56–8	α-Pinene	Y				Y			Y
95–47–5	*o*-Xylene	Y		Y		Y		Y	Y
100–41–4	Ethylbenzene		Y	Y		Y		Y	Y
106–46–7	*p*-Dichloroben zene		Y	Y		Y		Y	Y
106–93–4	Ethylene dibromide	Y				Y		Y	Y
107–06–2	Ethylene dichloride	Y				Y		Y	Y
108–38–5	*m*-Xylene	Y				Y		Y	Y
108–88–3	Toluene		Y	Y		Y		Y	Y
108–90–7	Chlorobenzene	Y		Y		Y		Y	Y
112–40–3	*n*-Dodecane	Y				Y			Y
123–91–1	*p*-Dioxane		Y			Y			Y
124–18–5	Decane		Y			Y			Y
127–18–4	Tetrachloroethylene		Y	Y	Y	Y		Y	Y
541–73–1	*m*-Dichlorobenzene	Y				Y		Y	Y
1120–21–4	Undecane		Y			Y			Y
1163–19–5	Decabromodiphenylether		Y				Y		
32534–81–9	Pentabromodiphenyl ether		Y				Y		
32536–52–0	Octabromodiphenyl ether		Y				Y		

[1] HPV Challenge commitment with early start year (2000 or 2001).
[2] SIDS Screening Information Assessment Report is available.
[3] The chemicals in this column were chemicals identified in Ref. 30 that were also reported to the TSCA IUR

EPA is aware of recent ongoing discussions between the Agency for Toxic Substances and Disease Registry (ATSDR) and the Halogenated Solvents Industries Association (HSIA) regarding the voluntary testing of two chemicals relevant to the VCCEP pilot, i.e., trichloroethylene (CAS No. 79–01–6) and tetrachloroethylene (CAS No. 127–18–4). These chemicals have been the subject of discussions relating to priority data needs identified by ATSDR as part of a proceeding under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 110 and are also likely to be included in a test rule proposal being developed under TSCA section 4 at ATSDR's request. EPA understands that ATSDR and HSIA may soon come to agreement on arrangements to meet some of ATSDR's priority hazard data needs for these two pilot chemicals. While the testing being discussed would meet some of the hazard data needs of the VCCEP, it would not address exposure information needs and there appear to be several important deficiencies with regards to higher tier toxicity end points. In the event that ATSDR and HSIA can conclude their voluntary testing arrangement in the near future, EPA believes that a workable course of action in this case may be to use the ATSDR-HSIA work as input to Tier 1 hazard information. If this occurs, the delivery date for Tier 1 information and assessments prepared by VCCEP pilot sponsors could be adjusted to take account of the timing elements in the ATSDR-HSIA agreement. In the event that ATSDR and HSIA are unable to conclude a voluntary testing arrangement in the near future, EPA will consider the chemicals open for sponsorship under the Pilot as described in this notice.

Although only *o*-xylene and *m*-xylene are listed in Table 1 of this unit as pilot chemicals, the sponsors of these chemicals may want to consider addressing *p*-xylene (CAS No. 106–42–3) and mixed xylenes (CAS No. 1330–20–7) as they proceed in the VCCEP pilot. These two xylenes were deferred from the pilot because they are not been sponsored in the HPV Challenge Program and there is no Tier 1 data available from the OECD SIDS program. EPA believes these 4 chemicals may present the potential for a group approach.

B. Has EPA Completed Any Evaluations that Demonstrate the Relevance of the Biomonitoring Data Sets?

EPA considers the biomonitoring data as strong evidence of exposure and as providing a strong rationale for identifying a chemical for this program. EPA has evaluated the biomonitoring data not only for the detection of a chemical by the monitoring program, but also the detection frequency and concentration of the chemical in the tested biological medium. Examples of these data for the VCCEP pilot chemicals are presented in Table 2 of

this unit. The information in Table 2 is intended to be illustrative rather than complete. Many of the listed chemicals were also found in other human monitoring studies, some of which report the frequency of occurrence and some of which do not. The blood levels shown in Table 2 are from NHANES III; the breath data are from TEAM studies; and the breast milk data are from a recent Swedish study (Ref. 30). A number of the candidate chemicals were also studied in NHEXAS, but these data are not included in Table 2 because all of the chemicals found in NHEXAS were also reported in NHANES III.

With the possible exception of the Swedish breast milk study, all of the monitoring programs from which these data were drawn were relatively large, broad-scale studies. The blood data were derived from a subset of the national scale NHANES III population and were used to establish reference ranges for the chemicals studied. NHEXAS involved surveys in EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), in the State of Arizona, and in the Baltimore Metropolitan Area. TEAM studies were done in communities in California, New Jersey, North Carolina, and North Dakota. Because of the size and scope of these programs, the detection of a chemical at even a relatively low frequency may indicate exposure to a large population. The significance of the reported concentrations is difficult to interpret without information about the exposure events that led to a chemical's occurrence in that tissue and a detailed knowledge of that chemical's metabolic fate. At present, the reported data are best used simply as a qualitative indicator that exposure has occurred.

The first substance in Table 2 of this unit does not exactly match the corresponding entries on the pilot chemical list. However, EPA believes that the TEAM data on the mixture of meta and para isomers of dichlorobenzene are relevant to the listing of *m*-dichlorobenzene and *p*-dichlorobenzene as individual isomers. Likewise, the NHANES III data on mixed meta and para isomers of xylene are relevant to the listing of *m*-xylene in the pilot chemical list. Also, the listing of polybrominated diphenyl ethers in Table 2 of this unit and the data from the Swedish study (Ref. 30) is relevant to three entries on the pilot chemical list (decabromodiphenyl ether, pentabromodiphenyl ether, and octabromodiphenyl ether).

TABLE 2.—FREQUENCY OF DETECTION AND CONCENTRATION OF SELECT VCCEP PILOT CHEMICALS IN CERTAIN HUMAN BIOMONITORING STUDIES

CAS No.	Chemical name	Medium	Detection frequency	Concentration
	m,p-Dichlorobenzene	breath	91% of 49	GM[1]= 1.81 μg/m³
	m,p-Xylene	blood	≥75% of 649	med[2]= 0.19 ppb
	Polybrominated diphenylethers	milk		mean = 4 ng/g
67–64–1	Acetone	blood	≥75% of 1062	med = 1,800 ppb
71–43–2	Benzene	blood	≥75% of 883	med = 0.06 ppb
75–35–4	Vinylidene chloride	breath	95% of 49	WAGM[3] = 6.6 μg/m³
78–93–3	Methyl ethyl ketone	blood	≥75% of 1101	med = 5.4 ppb
79–01–6	Trichloroethylene	blood	13% of 677	
80–56–8	α-Pinene	breath	92% of 110	GM = 0.94 μg/m³
95–47–6	*o*-Xylene	blood	≥75% of 711	med = 0.11 ppb
100–41–4	Ethylbenzene	blood	≥75% of 631	med = 0.06 ppb
106–46–7	*p*-Dichlorobenzene	blood	≥75% of 1037	med = 0.33 ppb
106–93–4	Ethylene dibromide	breath	3% of 300	GM = 0.4 μg/m³
107–06–2	Ethylene dichloride	breath	(frequency data not available)	WAGM = 0.19 μg/m³
108–88–3	Toluene	blood	≥75% of 804	med = 0.28 ppb
108–90–7	Chlorobenzene	blood	21% of 1024	
112–40–3	*n*-Dodecane	breath	30% of 110	GM = 0.19 μg/m³
123–91–1	*p*-Dioxane	breath	8% of 110	GM = 0.05 μg/m³
124–18–5	Decane	breath	53% of 110	GM = 0.27 μg/m³
127–18–4	Tetrachloroethylene	blood	≥75% of 590	med = 0.06 ppb
1120–21–4	Undecane	breath	56% of 110	GM = 0.28 μg/m³

[1] GM = geometric mean.
[2] Med = median.
[3] WAGM = weighted average geometric mean.

C. Why Have a Pilot of the VCCEP?

EPA is running a pilot of the VCCEP so it can gain insight into how best to design and implement the VCCEP in order to effectively provide the Agency and the public with the means to understand the potential health risks to children associated with exposure to these and ultimately other chemicals to which children may be exposed. EPA intends the pilot to be the means of identifying efficiencies which can be applied to the subsequent implementation of the VCCEP.

Another purpose for running the pilot is the opportunity it will offer to test the performance of the Peer Consultation Process. Peer Consultation as it will apply to the VCCEP pilot is described in Unit III.P. through III.U. A number of stakeholders expressed concern that Peer Consultation may be a lengthy process and require a high commitment of time from those asked to participate. To expedite experience in determining how well the planned Peer Consultation Process works and what efficiencies might be introduced to expedite its work, EPA believes that chemicals which will present Tier 2 and Tier 3 assessment issues at an early point in time would be the most appropriate chemicals to include in the pilot. In selecting the chemicals for the pilot, EPA considered several indications of data availability to identify chemicals which already have extensive available hazard data (or nearly complete hazard data) . Screening level hazard data were considered available if Screening Information Data Set (SIDS) SIDS Initial Assessment Report (SIAR) had been prepared, or if the chemical is in the evaluation phase. Chemicals in the HPV Challenge Program with testing which is to begin in the years 2000 or 2001 were also included in the VCCEP pilot.

The pilot program will be evaluated at its completion as discussed in Unit III.W. The evaluation will consider what

modifications might be made which would make the VCCEP run more efficiently and the recommendations coming out of the pilot program evaluation will be used to improve the subsequent implementation of the VCCEP.

D. What Toxicity Studies Will Be Collected by the VCCEP and Will the Studies Be Divided into Tiers?

The toxicity studies EPA would collect for the VCCEP are the studies listed in Unit II.F. These are the studies EPA believes are appropriate to be included in a core toxicology data set to evaluate the toxicity of chemicals to which children have a significant potential for exposure. These are also the studies the SAP agreed with EPA regarding their inclusion in such a program. The SAP supported the application of this battery of tests as a single tier (Ref. 33). However, during stakeholder discussions, EPA frequently heard comments from various individuals that several of the studies in the test battery should be initiated only after lower level (e.g., HPV Challenge Program) tests and exposure information indicate additional cause for concern. In order to meet the needs of as many of the stakeholders as possible and to ensure the participation of industry sponsors in a voluntary program, testing tiers have been incorporated in the VCCEP. Also, many of the chemicals selected for this voluntary program are sponsored in the HPV Challenge Program and the health effects studies conducted in that Program will satisfy the Tier 1 test requirements of the VCCEP, thereby allowing a resource-saving integration of the VCCEP and the HPV Challenge Program. Table 3 of this unit indicates how the test battery will be divided among three tiers and lists the appropriate guideline for conducting each test.

TABLE 3.—THREE TIERS OF VCCEP TESTS

Tier	Test	Test Guideline
1[1]	Acute oral toxicity (up/down) OR Acute inhalation toxicity	OECD 425 or ASTM E1163–98 OECD 403 or 40 CFR 799.9130
	In vitro gene mutation: Bacterial reverse mutation assay	OECD 471, 870.5100, or 40 CFR 799.9510
	Combined repeated dose toxicity with reproductive and developmental toxicity screens OR Repeated dose oral toxicity AND Reproductive toxicity (1-generation)	OECD 422 OECD 407 OECD 415/421
	In vitro chromosomal aberrations OR *In vivo* chromosomal aberrations OR *In vivo* mammalian erythrocyte micronucleus	OECD 473, 870.5375, or 40 CFR 799.9537 OECD 475, 870.5385, or 40 CFR 799.9538 OECD 474, 870.5395, or 40 CFR 799.9539
2	90-Day subchronic toxicity in rodents	870.3100 (oral), 870.3250 (dermal), 870.3465 (inhalation), or 40 CFR 799.9346 (inhalation)
	Reproduction and fertility effects	870.3800 or 40 CFR 799.9380
	Prenatal developmental toxicity (two species)	870.3700 or 40 CFR 799.9370
	In vivo mammalian bone marrow chromosomal aberrations, OR *In vivo* mammalian erythrocyte micronucleus (triggered off results from *in vitro* mammalian chromosomal aberration test if conducted in Tier 1)	OECD 475, 870.5385, or 40 CFR 799.9538 OECD 474, 870.5395, or 40 CFR 799.9539
	Immunotoxicity	870.7800 or 40 CFR 799.9780
	Metabolism and pharmacokinetics	870.7485 or 40 CFR 799.9748
3	Carcinogenicity OR chronic toxicity/carcinogenicity	870.4200 or 40 CFR 799.9420 870.4300
	Neurotoxicity screening battery	870.6200 or 40 CFR 799.9620
	Developmental neurotoxicity	870.6300 or 40 CFR 799.9630

[1] The tests and test guidelines in Tier 1 are the same as those in the HPV Challenge Program. For example, under the HPV Challenge Program, EPA encourages persons required to conduct testing for chromosomal damage to use the *in vitro* Mammalian Chromosome Aberration Test to generate the needed data unless known chemical properties (e.g., physical/chemical properties, chemical class characteristics) preclude its use. As another example, if not superseded by a higher tier study, EPA recommends the use of the Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test. See HPV Challenge Program web site at http://www.epa.gov/chemrtk/.

For chemicals which are in both the HPV Challenge Program and the VCCEP, sponsors should consider conducting appropriate upper tier VCCEP test(s) instead of the screening studies (such as OECD 422 or OECD 407 and 415/421 studies) included in the HPV Challenge Program to avoid conducting the lower tier studies unnecessarily. For example, if a chemical which was included in the HPV Challenge Program as well as the VCCEP lacked repeated dose testing data, it would be prudent for the sponsor to conduct a 90-day subchronic study to meet the needs of the VCCEP versus the recommended studies under the HPV Challenge program (OECD 422 or 407). Similarly, although the OECD 422 and 415/421 evaluate certain developmental and reproductive endpoints, they do not provide as full

an evaluation of those endpoints as would the Tier 2 VCCEP tests, i.e., the prenatal developmental toxicity test and the 2-generation reproduction and fertility effects test, respectively.

For most tests listed in Table 3, the sponsor may choose among several alternative guidelines developed for different programs including the OECD, OPPTS, TSCA, and the American Society for Testing and Materials (ASTM). All but four of the TSCA test guidelines were published in the July 1, 1999, edition of the Code of Federal Regulations (CFR) at 40 CFR part 799 (Ref. 46). Revisions of the other four TSCA guidelines (40 CFR 799.9130, 799.9537, 799.9630, and 799.9748) will be published shortly in the **Federal Register** and should appear in the July 1, 2001 edition of the CFR. The published TSCA guidelines (Ref. 46) as well as the OECD, OPPTS, and ASTM guidelines (Refs. 47–49) are available for review in the public docket for this notice, OPPTS–00274D. Copies of the guidelines can also be obtained from other sources. OECD test guidelines are available on the Internet at http://www.oecd.org/ehs/guide/index.htm followed by the selection of a specific guideline number. The OPPTS test guidelines in the 870 series are available in hard copy from the Government Printing Office at telephone number (202) 512–0132 and on the Internet in PDF format at http://www.epa.gov/opptsfrs/home/guidelin.htm/. followed by selections for ''870—Health Effects Test Guidelines'' and ''Final Guidelines.'' The TSCA test guidelines are available on the Internet at http://www.epa.gov/docs/epacfr40/chapt-I.info/subch-R/ followed by selections ''Part 799'' and ''Subpart H.'' The ASTM guideline E1163–98 can be purchased online at address http://www.ASTM.org followed by selections ''ASTM Store'' and ''Search for individual standards,'' and entering and selecting ''E1163–98.'' The ASTM test guideline E1163–98 can also be ordered from ASTM, 100 Barr Harbor Dr., West Conshohocken, PA 19428.

During the course of the VCCEP pilot, some of the guidelines listed in Table 3 may be revised by the entity which developed them, i.e., OECD, ASTM, or EPA. If revisions are made, the sponsor may conduct testing according to the guideline in effect on the date the sponsor made a commitment to provide that information or when the relevant test is initiated. Whenever practical, EPA encourages sponsors to use the most up to date guideline.

EPA believes that many of the chemicals selected for the VCCEP and its pilot may have been relatively well tested and therefore a significant amount of both lower and upper tier test data may already exist. Existing upper tier test data will be integrated into the program by having them submitted with Tier 1 information; this is consistent with the approach in the HPV Challenge Program. A possible outcome may be that the existing data may be sufficient such that no further hazard data development is needed at this time.

There may be instances when children have relevant exposures to VCCEP chemicals by multiple routes. EPA believes that needed information should be available on all relevant routes of exposure. In some instances, however, physiologically based pharmacokinetics (PBPK) testing and modeling may enable route-to-route extrapolation and be a possible alternative to multiple route testing. Ultimately, EPA plans to rely heavily on the reports of the third party contractor as described in Units III.P. through III.U. for compiling all scientific issues related to multiple route testing.

E. What Animal Welfare Considerations Have Been Made in the VCCEP?

In designing the VCCEP, EPA has taken several steps to reduce animal testing without unduly compromising the goal of protecting children from chemical hazards. EPA is committed to avoiding duplicative testing, and to reducing, refining, and replacing animal testing when valid alternatives exist. In the United States, EPA works within the framework of the Interagency Coordinating Committee for the Validation of Alternative Methods (ICCVAM), and, internationally, with OECD to ensure the scientific acceptability of alternative test methods. All test methods must be scientifically validated to demonstrate their accuracy before they can be accepted for regulatory and international data sharing purposes. Without such safeguards, tests may need to be repeated, resulting in the use of additional animals. If relevant alternative test methods become validated during the implementation of the VCCEP or its pilot, EPA will consider their immediate implementation in the program. In an effort to avoid duplication of similar tests, Tier 1 of the VCCEP includes testing endpoints which will be satisfied by tests already designated in the HPV Challenge Program.

A key step in reducing the number of animals used for testing is to ensure maximum use of existing data and to combine tests where feasible. To ensure the maximum use of existing data, industry and others are encouraged to search for existing relevant and adequate data and to share sources of such information. Sponsors will, as part of this program, commit to identifying and assessing the adequacy of existing data. To facilitate this effort, EPA has developed guidance under the HPV Challenge Program and will develop additional guidance for this effort as needed. EPA encourages chemical sponsors to combine tests where possible to conserve resources and reduce the number of animals required for testing. An example of two tests which can be combined are the tests for subchronic toxicity and immunotoxicity. Sponsors are also encouraged to consider development of PBPK approaches to evaluate route-to-route extrapolation of test data which also may reduce the need for certain testing.

An important step EPA has taken to address animal welfare concerns was to use chemical selection criteria for the VCCEP pilot which clearly demonstrate that actual exposures to humans are likely to be occurring and for which there is a compelling need for children's health effects data, exposure data, and risk information to be made publicly available. The resulting list of chemicals selected for this pilot program and listed in Table 1 are known to be relatively well characterized. As such, EPA was in a position to focus less on test data development and structure the pilot VCCEP around data evaluation and emphasize the importance of gathering exposure data to support an assessment of the risks of chemicals to children.

The tiered testing design of the pilot program is another feature of the program that is responsive to animal welfare concerns. In the VCCEP pilot, the Tier 2 and Tier 3 testing will be limited to chemicals for which there is a clear need; i.e., Tier 2 and Tier 3 tests will not automatically be required. The need for testing will be considered as part of an overall assessment directed to judging whether the potential hazards, exposures and risks to children have been adequately evaluated. This will be done by EPA in this program and the Agency will be assisted by a deliberative, science-based Peer Consultation process that is intended to ensure that the hazard and exposure information developed via this program will inform the public on a chemical's potential health effects, exposure and risks to children. The Peer Consultation process will also serve as a forum for all stakeholders to provide input on the available hazard and exposure information for each chemical and the need for any additional information.

F. What is the Sequence of Events that Comprise the VCCEP Pilot?

A flow chart (Figure 1) depicts the sequence of events that comprise the VCCEP pilot. Each event is briefly described in Unit III.F.1. through III.F.15. and more fully described in the subsequent sections of Unit III.

1. *Chemical selection.* After receiving feedback on the *Framework Document* (Ref. 31) from various individuals at the April 26–27, 2000, Stakeholder meeting and considering the written comments submitted to the docket and other communications, EPA identified candidate chemicals for the VCCEP and the pilot program. These chemicals are those judged by EPA to present, given the data at hand, the relatively greatest potential for exposures that may impact children. This notice initiates the voluntary program by identifying the test battery, outlining the program, and soliciting Tier 1 sponsorship of the pilot chemicals by their manufacturers and importers.

2. *Tier 1 commitment.* To sponsor a chemical at Tier 1, a company (or consortium) would send a letter to EPA indicating their commitment to handling a chemical under the VCCEP pilot as described in Unit I.C. and D. and Unit IV.B. Tier 1 commitments are requested between January 25, 2001 and June 25, 2001.

3. *Submission of Tier 1 data.* Sponsors (or consortium) would subsequently submit to EPA a Tier 1 Hazard Assessment described in Units III.H. and III.I., a Tier I Exposure Assessment as described in Units III.H., III.J., and III.K., and a Tier 1 Risk Assessment as described in Units III.H. and III.M. A Data Needs Assessment which would describe additional hazard testing and/or exposure data needed to fully evaluate the risks of a chemical to children and, where relevant, prospective parents would also be submitted to EPA as described in Units III.H., III.N., and III.O.

4. *Peer Consultation regarding Tier 2 data needs.* At EPA's request, the third party contractor would periodically convene a Peer Consultation to evaluate the Tier 1 information with emphasis on the Data Needs Assessment. The Peer Consultation would evaluate whether Tier 1 data needs were met by the sponsor's submission and whether the Tier 1 submission fully characterized the chemical's potential risk to children and whether there are remaining Tier 2 data needs. A possible conclusion of the Peer Consultation is that no more work is needed. Results and comments from the Peer Consultation Process will be compiled by the third party contractor and submitted to EPA.

5. *EPA review of Peer Consultation results.* EPA would review the sponsor's submission and the third party contractor report and announce the Tier 2 Data Needs Decision. The sponsor will be informed by mail and the public by the VCCEP web site. If EPA's approach differs substantially from that indicated by the third party report, sponsors and other stakeholders will have 60 days to comment on EPA's determination regarding Tier 2 data needs. EPA, following consideration of comments, will mail its final decision on Tier 2 data needs to the sponsor and announce it on the VCCEP web site.

6. *Tier 2 commitment.* The sponsor would have a period of 4 months after the issuance of EPA's final Tier 2 Data Needs Decision to commit to Tier 2 of the pilot program. This commitment would be made by letter to the Agency as described in Units I.C., I.D., and IV.C.

7. *Development and submission of Tier 2 data.* The sponsor will develop and submit to EPA Tier 2 hazard and exposure data in the form of a revised Hazard Assessment, revised Exposure Assessment, and revised Risk Assessment. The sponsor will also submit a Data Needs Assessment which addresses the need for Tier 3 information. The time allowed for this effort would be based on the time needed to conduct specific tests or exposure studies for each chemical using the guidance provided in Unit III.V., Table 4.

8. *Peer Consultation regarding Tier 3 data needs.* At EPA's request, the third party contractor would periodically convene a Peer Consultation to review the Tier 2 information with emphasis on the Data Needs Assessment. The Peer Consultation would evaluate whether Tier 2 data needs were met by the sponsor's submission and whether the Tier 2 submission fully characterized the chemical's potential risk to children and whether there are remaining Tier 3 data needs. A possible conclusion of the Peer Consultation is that no more work is needed. The results and comments from the Peer Consultation Process will be compiled by a third party contractor and submitted to EPA.

9. *EPA review of Peer Consultation results.* EPA would review the sponsor's submission and the third party contractor report and announce the Tier 3 Data Needs Decision. The sponsor will be informed by mail and the public by the VCCEP web site. If EPA's approach differs substantially from that indicated by the third party report, sponsors and other stakeholders will have 60 days to comment on EPA's decision regarding Tier 3 data needs. EPA, following consideration of comments, will mail its final decision on Tier 3 data needs to the sponsor and announce it on the VCCEP web site.

10. *Tier 3 commitment.* Sponsors would have a period of 4 months after the issuance of EPA's Tier 3 Data Needs Decision to commit to Tier 3 of the pilot program. This commitment would be made by letter to the Agency as described in Units I.C., I.D., and IV.D.

11. *Development and submission of Tier 3 data.* The sponsor will develop and submit Tier 3 hazard and exposure data to EPA in the form of a revised Hazard Assessment, revised Exposure Assessment, and revised Risk Assessment. The time allowed for this effort would be based on the time needed to conduct specific tests or exposure studies for each chemical using the guidance provided in Unit III.V., Table 4.

12. *Peer Consultation of Tier 3 data.* At EPA's request, the third party contractor would periodically convene a Peer Consultation to review the Tier 3 information. The Peer Consultation would evaluate whether Tier 3 data needs were met by the sponsor's submission and whether the Tier 3 submission fully characterized the chemical's potential risk to children. The results and comments from the Peer Consultation Process will be compiled by the third party contractor and submitted to EPA.

13. *EPA review of Peer Consultation results.* EPA would review the sponsor's submission and the third party contractor report and determine if the risk to children has been adequately evaluated. The sponsor will be informed by mail and the public by the VCCEP web site. If EPA's evaluation identifies additional information needs, sponsors and other stakeholders will have 60 days to comment on EPA's decision. EPA, following consideration of comments, will mail its final evaluation to the sponsor and announce it on the VCCEP web site.

14. *Risk communication.* Risk communication in the VCCEP and its pilot is the dissemination of information collected and developed by this program and is further described in Unit III.X.

15. *Risk reduction.* Risk reduction in the VCCEP and its pilot is the follow up action necessary to reduce any identified risk and is further described in Unit III.Y.

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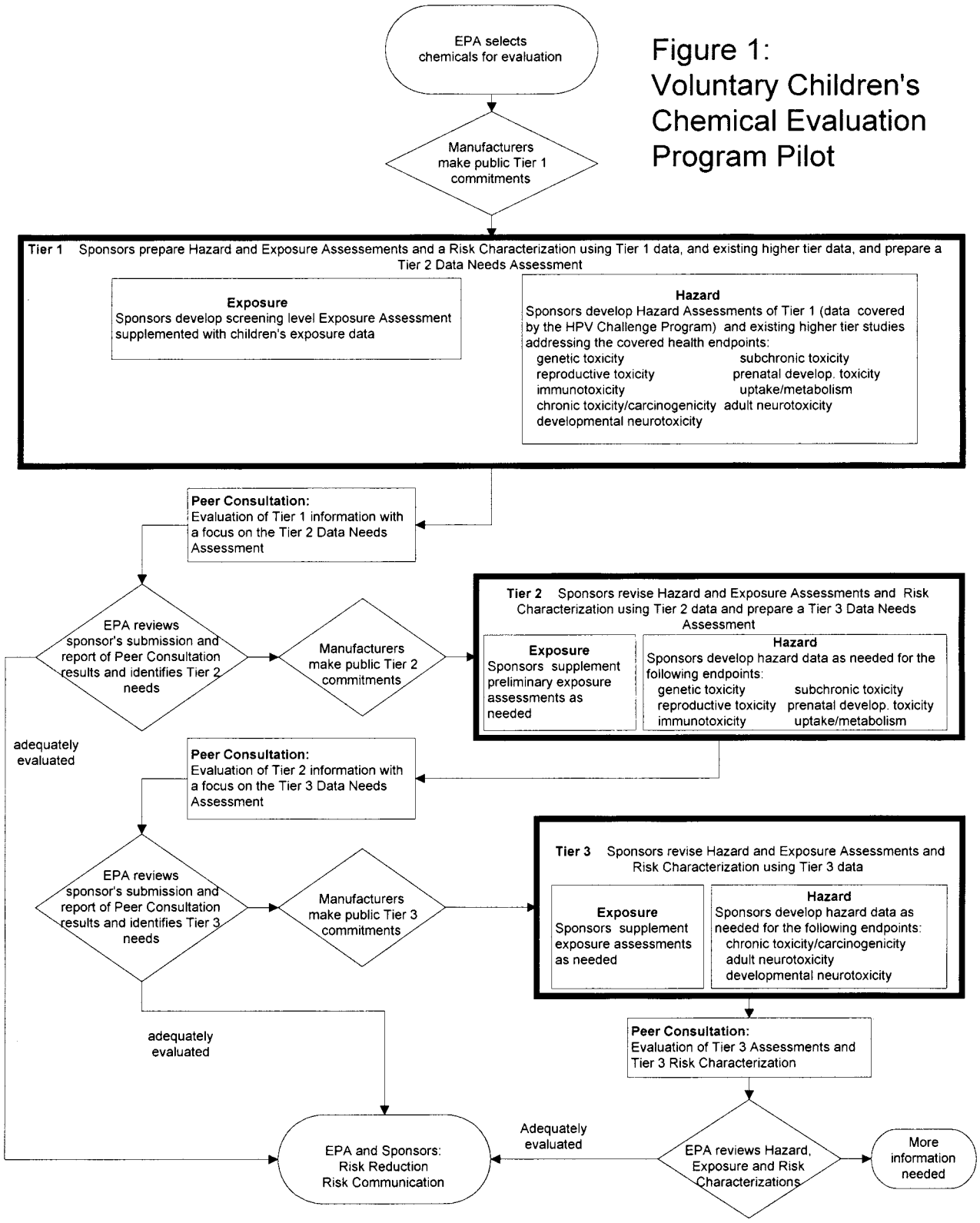

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G. Does a Sponsor Make a Separate Commitment for Each Tier?

For the pilot program, which will address 23 chemicals as explained in Unit III.A., the sponsor will be given the opportunity to commit to one tier at a time. After the completion of the pilot program, EPA will evaluate this aspect of the program and consider whether the multiple commitment procedure and other aspects of the program can be simplified.

H. What Information Must Be Submitted for Each Tier Committed To?

Four types of assessments must be submitted when a company/consortia commits to sponsor a chemical: A Hazard Assessment, an Exposure Assessment, a Risk Assessment, and a Data Needs Assessment. The Hazard, Exposure, and Risk Assessments, which should be consistent with applicable Agency guidelines (Refs. 34 and 41–44), would be submitted at the completion of each of the three tiers while a Data Needs Assessment would only be submitted with Tier 1 and Tier 2 submissions. The Data Needs Assessment submitted with Tier 1 submissions will address the need for Tier 2 data. Similarly, the Data Needs Assessment submitted with Tier 2 submissions will address the need for Tier 3 data. EPA, after reviewing both the sponsor's submission and the report of the third party summarizing the results and comments from the Peer Consultation (described in Units III.P. through III.U.), will announce what data are needed in Tier 2 and Tier 3.

The amount of information in the Hazard, Exposure, and Risk Assessments will increase with each successive tier because, as data are developed with each tier, those data will be used to expand and revise the relevant assessment developed for the previous tier. For example, the Hazard Assessment developed for Tier 2 will contain hazard information on the Tier 2 tests and all the information from the Tier 1 Hazard Assessment, which should be appropriately revised to reflect any new insights provided by the Tier 2 tests. Likewise, the hazard data developed from Tier 3 tests will be considered along with the Tier 2 Hazard Assessment, which will be expanded or revised to produce the Tier 3 Hazard Assessment. Similarly, higher tier Exposure Assessments will build upon Exposure Assessments developed for lower tiers. As Hazard and Exposure Assessments are expanded and revised for each tier so must the Risk Assessments be expanded and revised since they are based on the integration of hazard and exposure data. Because risk assessments define risk in terms of hazard and exposure, additional description of the risk or ''risk characterization'' should be provided to identify the adequacy/limitations/or deficiencies of the hazard and exposure data.

The Data Needs Assessments, which the sponsor will provide with Tiers 1 and Tier 2 submissions, will indicate whether the Tier 1 and Tier 2 Risk Assessments would benefit by additional hazard or exposure data which could be provided by the next tier. These Data Needs Assessments should be influenced by any known limitations or deficiencies of the hazard or exposure data as noted by the risk characterization. The Data Needs Assessment will be used by the Peer Consultation Group when considering whether the risks to children have been adequately assessed and characterized.

I. What Will a Hazard Assessment Contain for Each Tier?

The Tier 1 Hazard Assessment should consist, in part, of summaries of the Tier 1 studies listed in Table 3 in Unit III.D. Sponsors need to determine whether available information already adequately describes a given endpoint and submit summaries of this information. EPA guidance for determining data adequacy has already been provided in the HPV Challenge Program (web site address: http://www.epa.gov/chemrtk). The summaries should follow the guidance for Robust Summaries also provided by the HPV Challenge Program on the same web site. A Robust Summary must include an objective, discussion of methods, results, and conclusions. From a practical standpoint, it is not reasonable to attempt to create an electronic version of full study reports. Instead electronic summaries of full study reports should be prepared that contain the appropriate technical information for that particular endpoint. Guidance on what technical information, on an endpoint-by-endpoint basis, is necessary to adequately describe an experiment or study is also provided on the HPV Challenge Program web site. Robust Summaries should provide sufficient information to allow a technically qualified person to make an independent assessment of a given study report without having to go back to the full study report. If there are existing studies which are equivalent or relevant to any of the upper tier tests listed in Table 3 in Unit III.D., Robust Summaries of these studies should also be submitted with the Tier I Hazard Assessment. Any additional information, such as mechanistic information or SAR, that may influence decisions on further testing needs should also be included.

For a Tier 2 commitment, the sponsor should develop a Hazard Assessment that includes summaries of those Tier 2 studies listed in Table 3 in Unit III.D., which EPA has announced in its Data Needs Decision. In addition to the new hazard data developed for Tier 2, the Tier 2 Hazard Assessment should also contain all the information from the Tier 1 Hazard Assessment, which should be revised as appropriate to reflect new insights provided by the new hazard data developed for Tier 2.

For a Tier 3 commitment, the sponsor should develop a Hazard Assessment that includes summaries of those Tier 3 studies listed in Table 3 in Unit III.D., which EPA has announced in its Data Needs Decision. In addition to the new hazard data developed for Tier 3, the Tier 3 Hazard Assessment should also contain all the information from the Tier 2 Hazard Assessment, which should be revised as appropriate to reflect new insights provided by the new hazard data developed for Tier 3.

J. What Will an Exposure Assessment Contain?

An Exposure Assessment should contain information to answer the following questions for a particular chemical:

- Who and how many people are exposed?
- What are the sources of exposure, i.e., environmental releases, consumer products, etc.?
- Does the exposure occur through breathing air, drinking water, eating food, contact with skin, or any other routes?
- How intense is the exposure, i.e., what is the potential dose level?
- How often and for how long does exposure occur, that is, what is its frequency and duration?

The populations of concern to this program are children and, in certain situations, prospective parents. Exposures that can affect children are those which occur prior to conception (to either parent), during prenatal development, and postnatally to the age of sexual maturation which is completed around 18–21 years of age (Ref. 33). Although adult exposures are not intended to be a major focus of this program, certain risks to children cannot be assessed without evaluating parental exposures. Specifically, prospective parents' exposure is relevant to an evaluation of risks due to fertility and reproductive effects, as well as developmental effects from in utero exposures. Children can be exposed to chemicals through food and drinking water, through indoor and outdoor air, through ingestion of dust and soil, and through direct contact with products they use and products used in their immediate vicinity. Prospective parents can be exposed to chemicals through these pathways as well as through occupational activities.

The information in a complete Exposure Assessment should be representative and encompass

manufacturing, processing, and use. If existing data are submitted, they may include non-TSCA uses, but if new data are developed they should focus on exposure data from TSCA uses. Following are the specific types of information which should be submitted in an Exposure Assessment:

• Identification of all potential manufacturing and processing activities associated with the chemical that can lead to exposure to children or, where relevant, prospective parents. It is appropriate to evaluate a prospective parent's exposure if it is relevant to determining the need for higher tier developmental and reproductive toxicity studies.

• Identification of all potential uses (industrial, commercial, consumer) of the chemical and activities associated with these uses that may lead to exposure to children or, if appropriate, prospective parents.

• Measures or estimates of exposure to children (including significant subpopulations) or, where relevant, prospective parents.

• Measures or estimates of environmental releases from all activities and exposures resulting from these releases.

• Identification of relevant activity patterns, age ranges and subpopulations associated with activities that can lead to exposures.

• Physical/chemical properties and environmental fate characteristics.

• Review and analysis of relevant existing environmental and biological monitoring data.

• Documentation of all measured data, scenarios, assumptions, and estimation techniques.

Exposure Assessments should be developed using EPA's Exposure Assessment Guidelines (Ref. 34) as well as other existing exposure assessment procedures and guidance. EPA's National Center for Environmental Assessment (NCEA) is preparing a document entitled *Child-Specific Exposure Factors Handbook* which consolidates all child exposure factors and related data in one document. A draft copy (Ref. 39) is available on the NCEA website (http://www.epa.gov/ncea/csefh2.htm) and the final document should be available in the near future. The exposure information that is provided for the VCCEP must be transparent and must address the completeness of the assessment, i.e., how complete is the assessment in terms of addressing sources, populations, pathways, and routes of exposure to children. It is desirable for the exposure information from different sponsors to be provided in a consistent manner. EPA will work with stakeholders to develop a template that sponsors can use to provide exposure information. We anticipate the template will provide a format for reporting the results of exposure studies, e.g., exposure ''robust summaries.'' The template will also include sections that address the completeness of the assessment, the overall results and conclusions, the data gaps, and the need for further data and assessment. EPA encourages collaboration among sponsor companies and when necessary, between sponsor and non-sponsor companies, in order to ensure that exposure information encompasses all relevant activities, including activities outside the immediate knowledge and control of the sponsor companies.

Sponsors will bear a special responsibility in defining and describing the essential exposure issues associated with each chemical included in the program. Because the biomonitoring data used in selecting chemicals for this program are a strong indicator of human exposure, arguments to discontinue testing based on conclusions of no or low exposure must be supported by convincing analysis and thorough documentation. Refuting the biomonitoring data used for candidate chemical identification does not constitute exposure assessment and will not be considered a sufficient assessment. Similarly, complete reliance on the biomonitoring data for an exposure assessment, given the quality concerns raised by stakeholders, would be insufficient.

There may be certain cases, however, where evaluation of hazard data alone may appear warranted. In these cases, the sponsor should explain why exposure data have not been included, and should understand that the Peer Consultation Group and EPA may, in the absence of exposure data, conclude that upper tier testing and exposure data development are warranted.

K. What Should the Tier 1 Exposure Assessment Contain?

At a minimum, the Tier 1 Exposure Assessment should contain screening level (or, if available, better) information on exposure from manufacturing supplemented with relevant screening level data on downstream processing and use activities and specific information on children's exposures, if available. A screening level exposure assessment should generate conservative, quantitative estimates of exposure. The screening approach generally involves using readily available measured data, existing release and exposure estimates and other exposure-related information. Where actual measures of exposure are not available, the use of models may be necessary. For example, a screening-level model for ambient air exposure which uses the assumption that the exposed populations live near the chemical release locations is often used in EPA screening level assessments. An appropriately conservative screening level assessment can also help to rule out certain exposure concerns and set priorities for more detailed evaluation of the remaining concerns.

L. What Should Tier 2 and 3 Exposure Assessments Contain?

Tier 2 Exposure Assessments will be more advanced assessments that develop more accurate estimates of exposure and will generally focus on the higher priority exposures identified in the Tier 1 screening assessment. An advanced Exposure Assessment should quantify central tendency (e.g. median, geometric mean) and high end (i.e., greater than 90th percentile) exposures. Representative, well designed monitoring studies of known quality are the ideal. Higher tier exposure models may also be used in advanced assessments when appropriate measured data are unavailable. When higher tier models are used, every effort should be made to obtain accurate input data. For example, a higher tier model for ambient air exposure may use facility-specific parameters for emission rates, such as stack height and the exact size and location of the exposed population. Tier 2 assessments should also more specifically address exposures relevant to Tier 2 health testing endpoints. Similarly, Tier 3 Exposure Assessments would further develop Tier 1 and 2 exposure data and more specifically address exposures relevant to Tier 3 health testing endpoints.

M. What Will a Risk Assessment Contain?

The Risk Assessment should follow the guidance provided in EPA's risk assessment (Refs. 41–44) and exposure assessment guidelines (Refs. 34 and 39) which can be found at http://www.epa.gov/ncea. The Risk Assessment must integrate the Hazard and Exposure Assessments, and characterize the risks to children and, where relevant, prospective parents by indicating the adequacy, limitations, and/or deficiencies of the existing data for this purpose. Guidance for characterizing risk will be provided in EPA's *Risk Characterization Handbook* (Ref. 45) which should be available in the near future, at which time it will be on web site http://www.epa.gov/ORD/

spc/2riskchr.htm. The risk characterization should summarize key aspects of the following components of the risk assessment:

• Qualitative conclusions about the likelihood that the chemicals may pose a specific hazard to children or, where relevant, prospective parents, the nature of the observed effects, under what conditions (route, dose levels, time, and duration) of exposure these effects may occur, and whether the health effects-related data are sufficient and relevant to use in a risk assessment.

• A discussion of the dose-response patterns of the effects, the relationship among various endpoints and toxicities, the rationale behind the determination of the No Observed Adverse Effect Level (NOAEL), Lowest Observed Adverse Effect Level (LOAEL), and/or benchmark dose, the underlying assumptions, and the implications of using alternative assumptions.

• Descriptions of the sources and pathways of exposure, estimates of the range of human exposure (e.g., central tendency, high end), the route, duration, and pattern of exposure, relevant PK aspects, and the size and characteristics of the population exposed. The strengths and weaknesses of the risk assessment.

• The areas of uncertainty and the potential impact on the assessment.

• The potential impact of missing or inadequate hazard or exposure information.

For a Tier 1 commitment, the sponsor will develop a Risk Assessment which integrates Tier 1 Hazard and Exposure Assessments and characterizes the risk based on the quality and extent of those data. As noted earlier, the Hazard Assessment development for Tier 1 will include existing data from Tier 1 and higher tiers.

The Tier 2 Risk Assessment will integrate the Hazard and Exposure Assessments developed for Tier 2 and characterize the risk based on the quality and extent of those data. As noted earlier, the Hazard and Exposure Assessments developed for Tier 2 include the new data developed for Tier 2 and all the information in the relevant Tier 1 assessments which may be revised based on new insights provided by the data developed for Tier 2.

The Tier 3 Risk Assessment will integrate hazard and exposure assessments developed for Tier 3, and characterize the risk based on the quality and extent of those data. As noted earlier, the Hazard and Exposure Assessments developed for Tier 3 include the new data developed for Tier 3 and all the information in the relevant Tier 2 assessments which may have been revised based on new insights provided by the data developed for Tier 3.

N. What Will a Data Needs Assessment Contain?

A Data Needs Assessment identifies the additional hazard and/or exposure information needed to adequately assess the potential risks to children and, where relevant, prospective parents. The sponsor should be familiar with current requirements of test guidelines listed in Table 3 and consider to what degree the available hazard information covers current data needs. In situations where adequate data may be lacking for a particular hazard endpoint, the sponsor should consider what impact these limitations may have on the ability to adequately evaluate the potential hazards. The sponsor should consider to what degree the potential exposures to children from environmental releases and uses of the chemical have been accounted for and addressed. In situations where there are gaps in the evaluation of exposure, the sponsor should consider the impacts that these limitations, along with limitations in the hazard data, may impose on the ability to evaluate the risks to children. The sponsor should consider what hazard and exposure information could be provided by the next tier (e.g., Tier 2) and use a weight-of-the-evidence evaluation of Tier 1 hazard and exposure information to develop recommendations regarding needed work. The sponsor should provide the scientific rationale for any needed work in these areas in the next tier. The sponsor should also provide the scientific rationale for any hazard studies that are not recommended within that tier.

In meeting a Tier 1 commitment, the sponsor will develop an assessment of the need for Tier 2 hazard and exposure information. In meeting a Tier 2 commitment, the sponsor will develop an assessment of the need for Tier 3 hazard and exposure information. A Data Needs Assessment will not be required to be submitted with Tier 3 information.

O. What Will Be Considered when Preparing and Evaluating the Data Needs Assessment?

To evaluate what Tier 2 or Tier 3 information is needed, the Hazard, Exposure, and Risk Assessments from the previous tier will be considered. The need to conduct Tier 2 or Tier 3 toxicity tests and exposure studies for a specific chemical would be based on a judgement that the potential hazards, exposures, and risks to children and, where relevant, prospective parents have not been adequately evaluated by the lower tier assessments. The starting point for this judgement would be based on a weight-of-the-evidence evaluation of the Tier 1 hazard and exposure data prepared by the sponsor addressing the chemical's potential for hazards, exposures and risks to children and, where relevant, prospective parents. Of primary importance in this judgment is the risk characterization which notes any known limitations or deficiencies of the hazard and exposure data. If there is existing upper tier data, they will also be included in the evaluation. If the Tier 1 data are believed to adequately evaluate a chemical's potential hazard, exposure, and risk to children and, where relevant, prospective parents, Tier 2 hazard and exposure studies would not be pursued. Similarly, if the Tier 1 and Tier 2 data are believed to adequately evaluate a chemical's potential risks to children and, where relevant, prospective parents, Tier 3 hazard and exposure studies would not be pursued.

P. What is Peer Consultation and Why is it Included in VCCEP?

For the VCCEP, the purpose of the Peer Consultation Process is to provide a forum for scientists and relevant experts from various stakeholder groups to exchange views on the sponsor's Assessments and in particular on the recommended data needs and to provide these views to a third party contractor. The Peer Consultation Group will be asked to discuss whether the potential hazards, exposures, and risks to children have been adequately evaluated and to provide scientific input on the hazard and exposure data needs. It is not intended to be a consensus based process, but should identify areas of agreement, disagreement, and the supporting scientific rationale. An independent third party contractor will compile the results and comments from the Peer Consultation and submit a report to EPA.

After considering the sponsor's submission and the report of the third party contractor, EPA will announce what data from the next tier are needed. If EPA's approach differs substantially from that indicated by the third party report, EPA will provide a supporting rationale indicating the basis for its approach. Stakeholders will have 60 days to comment. EPA will consider these comments and then issue a final decision.

Q. How Does Peer Consultation Differ from Peer Review?

The key distinctions between peer consultation and peer review are the independence of the peer reviewers and their level of involvement. The goal of formal peer review is to obtain an independent, third-party review of a product. In contrast, peer consultation provides an opportunity to solicit input and comments from stakeholders on a scientific document. Depending on the nature of the peer consultation, this input could involve an interaction during the development of an evolving work product. Alternatively, it may involve solicitation of comments on a draft document. EPA's Science Policy Council has published the Peer Review Handbook (Ref. 51) that provides guidance on formal external peer review and informal peer consultation.

R. Who Prepares the Peer Consultation Documentation and What Must It Contain?

The sponsor is responsible for preparing the documentation for review by the Peer Consultation. A separate Peer Consultation Document will be prepared for each tier and should consist of four sections. The first section should provide the Hazard Assessment and robust summaries of all available hazard information (e.g., Tier 1 plus any available Tier 2 and Tier 3 data) including relevant toxicology studies as well as any additional information (i.e., mechanistic data, SAR) that may influence decisions on data needs. The second section is the Exposure Assessment which provides and characterizes the relevant exposure information available on the chemical. The third section is the Risk Assessment which indicates the potential health risk of exposure to the chemical for children and, if appropriate, prospective parents based on available hazard and exposure data, and also indicates whether the risk has been adequately evaluated. Finally, the last section is the Data Needs Assessment which summarizes the hazard and exposure data needs, as appropriate, with respect to achieving an adequate set of data for risk assessment. The sponsor should provide the scientific rationale for any needed work in these areas in the next tier. The sponsor should also provide the scientific rationale for any hazard studies that are not recommended within that tier. In a similar manner, the sponsor should provide the scientific rationale for the recommendations related to meeting exposure information needs in the next tier. It is recognized that this section may also include a recommendation of low priority for further work, which should also be supported by a scientific rationale. For each tier to which the sponsor has made a commitment, the sponsor will submit three hard copies and an electronic copy of a Peer Consultation Document to EPA. EPA will make the document available to the public and the third party contractor.

S. Who Will Participate in the Peer Consultation Group?

Because the goal of the Peer Consultation Process is to contribute to the review of a scientific work product, it should not be conducted as a mechanical evaluation step. To ensure this outcome, the Peer Consultation Group should be comprised of scientific experts with extensive and broad experience in toxicity testing and exposure evaluations, such that members will have sufficient technical expertise to make meaningful contributions to science-based evaluations. The membership of the Peer Consultation Group will likely vary somewhat for each chemical reviewed. To ensure consistency among reviews, there will be a balanced ''core'' group that consists of scientists from interested stakeholder groups, including EPA scientists and scientists representing industry, academia, children's health, public health, environmental, and animal welfare organizations. This group will be involved in the review of all chemicals. In addition, there should be a group of experts that will be invited to participate on a case-by-case basis to provide additional expertise relevant to a specific chemical or issue. This could include experts in specific toxicology disciplines, experts in exposure, or experts in a specific chemical. The Peer Consultation Group for a specific chemical is therefore likely to be composed of the core group and invited experts.

T. How Will the Peer Consultation be Conducted?

An external, third party scientific organization will be contracted to be responsible for arranging the Peer Consultation meetings, inviting experts, and facilitating the meetings. Stakeholders will be given an opportunity to suggest appropriate invited experts, but the selection will be made by the third party. The third party will also be responsible for addressing potential conflicts of interest in the membership of the Peer Consultation.

The sponsor will provide three hard copies and one electronic copy of the Peer Consultation Document to EPA. EPA will make the Document available to the third party contractor and to the public in the TSCA NCIC docket and announce its availability on the VCCEP web site. The third party contractor will be responsible for distributing the Document to the Peer Consultation Group. The sponsor will present the Assessments and recommendations in the Peer Consultation Document to the Peer Consultation Group and participate in the Group's deliberations to the extent of answering any questions about the Assessments and offering clarifications. The focus of the meetings will be the Data Needs Assessment section of the Document.

The Peer Consultation Group should review the Assessments prepared by the sponsor with particular emphasis on the sponsor's recommendation for developing additional data. The Peer Consultation Group should take a weight-of-evidence approach that considers all the available toxicity and exposure information. A weight-of-evidence evaluation can include, but not be limited to, consideration of the quality of the data, the resolving power of the studies, the number and types of endpoints examined, the relevance of the dose levels, route, timing, and duration of exposures, the appropriateness of dose selection, the replication of effects, statistical and/or biological significance of effects, the adequacy of the exposure information, and the relevance of the exposure scenario to the toxicology endpoints of concern. Sound scientific judgment is the foundation for the weight-of-evidence evaluation.

The results of the Peer Consultation Process should be the individual opinions of the members of the Peer Consultation Group regarding necessary follow up toxicity testing and/or exposure information within the context of the tiered evaluation framework. If specific toxicity studies are indicated, they should be chosen from the next tier of studies within the overall framework and should allow flexibility, if possible, to pursue either additional toxicity testing and/or exposure evaluation, allowing sponsors to select the option which will most quickly, directly, and cost-effectively reduce uncertainty and allow the creation of a risk assessment. If the opinions of the Peer Consultation Group are that no additional work is needed based on low priority of current concern, that would also be acceptable.

Peer Consultation meetings and deliberations will be open to the public. Interested parties who are not part of the Peer Consultation Group will have the opportunity to provide written and/or oral comments and information at the

appropriate time during the Peer Consultation meeting. EPA will ensure that the public and interested stakeholders are adequately notified of upcoming Peer Consultation meetings. If stakeholders express an interest, EPA will consider conducting these Peer Consultation meetings at locations other than Washington, DC. Meeting announcements will include information on the meeting agenda and meeting location.

At the end of the meeting, the results of the Peer Consultation will be compiled by the third party contractor and distributed to the Peer Consultation group to check for accuracy. The third party contractor will then submit this report, which will include a summary of significant written and verbal comments from outside parties and any third party comments, to the sponsor and EPA. EPA will place the report in the public record in the TSCA NCIC docket.

EPA will use the third party report in forming its decision regarding additional data needs. EPA will mail its Data Needs Decision to the sponsor and announce it on the VCCEP web site. If EPA's approach differs substantially from that presented in the third party contractor report, EPA will provide a supporting rationale which indicates the basis for its decision. Stakeholders will have 60 days to comment on the decision; all comments will be placed in the public docket. EPA will consider the stakeholders' comments and then make a final decision which will be mailed to the sponsor and announced on the VCCEP web site.

U. What Guidance is Provided for the Peer Consultation Process?

The third party contractor will provide the members of the Peer Consultation Group with a series of documents that will provide Agency guidance. This will include EPA's TSCA (Ref. 46) and OPPTS test guidelines (Ref. 47), OECD test guidelines (Ref. 48), ASTM guideline (Ref. 49), EPA's exposure assessment guidelines (Refs. 34 and 39), EPA's risk assessment guidelines (Refs. 41–44), EPA's Risk Characterization Handbook (Ref. 45), EPA's Peer Review Handbook (Ref. 51), and this **Federal Register** notice. The report entitled *Retrospective Validation of Tiered Toxicity Testing Triggers* (Ref. 2, Attachment D) prepared by the Chemical Manufacturers Association (CMA), now known as the American Chemistry Council (ACC), may also provide information to assist in the evaluation.

The Peer Consultation Group will assess the sponsor's prepared Assessments for technical adequacy, proper documentation, and satisfaction of established specifications. The Peer Consultation Group should also determine if the Assessments adequately present assumptions, calculations, supporting documentation, extrapolations, alternative interpretations, methodology, acceptance criteria, as well as other conclusions.

V. What Time Will be Allowed to Complete Each Tier?

After the sponsor has made a commitment to a particular tier, EPA believes there is a certain amount of time which is sufficient to collect information, conduct testing, obtain exposure information, and prepare a report. The amount of time necessary will depend on the nature of the toxicology and exposure information that is being developed. For toxicology studies, the amount of time that may be needed is presented in Table 4 of this unit. These times assume that tests within the same tier will be run concurrently. The time allowed to submit the information for a particular tier will be determined by consideration of the test in that tier requiring the greatest number of months to complete and the estimated time demands for any exposure studies. An additional 4 months of time may be requested by the sponsor to prepare one or more of the following: The Exposure Assessment, Risk Assessment, and Data Needs Assessment.

TABLE 4.—TIME ALLOWED TO CONDUCT TOXICOLOGY TEST AND PREPARE FINAL REPORT

Test	Months
Acute oral toxicity (up/down) OR Acute inhalation toxicity	18
In vitro gene mutation: Bacterial reverse mutation assay	18
In vitro chromosomal aberrations	18
90-Day subchronic in rodents	18
Reproduction and fertility effects	29
Prenatal developmental toxicity (two species)	12
In vivo mammalian bone marrow chromosomal aberrations, OR *In vivo* mammalian erythrocyte micronucleus	16
Immunotoxicity	12[1]
Metabolism and pharmacokinetics	12
Carcinogenicity OR	60

TABLE 4.—TIME ALLOWED TO CONDUCT TOXICOLOGY TEST AND PREPARE FINAL REPORT—Continued

Test	Months
Chronic toxicity/carcinogenicity	
Neurotoxicity screening battery	21
Developmental neurotoxicity	21

[1] If the test for immunotoxicity is run as a satellite of another study, the final report would be due on the reporting date of the other study.

W. How Will the VCCEP Pilot Program be Evaluated?

Evaluation of the pilot program is critical to the success of the VCCEP. The evaluation will consider what modifications might be made which would make the VCCEP run more efficiently. One efficiency that might be introduced into the program is requesting the sponsor to commit to more than one tier at a time. Experience gained from the pilot may indicate whether it is best to run the program with commitments at each tier, e.g. three commitments, or to run the program with two commitments, i.e., to Tier 1 and to Tiers 2/3. The evaluation of the pilot program will also look at the time frames allowed for sponsor commitment which for the pilot is 6 months to commit to Tier 1, 4 months to commit to Tier 2, and 4 months to commit to Tier 3. At this time, EPA expects to evaluate the pilot at 3 and 6 years after its initiation.

A key feature in the evaluation of the pilot program will be an objective evaluation of the performance of the Peer Consultation Process and its results. The evaluation will be organized and conducted by EPA, but representatives of the third party contractor and stakeholders will be consulted.

Questions to address in evaluating the Peer Consultation Process should include, but not necessarily be limited to, the following:

- Has the Peer Consultation Process been open and transparent?
- Has the Peer Consultation Process been efficient? If not, what improvements could be made?
- Does the evaluative process provide a scientifically rigorous and effective means for developing results and comments from Peer Consultation and for assisting EPA in developing decisions?
- Has the Peer Consultation Group adequately considered both toxicology and exposure information in developing its results?

• Have the communications related to the Peer Consultation Process, activities and outcomes been effective and have they facilitated public understanding and use of the information generated from this process?

EPA believes that the VCCEP pilot presents a unique opportunity for EPA, the chemical industry, and other stakeholders to demonstrate that they can jointly manage, participate in, and generate results in an in-depth hazard, exposure, and risk assessment program. While the focus of this pilot is on chemicals that may have potential health effects on children, EPA believes that the process to be evaluated in the pilot may have broader applications in the future. For example, it may present a mechanism to follow up on chemicals that are of concern based on information developed in the HPV Challenge Program. In the event that there is little participation in the pilot or if the activities under the pilot are unnecessarily drawn out and resource inefficient, EPA will evaluate whether its TSCA chemicals programs should revert to a more conventional regulatory approach, especially with regard to test rules under TSCA section 4 or other regulatory actions.

X. How Will the Data Resulting from the VCCEP and its Pilot be Provided to the Public?

Because the chemicals selected for the VCCEP are believed to have widespread potential for exposures to both children and prospective parents, EPA believes that the availability of the information that will be developed as a result of this program is vitally important so that government, industry, and the public can understand potential chemical hazards, exposures, and risks posed to the nation's children.

EPA will announce on the VCCEP web site the public availability in the TSCA NCIC of the Hazard Assessments, Exposure Assessments, Risk Assessments, and Data Needs Assessments developed for this program. It will similarly provide access to EPA's communications with sponsors and the reports of the third party contractor who will compile the results and comments from the Peer Consultation. Stakeholders will also be involved in contributing to follow up communication of risk information developed by this program.

Y. How Will the Information Submitted for the VCCEP and its Pilot be Used by EPA?

When data and other information generated from this program become available, EPA will utilize a risk-based, scientifically sound process to make decisions on the need for further information gathering or risk reduction action. All stakeholders to this process will be involved in contributing to follow up actions that result from information developed by this program. The sponsor and other stakeholders will be provided adequate notice and a reasonable opportunity to comment should EPA perceive the need to initiate risk reduction actions based on that data.

IV. Volunteering for the VCCEP Pilot

A. What are My Legal Obligations If I Volunteer for the VCCEP or its Pilot?

If a company volunteers to sponsor a chemical in the VCCEP or its pilot it has made a voluntary commitment to develop hazard and exposure data on a specific chemical in the program consistent with EPA's Chemical Right-to-Know Initiative. Commitments are not enforceable agreements or contracts. Sponsors may withdraw their sponsorship of a chemical at any time with the understanding that EPA may then exercise its authority to require testing under TSCA where appropriate. Where a chemical is currently being sponsored under VCCEP or its pilot, the Agency will take this into consideration when considering taking actions under TSCA section 4.

B. How do I Volunteer to Sponsor My Chemical at Tier 1 of the Pilot?

To sponsor a chemical at Tier 1, a company (or consortium) would forward a letter to EPA indicating their commitment to handling the chemical under the VCCEP pilot. This commitment letter should be submitted between January 25, 2001 and June 25, 2001. The commitment letter must identify the chemical by name and CAS No., include a technical contact per Unit I.D. (and member companies for consortia), commit to starting development of Tier 1 hazard and exposure data described in Units III.H., III.I., III.J., and III.K. within 6 months after the end of the sign up period, and include the anticipated start date and submission date to EPA of Tier 1 information.

For purposes of the VCCEP, Tier 1 includes the hazard endpoints found in the HPV Challenge as well as any existing Tier 2 or Tier 3 hazard data. Sponsors are encouraged to begin efforts under the VCCEP within 6 months after the end of the sign up period, but may opt to delay the start year for developing Tier 1 hazard and exposure data to be consistent with the commitment made to the HPV Challenge Program. Also, new testing of individual chemicals (i.e., those HPV chemicals not proposed for testing in a category) shall be deferred until November 2001 (Ref. 40). In these cases, Tier 1 data (as described above) should be provided in January of the start year.

Sponsors or consortia making a Tier 1 commitment for a specific chemical would agree to:

1. Sponsor the chemical in Tier 1.
2. Develop a Hazard Assessment of Tier 1 (existing and new studies as needed) studies and existing higher tier hazard studies, as described in Units III.H. and III.I.
3. Develop an Exposure Assessment, Risk Assessment, and a Data Needs Assessment as described in Units III.H., III.J., III.K., III.M., III.N., and III.O.
4. Prepare a Peer Consultation Document as described in Unit III.R. and provide three hard copies and an electronic copy to EPA. EPA will make the Document available to the public and the third party contractor.
5. Make a good faith effort to start and finish all work in a timely manner and within the time period specified.
6. Make all hazard and exposure data developed for this program publicly available.
7. Judge existing hazard studies not conducted per Good Laboratory Practices (GLPs) guidelines based on their merits.
8. Generate any new hazard data using GLPs and test guidelines in Table 3 of Unit III.D.
9. Develop exposure data that is representative of known exposure scenarios and is of known quality.
10. Cooperate with other potential sponsors in facilitating the formation of consortia.

C. How do I Volunteer to Sponsor My Chemical at Tier 2 of the Pilot?

To sponsor a chemical at Tier 2, a company (or consortium) would forward a letter to EPA indicating their commitment to handling the chemical under Tier 2 of the VCCEP pilot. The commitment letter must identify the chemical by name and CAS No., include a technical contact per Unit I.D. (and member companies for consortia), commit to starting development of Tier 2 hazard and exposure data described in Units III.H., III.I., III.J, and III.L. no later than 6 months after the end of the sign up period, and include the anticipated start date and submission date to EPA of Tier 2 information. Tier 2 commitments should be made by sponsor companies within 4 months of the issuance of EPA's Tier 2 Data Needs Decision.

Sponsors or consortia making a Tier 2 commitment for a specific chemical would agree to comply with the guidance in Unit IV.B.4. through 10. as well as the following:

1. Sponsor the chemical in Tier 2.
2. Develop a Hazard Assessment of Tier 2 (existing and new studies as needed) studies and existing higher tier hazard studies, as described in Units III.H. and III.I.
3. Develop an Exposure Assessment, Risk Assessment, and a Data Needs Assessment as described in Units III.H., III.J., III.L., III.M., III.N., and III.O.

D. How do I Volunteer to Sponsor My Chemical at Tier 3 of the Pilot?

To sponsor a chemical at Tier 3, a company (or consortium) would forward a letter to EPA indicating their commitment to handling the chemical under Tier 3 of the VCCEP pilot. The commitment letter must identify the chemical by name and CAS No., include a technical contact per Unit I.D. (and member companies for consortia), commit to starting development of Tier 3 hazard and exposure data described in Units III.H., III.I., III.J., and III.L. no later than 6 months after the end of the sign up period, and include the anticipated start date and submission date to EPA of Tier 3 information. Tier 3 commitments should be made by sponsors within 4 months of the issuance of EPA's Tier 3 Data Needs Decision.

Sponsors or consortia making a Tier 3 commitment for a specific chemical would agree to comply with the guidance in Unit IV.B.4. through 10. as well as the following:

1. Sponsor the chemical in Tier 3.
2. Develop a Hazard Assessment of Tier 3 (existing and new studies as needed) studies, as described in Units III.H. and III.I.
3. Develop an Exposure Assessment and Risk Assessment as described in Units III.H., III.J., III.L., and III.M.

V. Identification of Manufacturers and Importers of Pilot VCCEP Chemicals

When CBI is not an issue, EPA will assist in identifying the manufacturers and importers. A list of VCCEP pilot chemicals and non-CBI manufacturers and importers who reported to the 1998 IUR is included in Ref. 36. Similar information is available from the HPV Challenge Program web site on manufacturers and importers of HPV chemicals reporting under the 1990 and 1994 IURs. EPA encourages all companies that manufacture or import a selected chemical to share the responsibility of supporting this program.

VI. Tracking VCCEP Pilot Sponsor Commitments and Performance

Public confidence in the successful outcome of this voluntary program and ongoing participation by the sponsors are both enhanced by the public's ability to follow the program's progress as it occurs. EPA will maintain a database on its web site which will list the sponsor commitments. Information in the tracking database will include:

- CAS No. and name of the chemical.
- Sponsors and any consortia involved.
- Expected and actual start date and submission date to EPA for Tier 1 information.
- Third party contractor report on the results and comments from Peer Consultations and EPA's Data Needs Decisions for Tier 2 and Tier 3.
- Status of Tier 2 and Tier 3 commitments.
- Expected and actual start date and submission date to EPA for Tier 2 and Tier 3 information.

VII. Schedule for the VCCEP Pilot

The schedule goals for the VCCEP pilot are as follows:

- Receive Tier 1 commitments to the VCCEP pilot between January 25, 2001 and June 25, 2001.
- Sponsors initiate any needed studies within 6 months after the end of the sign up period.
- Sponsors complete needed studies within the time period specified in Table 4 of Unit III.V., unless they have requested an extension of up to 4 months to prepare one or more of the following assessments: Exposure Assessment, Risk Assessment, and Data Needs Assessment.
- Make all Tier 1 Assessments publicly available within 1 month of receipt by EPA.
- Peer Consultation reviews Tier 1 Assessments, third party contractor compiles results and comments, and sends report to EPA.
- EPA announces the Tier 2 Data Needs Decision.

  1. 60-Day comment period if Decision differs substantially from what is presented in the third party contractor's report.

  2. EPA announces the final Tier 2 Data Needs Decision.
- Receive Tier 2 commitments within 4 months of the final Tier 2 Data Needs Decision.
- Sponsors initiate any needed studies within 6 months after the end of the sign up period.
- Sponsors complete needed studies within the time period specified in Table 4 of Unit III.V., unless they have requested an extension of up to 4 months to prepare one or more of the following assessments: Exposure Assessment, Risk Assessment, and Data Needs Assessment.
- Make all needed Tier 2 Assessments publicly available within 1 month of receipt by EPA.
- Peer Consultation reviews Tier 2 Assessments, third party contractor compiles results and comments, and sends report to EPA.
- EPA announces the Tier 3 Data Needs Decision.

  1. 60-Day comment period if Decision differs substantially from what is presented in the third party contractor's report.

  2. EPA announces the final Tier 3 Data Needs Decision.
- Receive Tier 3 commitments within 4 months of the final Tier 3 Data Needs Decision.
- Sponsors initiate any needed studies within 6 months after the end of the sign up period.
- Sponsors complete needed studies within the time period specified in Table 4 of Unit III.V., unless they have requested an extension of up to 4 months to prepare one or more of the following assessments: Exposure Assessment, Risk Assessment, and Data Needs Assessment.
- Make all needed Tier 3 Assessments publicly available within 1 month of receipt by EPA.
- Peer Consultation reviews Tier 3 Assessments, third party contractor compiles results and comments, and sends report to EPA.
- EPA announces its evaluation of Tier 3 data.

  1. 60-Day comment period if EPA identifies additional information needs.

  2. EPA announces the final evaluation of Tier 3 data.
- Evaluation of pilot program.
- Initiate any necessary Risk Reduction and Risk Communication after review of final Risk Assessment.

VIII. References

The following references are available for inspection in the TSCA NCIC under docket control number OPPTS–00274D.

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2. CMA. Comments on the Framework Document for the VCCEP. May 30, 2000.
3. CMA, Chemstar, Acetone Panel. Comments on the Framework Document for the VCCEP. May 30, 2000.
4. CMA, Chemstar, Brominated Flame Retardant Industry Panel. Comments on the Framework Document for the VCCEP. May 30, 2000.

5. CMA, Chemstar, Cumene Panel. Comments on the Framework Document for the VCCEP. May 30, 2000.
6. CMA, Chemstar, Isophorone Task Group. Comments on the Framework Document for the VCCEP. May 30, 2000.
7. CMA, Chemstar, Ketones Panel. Comments on the Framework Document for the VCCEP. May 30, 2000.
8. CMA, Chemstar, Naphthalene Panel. Comments on the Framework Document for the VCCEP. May 30, 2000.
9. CMA, Chemstar, Phthalate Esters Panel. Comments on the Framework Document for the VCCEP. May 30, 2000.
10. CMA, Chemstar, Vinyl Chloride Health Committee. Comments on the Framework Document for the VCCEP. May 30, 2000.
11. Chemical Specialties Manufacturers Association (CSMA). Comments on the Framework Document for the VCCEP. June 1, 2000.
12. Doris Day Animal League. Comments on the Framework Document for the VCCEP. May 26, 2000.
13. Dow. Comments on the Framework Document for the VCCEP. May 23, 2000.
14. Halogenated Solvents Industries Association (HSIA). Comments on the Framework Document for the VCCEP. May 30, 2000.
15. HSIA. Comments on the Framework Document for the VCCEP. Filed electronically. May 30, 2000.
16. Humane Society of the United States. Comments on the Framework Document for the VCCEP. May 30, 2000.
17. King and Spalding. Comments on the Framework Document for the VCCEP. May 30, 2000.
18. The National Treasure Employees Union (NTEU). Comments on the Framework Document for the VCCEP. May 26, 2000.
19. Physicians Committee for Responsible Medicine (PCRM). Comments on the Framework Document for the VCCEP. Filed electronically. June 8, 2000.
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21. People for the Ethical Treatment of Animals (PETA). Comments on the Framework Document for the VCCEP. May 30, 2000.
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23. Styrene Information and Research Center (SIRC). Comments on the Framework Document for the VCCEP. May 31, 2000.
24. Synthetic Organic Chemical Manufacturers Association (SOCMA). Comments on the Framework Document for the VCCEP. May 30, 2000.
25. The Dow Chemical Company. Comments on the Framework Document for the VCCEP. May 26, 2000.
26. People for the Ethical Treatment of Animals (PETA). Comments on the Framework Document for the VCCEP. December 10, 1999.
27. Physicians Committee for Responsible Medicine (PCRM). Comments on the Framework Document for the VCCEP. January 6, 2000.
28. CMA. Letter with 3 attachments from Sandra Tirey to James Aidala and Susan Wayland, USEPA, Office of Prevention, Pesticides and Toxics, Washington, DC. September 21, 1999.
29. American Public Health Association (APHA), Children's Environmental Health Network, Environmental Defense, National Environmental Trust, Physicians for Social Responsibility. Comments on the Environmental Protection Agency's Framework for a Voluntary Children's Chemical Evaluation Program. April 12, 2000.
30. Noren K., Meironte D. Contaminants in Swedish human milk. Decreasing levels of organochlorine and increasing levels of organobromine compounds. Organohalogen Compounds 38:1–4. 1998.
31. USEPA. Framework for a Voluntary Children's Chemical Evaluation Program. April 12, 2000.
32. USEPA. Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health. Report of the Toxicology Working Group of the 10X Task Force. April 28, 1999. (Web site address: http://www.epa.gov/pesticides/SAP/1999).
33. USEPA. FIFRA Scientific Advisory Panel Meeting, May 25–27, 1999; May 25, 1999. SAP Report No. 99–03.
34. USEPA. Guidelines for Exposure Assessment. **Federal Register** (FRL–4129–5) (57 FR 22888, May 29, 1992).
35. Novigen Sciences, Inc. Washington, DC. Frequency of detection and levels of organochlorine compounds in biomonitoring samples collected by NHANES, NHEXAS, NHATS, and TEAM. Prepared for Chlorine Chemistry Council. May 4, 2000.
36. USEPA. Non-CBI companies which manufacture or import chemicals in the VCCEP pilot. August 2000.
37. USEPA. Supporting data for Tables 1, 2, and 3. August 24, 2000.
38. USEPA. Methodology for Selecting Chemicals for the Voluntary Children's Chemical Evaluation Program (VCCEP) Pilot. December 5, 2000.
39. USEPA, NCEA. *Child-Specific Exposure Factors Handbook*. NCEA-W-0853. June 2000. External Review Draft.
40. USEPA. Letter from Susan H. Wayland to companies participating in the HPV Challenge Program. October 14, 1999.
41. USEPA. Guidelines for Neurotoxicity Risk Assessment. **Federal Register** (FRL–6011–3) (63 FR 26925–26954, May 14, 1998).
42. USEPA. Guidelines for Carcinogen Risk Assessment. EPA/600/P-92/003C. April 1996. **Federal Register** (FRL–5460–3) (61 FR 17960–18011, April 23, 1996).
43. USEPA. Guidelines for Developmental Toxicity Risk Assessment. **Federal Register** (FRL–4038–3) (56 FR 63798, December 5, 1991).
44. USEPA. Guidelines for Reproductive Toxicity Risk Assessment. **Federal Register** (FRL–5630–6) (61 FR 56273, October 31, 1996).
45. USEPA, Science Policy Council. *Risk Characterization Handbook*. In preparation.
46. USEPA. Toxic Substances Control Act Test Guidelines. 40 CFR part 799. pp. 280–312, 319–344. July 1, 2000.
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48. OECD. OECD Test Guidelines.
49. ASTM. ASTM Test Guideline E1163–98.
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53. NTP, CERHR. Review of Phthalates. July 14, 2000.
54. CPSC. Notice of meeting of Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP). **Federal Register** (65 FR 49231, August 11, 2000).
55. FDA. Center for Devices and Radiological Health. PVC and DEHP. Presentation by Dr. David W. Feigal to the 8th GHTF Conference, Ottawa, Canada. September 20, 2000.

IX. Regulatory Assessment Requirement

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is

subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the notice, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to the submission of commitment letters and submission of data on health effects have been approved under OMB control number 2070–0033 (EPA ICR No. 1139) (Ref. 52). EPA will develop a new ICR to cover the submission of exposure and risk information for the chemicals in the VCCEP. The availability of the new ICR will be announced in the **Federal Register** and there will be an opportunity for public comment. Upon OMB approval of the new ICR, EPA will send a letter to the sponsors or issue a **Federal Register** notice reminding them of the due date for the Tier 1 information and will include the ICR number and OMB control number covering the data collection.

The collection of commitment letters and health effects information discussed in this notice is approved by OMB and the total burden hours currently approved for the information collection activities for a voluntary chemical evaluation program specifically accounts for the Agency's burden estimate for 22 chemicals during the OMB approved information collection period. EPA believes that if several chemicals are addressed as a group instead of individually, as discussed in Unit III.A. for *o*-xylene and *m*-xylene, that the burden estimate for a group should be that for a single chemical. EPA therefore believes that the existing approval includes a sufficient burden hour allocation to cover the burden related to the 23 chemicals in the pilot of this voluntary program.

The voluntary testing program involves the submission by the sponsor of one commitment letter per year and one long term report (referred to in this program as the Peer Consultation Document) per chemical or group per year. EPA estimates that the information collection activities related to commitment letters and health effects evaluation/testing discussed in the Peer Consultation Document would result in total burden hours of approximately 39,768 (Ref. 52, Attachment 7) . The average burden is estimated to be 68.36 hours per response (Ref. 52).

As defined by the PRA and 5 CFR 1320.3(b), ''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.

List of Subjects

Environmental protection, Chemicals, Children, Hazardous substances, Health and safety.

Dated: December 15, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxics.

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December 26, 2000

Part VI

Environmental Protection Agency

Office of Environmental Justice Small Grants Program; Application Guidance FY 2001; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6921–8]

Office of Environmental Justice Small Grants Program; Application Guidance FY 2001

Introduction

This guidance outlines the purpose, goals, and general procedures for application and award under the Fiscal Year (FY) 2001 Environmental Justice Small Grants Program (EJSGP). For FY 2001, the U.S. Environmental Protection Agency (EPA) will make available approximately $1,500,000 in grant funds to eligible organizations (pending availability of funds); $500,000 of this amount is available for Superfund projects only. Applications must be mailed to your appropriate EPA regional office (listed in Section III) and postmarked by the U.S. Postal Service no later than midnight Friday, March 9, 2001.

This guidance includes the following:

I. Scope and Purpose of the OEJ Small Grants Program
II. Eligible Applicants and Activities
III. Application Requirements
IV. Process for Awarding Grants
V. Expected Time-frame for Reviewing and Awarding Grants
VI. Project Period and Final Reports
VII. Fiscal Year 2002 OEJ Small Grants Program

Translations Available

A Spanish translation of this announcement may be obtained by calling the Office of Environmental Justice at 1–800–962–6215.

Hay traducciones disponibles de este anuncio en espanol. Si usted esta interesado en obtener una traduccion de este anuncio en espanol, por favor llame a La Officina de Justicia Ambiental conocida como ''Office of Environmental Justice,'' linea gratuita (1–800–962–6215).

I. Scope and Purpose of the OEJ Small Grants Program

The purpose of this grant program is to provide financial assistance to eligible community groups (*i.e.,* community-based/grassroots organizations, churches, or other nonprofit organizations) and federally recognized tribal governments that are working on or plan to carry out projects to address environmental justice issues. Preference for awards will be given to community-based/grassroots organizations that are working on local solutions to local environmental problems. Funds can be used to develop a new activity or substantially improve the quality of existing programs that have a direct impact on affected communities. All awards will be made in the form of a grant not to exceed one year.

Background

In its 1992 report, *Environmental Equity: Reducing Risk for All Communities,* EPA found that minority and low-income populations may experience higher than average exposure to toxic pollutants than the general population. The EPA established the OEJ in 1992 to help these communities identify and assess pollution sources, to implement environmental awareness and training programs for affected residents, and to work with community stakeholders to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit, select, supervise, and evaluate environmental justice-related projects, and to disseminate information on the projects' content and effectiveness. Fiscal year (FY) 1994 marked the first year of the OEJ Small Grants Program. The chart below shows how the grant monies have been distributed since FY 1994.

Fiscal year	$Amount	Number of awards
1994	500,000	71
1995	3,000,000	175
1996	2,800,000	152
1997	2,700,000	139
1998	2,500,000	123
1999	1,455,000	95
2000	899,000	61

How Does EPA Define Environmental Justice Under the Environmental Justice Small Grants Program?

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no one group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. *Meaningful involvement* means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

II. Eligible Applicants and Activities

A. Who May Submit Applications and May an Applicant Submit More Than One?

Any affected, non-profit community organization 501c(3) or 501c(4) [1] or federally recognized tribal government may submit an application upon publication of this solicitation. *Applicants must be non-profit* to receive these federal funds. State-recognized tribes or indigenous peoples' organizations can apply for grant assistance if they meet the definition of a nonprofit organization. ''Non-profit organization'' means any corporation, trust, association, cooperative, or other organization that: (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. While state and local governments and academic institutions are eligible to receive grants, preference will be given to non-profit, community-based/grassroots organizations and federally recognized tribal governments. Preference may be given to those organizations that have not received previous grants under the Environmental Justice Small Grants Program. Individuals are not eligible to receive grants.

The Environmental Justice Small Grants Program is a competitive process. To prevent preferential treatment to any single potential applicant, the Agency will offer training and/or conference calls on grant application guidelines. We encourage you to participate so that you can have your questions answered in a public forum. Please call your Regional office to inquire about the scheduled dates of the special training and conference calls. (See Contact List in this document).

EPA will consider only one application per applicant for a given project. Applicants may submit more than one application if the applications are for separate and distinct projects or activities. Applicants that previously received funds under the Environmental Justice Small Grants Program may

[1] As a result of the Lobbying Disclosure Act of 1995, EPA (and other federal agencies) may not award grants to non-profit, 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a 501(c)(4) organization without distinguishing between lobbying funding by federal money and lobbying funded by other sources.

submit an application for FY 2001. Every application for FY 2001 is evaluated based on the merit of the proposed project in comparison to other FY 2001 pre-applications. Past performance may be considered during the ranking and evaluation process for those applicants who have received previous grants.

B. What Types of Projects Are Eligible for Funding?

While there are many applications submitted from community groups for equally worthwhile projects, EPA is emphasizing the need for projects in two categories: (1). Projects which address public health concerns/issues in minority and/or low-income communities. (2). Projects which address how environmental information is made available in minority and/or low-income communities. Both areas of concentration are important issues to local communities. To be considered for funding, the application must include the following information: (1) How the project proposes to address the issues related to at least two environmental statutes; and (2) how the proposed project meets at least two of the program goals.

(1) Multi-Media Statutory Requirement

The Environmental Justice Small Grants Program awards grants under a multimedia granting authority. This means that recipients of these funds must implement projects that address pollution in more than one environmental medium (*e.g.,* air, water). To show evidence of the breadth of the project's scope, the application must identify at least two environmental statutes that the project will address. Most often, your project will include activities outlined in the following environmental statutes:

a. *Clean Water Act,* Section 104(b)(3): conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. *Safe Drinking Water Act,* Section 1442(b)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. *Solid Waste Disposal Act,* Section 8001(a): conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste (*e.g.,* health and welfare effects of exposure to materials present in solid waste and methods to eliminate such effects).

d. *Clean Air Act,* Section 103(b)(3): conduct research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

Your project may be very research-oriented and specific to a particular environmental problem. If this is the case, you may reference the following environmental statutes (list either one of the following and one listed above or two of the following).

e. *Toxic Substances Control Act,* Section 10(a): conduct research, development, and monitoring activities on toxic substances.

f. *Federal Insecticide, Fungicide, and Rodenticide Act,* Section 20(a): conduct research on pesticides.

g. *Marine Protection, Research, and Sanctuaries Act,* Section 203: conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

h. *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA), Section 311(c) ''research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of [due to] hazardous substances and detection of hazardous substances in the environment.'' The term ''hazardous substances'' in CERCLA Section 101(14) does not include many petroleum products. This Act is often referred to as ''Superfund.''

EPA's grant regulations define ''research'' as ''systematic study directed toward a fuller scientific knowledge or understanding of the subject studied.'' 40 CFR 30.2(dd). EPA has interpreted ''research'' to include study that extends to socioeconomic, institutional, and public policy issues as well as the ''natural'' sciences.

Please note: If your project includes scientific research and/or data collection, you must be prepared to submit a Quality Assurance Plan (QAP) to your EPA Project Officer prior to the beginning of the research.

(2) Special Requirements for ''Superfund'' grants funded under CERCLA

a. CERCLA, Section 311(c), only authorizes research grants. Therefore, Superfund grants can only be awarded when the project is of a research nature. Research is the detection, assessment, and evaluation of the effects on, and risks to human health, from hazardous substances and/or the detection of hazardous substances in the environment.

b. Applicants must demonstrate that the research project relates to ''hazardous substances'' as that term is defined by CERCLA 101(14). There is a list of hazardous substances at 40 CFR 302.4 which, while not exclusive, does provide useful guidance.

c. Research funded under CERCLA 311(c) cannot relate to petroleum products excluded from the definition of hazardous substances found at CERCLA 101(14).

d. Applicants must meet the requirement that the project relate to two environmental grant authority statutes by proposing a research project authorized by both CERCLA 311(c) and another statute listed above which authorizes research funding.

e. The project must be of a research nature only, *i.e.,* survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. Projects which expand the scientific knowledge or understanding, of community members, about the hazardous substances issues that effect them can be funded as EJ Superfund grants.

f. The project cannot carry out training activities, other than training in research techniques, or outreach, technical assistance, or public education or awareness activities.

g. The project can include conferences only if the purpose of the conference is to present research results or to gather research data.

(3) Office of Environmental Justice Small Grants Program Goals

In addition to the multi-statute requirement outlined above, the application must also include a description of how an applicant plans to meet at least two of the three program goals listed below. See Section III ''Application Requirements'' for more details.

1. Identify necessary improvements in communication and coordination among all stakeholders, including existing community-based/grassroots organizations and local, state, tribal, and federal environmental programs. Facilitate communication and information exchange, and create partnerships among stakeholders to address disproportionate, high and adverse environmental exposure (*e.g.,* workshops, awareness conferences, establishment of community stakeholder committees);

2. Build community capacity to identify local environmental justice problems and involve the community in the design and implementation of activities to address these concerns. Enhance critical thinking, problem-solving, and active participation of affected communities. (*e.g.,* train-the-trainer programs).

3. Enhance community understanding of environmental and public health information systems and generate information on pollution in the community. If appropriate, seek technical experts to demonstrate how to access and interpret public environmental data (*e.g.,* Geographic Information Systems (GIS), Toxic Release Inventories (TRI) and other databases).

The issues discussed above may be defined differently among applicants from various geographic regions, including areas outside the continental U.S. (Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands). Each application should define its issues as they relate to the specific project. In your narrative/work plan, include a succinct explanation of how the project may serve as a model in other settings and how it addresses a high-priority environmental justice issue. The degree to which a project addresses a high-priority environmental justice issue will vary and must be defined by applicants according to their local environmental justice concerns.

C. How Much Money May Be Requested, and are Matching Funds Required?

The ceiling in federal funds for an individual grant is $15,000 for non-Superfund projects or $20,000 for Superfund projects. Please check with your regional contact for the amount of funds that will be available in each region. Applicants are not required to provide matching funds.

D. Are There Any Restrictions on the Use of the Federal Funds?

Yes. EPA grant funds can only be used for the purposes set forth in the grant agreement. Grant funds from this program cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, the recipient may not use these federal assistance funds to sue the federal government or any other government entity. Refer to 40 CFR 30.27, entitled ''Allowable Costs''. Further, the scope of Environmental Justice Small Grants may not include construction, personal gifts (*e.g.,* t-shirts, buttons, hats), and furniture purchases.

III. Application Requirements

A. What Is Required for Applications?

In order to be considered for funding under this program, proposals from eligible organizations must have the following:

1. Application for Federal Assistance (SF 424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, plus two copies, signed by a person duly authorized by the governing board of the applicant.

Please complete Part 10 of the SF 424 form, ''Catalog of Federal Domestic Assistance Number'' with the following information: 66.604—Environmental Justice Small Grants Program.

2. The Federal Standard Form (SF 424A) and budget detail, which provides information on your budget. For the purposes of this grants program, complete only the non-shaded areas of SF 424A. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $15,000 for non-Superfund or $20,000 for Superfund projects. Therefore, your budget should reflect this limit on federal funds.

3. Narrative/work plan of the proposal, not to exceed five pages. Applications may not be considered if they exceed five single pages. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size (8½ × 11 inches), with normal type size (12 characters per inch), and at least 1″ margins.

The narrative/work plan is one of the most important aspects of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. Work plans must be submitted in the format described below:

a. A one page summary that:

- Identifies the environmental justice issue(s) to be addressed by the project;
- Identifies the EJ community/target audience;
- Identifies at least two environmental statutes/Acts addressed by the project; and
- Identifies at least two program goals that the project will meet and how it will meet them.

b. A concise introduction that states the nature of the organization (*i.e.,* how long it has been in existence, if it is incorporated, if it is a network, etc.), how the organization has been successful in the past, purpose of the project, the EJ community/target audience, project completion plans/time frames, and expected results.

c. A concise project description that describes how the applicant is community-based and/or plans to involve the target audience in the project and how the applicant plans to meet at least two of the three program goals outlined in Section IIB: ''Office of Environmental Justice Small Grants Program Goals.'' Additional credit will not be given for projects that fulfill more than two goals.

d. A conclusion discussing how the applicant will evaluate and measure the success of the project, including the anticipated benefits and challenges in implementing the project.

e. An appendix with resumes of up to three key personnel who will be significantly involved in the project.

4. Letter(s) of commitment. If your proposed project includes the significant involvement of other community organizations, your application must include letters of commitment from these organizations. This requirement may not apply to your proposed project—only include if applicable.

Applications that do not include the information listed above in items 1–3 and, if applicable, item 4, will not be considered for an award.

Please note: your application to this EPA program may be subject to your state's intergovernmental review process and/or the consultation requirements of Section 204, Demonstration Cities and Metropolitan Development Act. Check with your state's Single Point of Contact to determine your requirements—some states do not require this review. Applicants from American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands should also check with their Single Point of Contact. If you do not know who your Single Point of Contact is, please call your EPA regional contact (Section III) or EPA Headquarters at (202) 564–5325. Federally recognized tribal governments are not required to comply with this procedure.

B. When and Where Must Applications be Submitted?

The applicant must submit/mail one signed original application with required attachments and one copy to the primary contact at the EPA regional office listed below. The application must be postmarked by United Parcel Postal Service no later than Friday, March 9, 2001.

Regional Contact Names and Addresses

Region 1 Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Primary Contact: Ronnie Harrington (617) 918–1703, USEPA Region 1 (SAA), 1 Congress Street—1100, Boston, MA 02203–0001;
Secondary Contact: Pat O'Leary (617) 565–3834

Region 2 New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Primary Contact: Natalie Loney (212) 637–3639, USEPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007,
Secondary: Terry Wesley (212) 637–3576

Region 3 Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Primary Contact: Reginald Harris (215) 814–2988, USEPA Region 3 (3DA00), 1650 Arch Street, Philadelphia, PA 19103–2029

Region 4 Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Primary Contact: Gloria Love (404) 562–9672, USEPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303–8960,
Secondary: Connie Raines (404) 562–9671

Region 5 Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Primary Contact: Margaret Millard (312) 353–1440, USEPA Region 5 (MC T–175), 77 West Jackson Boulevard, Chicago, IL 60604–3507,
Secondary: Karla Owens (312) 886–5993

Region 6 Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Primary Contact: Nelda Perez (214) 665–2209, USEPA Region 6 (6EN), 1445 Ross Avenue, 12th Floor, Dallas, Texas 75202–2733,
Secondary Contact: Shirley Augurson (214) 665–7401

Region 7 Iowa, Kansas, Missouri, Nebraska

Primary Contact: Cecil Bailey (913) 551–7462 or 1–800–223–0425, USEPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101
Secondary Contact: Althea Moses (913) 551–7649

Region 8 Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Primary Contact: Nancy Reish (303) 312–6040, USEPA Region 8 (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466,
Secondary: Marcella Devargas (303) 312–6161

Region 9 Arizona, California, Hawaii, Nevada, American Samoa, Guam

Primary Contact: Willard Chin (415) 744–1204, USEPA Region 9 (A–2–2), 75 Hawthorne Street, San Francisco, CA 94105
Secondary: EJ Information Line (415) 744–1565

Region 10 Alaska, Idaho, Oregon, Washington

Primary Contact:Victoria Plata (206) 553–8580, USEPA Region 10 (CEJ–163), 1200 Sixth Avenue, Seattle, WA 98101,
Secondary: Mike Letourneau (206) 553–1687

IV. Process for Awarding Grants

A. How Will Applications Be Reviewed?

EPA regional offices will review, evaluate, and select grant recipients. Applications will be screened to ensure that they meet all eligible activities and requirements described in Sections II and III. Applications will also be evaluated by regional review panels based on the criteria outlined in this solicitation. Applications will be disqualified if they do not meet these criteria.

B. How Will the Final Selections Be Made?

After the individual projects are reviewed and ranked, EPA regional officials will compare the best applications and make final selections. Additional factors that EPA will take into account include geographic and socioeconomic balance, diverse nature of the projects, cost, and projects whose benefits can be sustained after the grant is completed. Regional Administrators will select the final grants.

Please note that this is a very competitive grant's program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, a listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available at local libraries, colleges, or universities.

C. How Will Applicants Be Notified?

After all applications are received, EPA regional offices will mail acknowledgments to applicants in their regions. Once applications have been recommended for funding, the EPA Regions will notify the finalists and request any additional information necessary to complete the award process. The finalists will be required to complete additional government application forms prior to receiving a grant, such as the EPA Form SF–424B (Assurances—Non-Construction Programs), EPA Form 5700–48, and the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The federal government requires all grantees to certify and assure that they will comply with all applicable federal laws, regulations, and requirements.

The EPA Regional Environmental Justice Coordinators or their designees will notify those applicants whose projects are not selected for funding.

V. Expected Time-Frame for Reviewing and Awarding Grants

December 22, 2000: FY 2001 Environmental Justice Small Grants Program Application Guidance is available and published in the **Federal Register**.
December 22, 2000 to March 3, 2001: Eligible grant recipients develop and complete their applications.
March 9, 2001: Applications must be postmarked by this date and mailed or delivered to the appropriate EPA regional office.
March 10, 2001 to April 9, 2001: EPA regional program officials review and evaluate applications and select grant finalists.
April 10, 2001 to August 6, 2001: Applicants will be contacted by the Region if their application is being considered for funding. Additional information may be required from the finalists, as indicated in Section IV. EPA regional grant offices process grants and make awards.
September 28, 2001: EPA expects to release the national announcement of the FY 2001 Office of Environmental Justice Small Grant Recipients.

VI. Project Period and Final Reports

Activities must be completed and funds spent within the time frame specified in the grant award, usually one year. Project start dates will depend on the grant award date (most projects begin in August or September). The recipient organization is responsible for the successful completion of the project. The recipient's project manager is subject to approval by the EPA project officer but EPA may not state that any particular person be the project manager.

All recipients must submit final reports for EPA approval within ninety

(90) days of the end of the project period. Specific report requirements (*e.g.,* Final Technical Report and Financial Status Report) will be described in the award agreement. EPA will collect, review, and disseminate grantees' final reports to serve as model programs.

For further information about this program, please visit EPA's website at *www.epa.gov/oeca/ej/* or call our hotline at 1–800–962–6215.

VII. Fiscal Year 2002 OEJ Small Grants Program

A. How Can I Receive Information on the Fiscal Year 2002 Environmental Justice Grants Program?

If you wish to be placed on the national mailing list to receive information on the FY 2002 Environmental Justice Small Grants Program, you must mail your request along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Office of Environmental Justice Small Grants Program (2201A), FY 2002 Grants Mailing List, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, 1 (800) 962–6215.

Thank you for your interest in our Small Grants Program and we wish you luck in the application process.

Dated: December 18, 2000.

Barry E. Hill,

Director, Office of Environmental Justice.

Appendix A—Standard Forms 424 and 424A and Completed Sample Forms

Copies of the forms are available by calling 1–800–962–6215 or off the Internet at *http://www.whitehouse.gov/OMB/grants/#forms*

Appendix B—40 CFR 30.27 ''Allowable Costs''

http://www.access.gpo.gov/nara/cfr/waisidx_00/40cfr30_00.html
[Code of Federal Regulations]
[Title 40, Volume 1, Part 1 to 49]
[Revised as of July 1, 2000]
From the U.S. Government Printing Office via GPO Access
[CITE: 40CFR30.27] [Page 311]

Title 40—Protection of Environment

Subpart C—Post-Award Requirements

Sec. 30.27 Allowable costs.

(a) For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31. In addition, EPA's annual Appropriations Acts may contain restrictions on the use of assistance funds. For example, the Acts may prohibit the use of funds to support intervention in Federal regulatory or adjudicatory proceedings.

(b) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (Recipient's may, however, pay consultants more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. Contracts with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

Appendix C Guidance on Lobbying Restrictions

The purpose of this guidance is to remind nonprofit organizations, universities, and other non-government recipients of EPA grants [2] that, with very limited exceptions, you may not use Federal grant funds or your cost-sharing funds to conduct lobbying activities. The restrictions on lobbying are explained in Office of Management and Budget (OMB) Circular No. A–21, ''Cost Principles for Educational Institutions,'' 61 FR 20880 (May 8, 1996),[3] and OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations; 'Lobbying' Revision,'' 49 FR 18260 (April 27, 1984). As a recipient of EPA funds, you must be aware of and comply with these restrictions.[4]

The general objective of the restrictions is to prohibit the use of appropriated funds for lobbying, publicity, or propaganda purposes designed to support or defeat legislation. The restrictions do not affect the normal sharing of information or lobbying activities conducted with your own funds (so long as they are not used to match the grant funds).

Unallowable Lobbying Activities

Under Circulars A–21 and A–122, the costs of the following activities are unallowable:

(1) Contributions, endorsements, publicity or similar activities intended to influence Federal, State or local elections, referenda, initiatives or similar processes.

(2) Direct and indirect financial or administrative support of political parties, campaigns, political action committees, or other organizations created to influence elections. Recipients may help collect and interpret information. These efforts must be for educational purposes only, however, and cannot involve political party activity or steps to influence an election.

(3) Attempts to influence the introducing, passing, or changing of Federal or State legislation through contacts with members or employees of Congress or State legislatures, including attempts to use State and local officials to lobby Congress or State legislatures. For example, you may not charge a grant for your costs of sending information to Members of Congress to encourage them to take a particular action. Also prohibited are contacts with any government official or employee to influence a decision to sign or veto Federal or State legislation. The restriction does not address lobbying at the local level.

(4) Attempts to influence the introducing, passing, or changing of Federal or State legislation by preparing, using, or distributing publicity or propaganda, *i.e.,* grass roots lobbying efforts to obtain group action by members of the public, including attempts to affect public opinion and encourage group action. For example, the costs of printing and distributing to members of the public or the media a report produced under a grant, if intended to influence legislation, are unallowable. [5]

(5) Attending legislative sessions or committee hearings, gathering information about legislation, and similar activities, when

[2] The term ''grant'' as used in this guidance refers to grants and cooperative agreements.

[3] Grants awarded before May 8, 1996, are subject to the previous version of Circular No. A–21, but the provisions on lobbying have remained essentially unchanged.

[4] This guidance does not address the restrictions on lobbying contained in 40 CFR Part 34, the EPA regulations implementing section 319 of Pub. Law No. 101–121, known as ''the Byrd Amendment,'' generally prohibit recipients of Federal grants, contracts, and loans from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific grant, contract, or loan. Part 34 includes detailed certification and disclosure requirements. This guidance also does not address section 18 of the Lobbying Disclosure Act of 1995, Pub. Law No. 104–65, which provides that organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible for Federal grants or loans.

[5] Circular A–122 addresses public information service costs that do not relate to lobbying. Attachment B to the Circular, at paragraph 36, makes allowable, with prior approval of the Federal agency, costs associated with pamphlets, news releases and other forms of information services if their purpose is: to inform or instruct individuals, groups or the general public; to interest individuals or groups in participating in a service program of the recipient; or to disseminate the results of sponsored and non-sponsored activities.

intended to support or prepare for unallowable lobbying.

Exceptions

There are three exceptions to this list of unallowable lobbying activities in Circulars A–21 and A–122. These exceptions do not necessarily make the cost of these activities allowable; they make the costs potentially allowable. Allowability will be determined based on whether the costs in a particular case are reasonable, necessary, and allocable to the grant.

The first exception is for technical and factual (not advocacy) presentation to Congress, a State legislature, member, or staff, on a topic directly related to performance of the grant, in response to a request (not necessarily in writing) from the legislative body or individual. For requests that are not made in writing, recipients should make a note for their files documenting the requests. The information presented must be readily available and deliverable. Costs for travel, hotels, and meals related to the presentation are generally unallowable unless related to testimony at a regularly scheduled Congressional hearing at the written request of the chairperson or ranking minority member of the congressional committee.

The second exception is for actions intended to influence State legislation in order to directly reduce the actual cost of performing the Federal grant project or to protect the recipient's authority to perform the project. The exception does not apply to actions intended merely to shift costs from one source to another. For example, in response to Federal funding cutbacks, a Federally-funded recipient lobbies for State funds to replace or reduce the Federal share of project costs for next year. The cost of that lobbying activity would not be allowable because its purpose is not to directly reduce the actual cost of performing the work but merely to shift from Federal funding to State funding.

Finally, Circulars A–21 and A–122 allow lobbying costs if they are specifically authorized by law.

Indirect Cost Rate

When you seek reimbursement for indirect costs (overhead), you must identify your total lobbying costs in your indirect cost rate proposal so that the Government can avoid subsidizing lobbying. This is consistent with the circulars' requirement of disclosure of the costs spent on all unallowable activities. This requirement is necessary so that when the Government calculates the amount of an organization's indirect costs that it will pay. It does not include the costs of unallowable activities that the organization happens to count as indirect costs.

Enforcement

In cases of improper lobbying with grant funds, EPA may recover the misspent money, suspend or terminate the grant, and take action to prevent the recipient from receiving any Federal grants for a certain period. Your project officer is available to handle any questions or concerns.

Appendix D—Tips for Preparing Grant Application

This information is intended to help you put together a competitive proposal for the Environmental Protection Agency's (EPA) Environmental Justice Small Grants Program. *Please read the Application Guidance carefully—this document is intended to enhance not replace the official FY 01 Guidance.*

- **Target your audience carefully**

Identify a specific group or community to work with to develop a program that will give the highest return for your dollars invested.

- **Build partnerships and alliances**

You are strongly encouraged to enlist project involvement from community groups with similar or related goals and secure their commitment of services and/or dollars. Be sure to document this by obtaining letter(s) of commitment for your application. Initiate the partnerships early in your planning, since building alliances can take time and effort.

- **Do some homework**

Allow time to review the literature on environmental justice issues both within EPA and the community you work in or with. Find out what materials exist on the subject and the procedures you are planning to include in your work plan. Use this information to back up your project plans or to explain how your group activities are unique and/or creative.

- **Develop a project evaluation technique**

Define as carefully and precisely as possible what you want to achieve with this project and how you will test its success. Ask yourself: ''what do you expect to be different once the project is complete?'' Outline a plan you will use to measure the success of your activities/project.

- **Develop a timeline or project accomplishment schedule**

List the major tasks that you will complete to meet the goals of the project. Break these broad goals into smaller tasks and lay them out in a schedule over the twelve months of the grant period. Determine and identify in the proposal the total estimated cost for each task. You may estimate this cost by the number of personnel, materials, and other resources you will need to carry out the tasks.

- **Develop a project budget with the federal portion up to $15,000 for non-Superfund or $20,000 for Superfund projects**

The EPA portion of this grant should not exceed $15,000 for non-Superfund or $20,000 for Superfund projects. Divide your budget into categories such as personnel salaries/fringe benefits, travel, equipment, supplies, contract costs, other.

- **Stay within the format**

This makes it easier for the reviewer to read and therefore, understand your work plan. Please refer to the application requirements (pages 6–7).

- Communicate the nature of your project accurately, precisely, and concisely.

Describe exactly what you propose to do, how you are going to do it, when you are going to do it, who will benefit, and how you will know you are successful. Indicate not only what you propose but what expertise your group has for completing the project (include resumes).

Evaluation of Your Proposal

Your proposal will be evaluated by a committee of EPA Headquarters and Regional environmental justice personnel of diverse personal and professional backgrounds. Final selection is based on a variety of factors, including geographic and socioeconomic balance, diversity, cost of the project and how well the partnership benefits can be sustained after the grant is completed. Below are some common strengths and weaknesses we see in proposals.

Common Strengths

- Project proposal developed solidly from within the community.
- Broad based community support for a project that has the potential to positively affect local people.
- Project identifies established community advisory board or community group who will be involved in the project.
- Good partnership with industry, community, and environmental groups. Good coordination with a variety of community groups.
- Proposal does a good job of outlining a complex problem and approach to solving it—does not overlook any major issues or key players.
- Clear identification and background description of population to be served.
- Proposal identifies specific outputs, target accomplishments, and estimated budgets for each goal, and target dates for completion.
- Proposed project builds on existing projects or programs.
- The scope of the project can be completed in a funding year.
- Proposal clearly describes how the project will achieve at least two of the three program goals outlined on pages 4 and 5 of the application guidance.
- Proposal includes innovative ideas and creative thinking about how to motivate and involve youth in the communities where they live.
- Proposal includes honest discussion of challenges involved.

If applying for a Superfund project, the proposal discusses why their project is for ''research'' to assure it meets statutory requirements.

Common Weaknesses

- Application did not include information specifically requested in the application guidance.
- Community members do not appear to be an integral part of the project planning process.
- Not specific enough about what EPA funds will be used for. If the proposal is for a project that has a budget of more than $15,000 or $20,000 for Superfund, proposal must indicate whether other funding has been secured.
- Applicant is not a non-profit organization (see application guidance page 2).

- Program may be too ambitious for one year.
- Project funds conferences or dialogues to discuss EJ issues but does not fund activities that make direct changes in a community.
- Immediacy of need is not established.
- Methods of evaluating the success of the project unclear.
- Failure to mention other groups that applicant will work with or to secure letters of commitment.
- Proposal seeks support for developing general environmental program with little mention of environmental justice issues. The link between goals of EPA's environmental justice program and the project is not clearly stated.
- Discussion of overall mission and goals of the organization but not enough detail on how the specific project and activities will help achieve the goals.

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Principal residence sale or exchange; exclusion of gain; comments due by 1-8-01; published 10-10-00

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Nondiscrimination on basis of race, color, national origin, handicap, and age in federally assisted programs or activities; comments due by 1-5-01; published 12-6-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3048/P.L. 106–544

Presidential Threat Protection Act of 2000 (Dec. 19, 2000; 114 Stat. 2715)

H.R. 4281/P.L. 106–545

ICCVAM Authorization Act of 2000 (Dec. 19, 2000; 114 Stat. 2721)

H.R. 4640/P.L. 106–546

DNA Analysis Backlog Elimination Act of 2000 (Dec. 19, 2000; 114 Stat. 2726)

H.R. 4827/P.L. 106–547

Enhanced Federal Security Act of 2000 (Dec. 19, 2000; 114 Stat. 2738)

S. 1972/P.L. 106–548

To direct the Secretary of Agriculture to convey to the town of Dolores, Colorado, the current site of the Joe Rowell Park. (Dec. 19, 2000; 114 Stat. 2741)

S. 2594/P.L. 106–549

To authorize the Secretary of the Interior to contract with the Mancos Water Conservancy District to use the Mancos Project facilities for impounding, storage, diverting, and carriage of nonproject water for the purpose of irrigation, domestic, municipal, industrial, and any other beneficial purposes. (Dec. 19, 2000; 114 Stat. 2743)

S. 3137/P.L. 106–550

James Madison Commemoration Commission Act (Dec. 19, 2000; 114 Stat. 2745)

Last List December 20, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
500–End	(869–042–00028–5)	48.00	Jan. 1, 2000
11	(869–042–00029–3)	23.00	Jan. 1, 2000
12 Parts:			
1–199	(869–042–00030–7)	18.00	Jan. 1, 2000
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–042–00032–3)	45.00	Jan. 1, 2000
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–042–00034–0)	26.00	Jan. 1, 2000
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13	(869–042–00036–6)	35.00	Jan. 1, 2000
14 Parts:			
1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
60–139	(869–042–00038–2)	46.00	Jan. 1, 2000
140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
200–1199	(869–042–00040–4)	29.00	Jan. 1, 2000
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–042–00043–9)	45.00	Jan. 1, 2000
800–End	(869–042–00044–7)	26.00	Jan. 1, 2000
16 Parts:			
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1000–End	(869–042–00046–3)	43.00	Jan. 1, 2000
17 Parts:			
1–199	(869–042–00048–0)	32.00	Apr. 1, 2000
200–239	(869–042–00049–8)	38.00	Apr. 1, 2000
240–End	(869–042–00050–1)	49.00	Apr. 1, 2000
18 Parts:			
1–399	(869–042–00051–0)	54.00	Apr. 1, 2000
400–End	(869–042–00052–8)	15.00	Apr. 1, 2000
19 Parts:			
1–140	(869–042–00053–6)	40.00	Apr. 1, 2000
141–199	(869–042–00054–4)	40.00	Apr. 1, 2000
200–End	(869–042–00055–2)	20.00	Apr. 1, 2000
20 Parts:			
1–399	(869–042–00056–1)	33.00	Apr. 1, 2000
400–499	(869–042–00057–9)	56.00	Apr. 1, 2000
500–End	(869–042–00058–7)	58.00	Apr. 1, 2000
21 Parts:			
1–99	(869–042–00059–5)	26.00	Apr. 1, 2000
100–169	(869–042–00060–9)	30.00	Apr. 1, 2000
170–199	(869–042–00061–7)	29.00	Apr. 1, 2000
200–299	(869–042–00062–5)	13.00	Apr. 1, 2000
300–499	(869–042–00063–3)	20.00	Apr. 1, 2000
500–599	(869–042–00064–1)	31.00	Apr. 1, 2000
600–799	(869–038–00065–0)	10.00	Apr. 1, 2000
800–1299	(869–042–00066–8)	38.00	Apr. 1, 2000
1300–End	(869–042–00067–6)	15.00	Apr. 1, 2000
22 Parts:			
1–299	(869–042–00068–4)	54.00	Apr. 1, 2000
300–End	(869–042–00069–2)	31.00	Apr. 1, 2000
23	(869–042–00070–6)	29.00	Apr. 1, 2000
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0–199	(869–042–00071–4)	40.00	Apr. 1, 2000
200–499	(869–042–00072–2)	37.00	Apr. 1, 2000
500–699	(869–042–00073–1)	20.00	Apr. 1, 2000
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25	(869–042–00076–5)	52.00	Apr. 1, 2000
26 Parts:			
§§ 1.0-1–1.60	(869–042–00077–3)	31.00	Apr. 1, 2000
§§ 1.61–1.169	(869–042–00078–1)	56.00	Apr. 1, 2000
§§ 1.170–1.300	(869–042–00079–0)	38.00	Apr. 1, 2000
§§ 1.301–1.400	(869–042–00080–3)	29.00	Apr. 1, 2000
§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-042-00082-0)	36.00	Apr. 1, 2000
§§ 1.501–1.640	(869–042–00083–8)	32.00	Apr. 1, 2000
§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–042–00086–2)	41.00	Apr. 1, 2000
§§ 1.1001–1.1400	(869–042–00087–1)	45.00	Apr. 1, 2000
§§ 1.1401–End	(869–042–00088–9)	66.00	Apr. 1, 2000
2–29	(869–042–00089–7)	45.00	Apr. 1, 2000
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–042–00093–5)	43.00	Apr. 1, 2000
500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
27 Parts:			
1–199	(869–042–00096–0)	59.00	Apr. 1, 2000

Title	Stock Number	Price	Revision Date
200–End	(869–042–00097–8)	18.00	Apr. 1, 2000
28 Parts:			
0-42	(869–042–00098–6)	43.00	July 1, 2000
43-end	(869-042-00099-4)	36.00	July 1, 2000
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
900–1899	(869–042–00103–6)	24.00	July 1, 2000
1900–1910 (§§ 1900 to 1910.999)	(869–042–00104–4)	46.00	[6]July 1, 2000
1910 (§§ 1910.1000 to end)	(869–042–00105–2)	28.00	[6]July 1, 2000
1911–1925	(869–042–00106–1)	20.00	July 1, 2000
1926	(869–042–00107–9)	30.00	[6]July 1, 2000
1927–End	(869–042–00108–7)	49.00	July 1, 2000
30 Parts:			
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200–699	(869–042–00110–9)	33.00	July 1, 2000
700–End	(869–042–00111–7)	39.00	July 1, 2000
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0–199	(869–042–00112–5)	23.00	July 1, 2000
200–End	(869–042–00113–3)	53.00	July 1, 2000
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
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1–190	(869–042–00114–1)	51.00	July 1, 2000
191–399	(869–042–00115–0)	62.00	July 1, 2000
400–629	(869–042–00116–8)	35.00	July 1, 2000
630–699	(869–042–00117–6)	25.00	July 1, 2000
700–799	(869–042–00118–4)	31.00	July 1, 2000
800–End	(869–042–00119–2)	32.00	July 1, 2000
33 Parts:			
1–124	(869–042–00120–6)	35.00	July 1, 2000
125–199	(869–042–00121–4)	45.00	July 1, 2000
200–End	(869–042–00122–5)	36.00	July 1, 2000
34 Parts:			
1–299	(869–042–00123–1)	31.00	July 1, 2000
300–399	(869–042–00124–9)	28.00	July 1, 2000
400–End	(869–042–00125–7)	54.00	July 1, 2000
35	(869–042–00126–5)	10.00	July 1, 2000
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1–199	(869–042–00127–3)	24.00	July 1, 2000
200–299	(869–042–00128–1)	24.00	July 1, 2000
300–End	(869–042–00129–0)	43.00	July 1, 2000
37	(869–042–00130–3)	32.00	July 1, 2000
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0–17	(869–042–00131–1)	40.00	July 1, 2000
18–End	(869–042–00132–0)	47.00	July 1, 2000
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50–51	(869–042–00135–4)	28.00	July 1, 2000
52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
53–59	(869–042–00138–9)	21.00	July 1, 2000
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–042–00140–1)	23.00	July 1, 2000
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
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72–80	(869–042–00144–3)	47.00	July 1, 2000
81–85	(869–042–00145–1)	36.00	July 1, 2000
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136–149	(869–042–00148–6)	42.00	July 1, 2000
150–189	(869–042–00149–4)	38.00	July 1, 2000
190–259	(869–042–00150–8)	25.00	July 1, 2000
260–265	(869–042–00151–6)	36.00	July 1, 2000
266–299	(869–042–00152–4)	35.00	July 1, 2000
300–399	(869–042–00153–2)	29.00	July 1, 2000
400–424	(869–042–00154–1)	37.00	July 1, 2000
425–699	(869–042–00155–9)	48.00	July 1, 2000
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
41 Chapters:			
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18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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1–100	(869–042–00158–3)	15.00	July 1, 2000
101	(869–042–00159–1)	37.00	July 1, 2000
102–200	(869–042–00160–5)	21.00	July 1, 2000
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430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
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*1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
*1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
*90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
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20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
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48 Chapters:			
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1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
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7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
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*1000–1199	(869–042–00198–2)	25.00	Oct. 1, 2000
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
*200–599	(869–042–00201–6)	35.00	Oct. 1, 2000

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..