AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

6–14–01 Thursday
Vol. 66 No. 115 June 14, 2001
Pages 32207–32528

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $638, or $697 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $253. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $9.00 for each issue, or $9.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 66 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

Printed on recycled paper.

Contents

Federal Register

Vol. 66, No. 115

Thursday, June 14, 2001

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products and cigarette papers and tubes—
Regulations recodification, 32218–32221

Amtrak Reform Council
NOTICES
Meetings, 32314–32315

Animal and Plant Health Inspection Service
RULES
Noxious weeds:
Permits and interstate movement, 32213–32217
Plant-related quarantine, domestic:
Karnal bunt, 32209–32210
Plant-related quarantine, foreign:
Mangoes from Philippines, 32210–32213
PROPOSED RULES
Plant-related quarantine, domestic:
Black stem rust, 32268–32272

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Recreation Center No. 2, Fayetteville, NC, 32336
Privacy Act:
Systems of records, 32336–32338

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bonneville Power Administration
NOTICES
Environmental statements; notice of intent:
Starbuck Power Project, WA, 32339–32340

Centers for Disease Control and Prevention
NOTICES
Inventions, Government-owned; availability for licensing, 32358

Children and Families Administration
NOTICES
Grant and cooperative agreement awards:
University of Hawaii, 32358–32359

Coast Guard
RULES
Ports and waterways safety:
Lake Erie, Port Clinton, OH; safety zone, 32222–32223
Maumee River, OH; safety zone, 32223–32225
PROPOSED RULES
Ports and waterways safety:
Lake Michigan, Gary, IN; safety zone, 32280–32282

Commerce Department
See Export Administration Bureau
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Fisher-Price, Inc., 32328–32329

Customs Service
NOTICES
Trade name recordation applications:
Red Bull GmbH, 32414
Red Bull North America, Inc., 32414

Defense Department
See Army Department
See Navy Department
RULES
Vocational rehabilitation and education:
Veterans education—
Educational Assistance Test Program; increased allowances, 32225–32226
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 32329–32330
Arms sales notification; transmittal letter, etc., 32330–32335
Meetings:
Electron Devices Advisory Group, 32335–32336

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 32338–32339
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Children with Disabilities Programs; correction, 32527–32528

Employment and Training Administration
NOTICES
Adjustment assistance:
C-Cor.net Corp., 32388
CMI Industries Inc., 32388
Crown Industries et al., 32390–32391
E.C.I. Sportswear et al., 32391–32393
Mayfair Mills, 32393
Lanier Clothes, 32390
OEM/Erie Westland L.L.C., 32393
Adjustment assistance and NAFTA transitional adjustment assistance:
Jake Shook Logging, Inc., et al., 32388–32390
NAFTA transitional adjustment assistance:
OEM/Erie Westland L.L.C., 32393

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
PROPOSED RULES
Privacy Act; implementation, 32272–32276

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Delaware, 32231–32235
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 32235–32242
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Small municipal waste combustion units constructed on or before August 30, 1999; Federal plan requirements, 32483–32526
Air quality implementation plans; approval and promulgation; various States:
Delaware, 32287
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 32287–32293

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Imports:
Iron ore and semi-finished steel; national security investigation; hearings, 32315–32316

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 32276–32279
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 32409–32410
Reports and guidance documents; availability, etc.:
Thrust management systems; type certification assessment; policy statement, 32410–32412

Federal Communications Commission
RULES
Radio and television broadcasting:
Dual network rule; amendment, 32242–32248
PROPOSED RULES
Digital television stations; table of assignments:
Minnesota, 32296–32297
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32356–32357
Applications, hearings, determinations, etc.:
Network Affiliated Stations Alliance, 32357–32358

Federal Emergency Management Agency
PROPOSED RULES
Flood insurance program:
Flood maps; future conditions flood hazard information, 32293–32296

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Illinois Light Co. et al., 32344–32346
Hydroelectric applications, 32346–32356
Meetings; Sunshine Act, 32356
Applications, hearings, determinations, etc.:
Dominion Transmission, Inc., 32340–32342
El Paso Natural Gas Co., 32342
Kern River Gas Transmission Co., 32342–32343
South Eastern Energy Corp. et al., 32343
Texas Eastern Transmission Corp., 32343–32344
Wisvest-Connecticut, LLC, et al., 32344

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Cambria County, PA, 32412

Federal Mediation and Conciliation Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Labor-Management Cooperation Program; fund allocation policy change, 32358

Federal Transit Administration
NOTICES
Buy America waivers:
Rolling stock; cost calculation, 32412–32413

Fish and Wildlife Service
RULES
Endangered and threatened species:
Alabama lampmussel, etc. (16 freshwater mussels and 1 freshwater snail); nonessential experimental population status establishment in Tennessee River, 32250–32264
Migratory bird hunting:
Mid-continent light goose population reduction, 32264–32267
PROPOSED RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 32297–32304
NOTICES
Endangered and threatened species permit applications, 32370–32371

Food and Drug Administration
NOTICES
Meetings:
Cancer Patient Advocates; Conversation about Cancer Drug Development, 32359
Pharmaceutical Science Advisory Committee, 32359–32360

Forest Service
NOTICES
Meetings:
National Urban and Community Forestry Advisory Council, 32314
Northwest Sacramento Province Advisory Committee, 32314

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32360–32361

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes, etc.:
Electronic payee statements
Hearing rescheduled, 32279–32280

International Trade Commission
RULES
Practice and procedure:
Investigations relating to global and bilateral safeguard actions, market disruption, relief actions review; confidential business information disclosure, 32217–32218
NOTICES
Import investigations:
4-androstenediol, 32374–32375

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 32375–32376
Grants and cooperative agreements; availability, etc.:
Women in Apprenticeship and Nontraditional Occupations Program, 32376–32388

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Northern and Eastern Colorado Desert coordinated management plan, 32372
Motor vehicle use restrictions:
California, 32372–32373

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32393–32394

National Aeronautics and Space Administration
NOTICES
Inventions, Government-owned; availability for licensing, 32394–32396

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 32396

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32361
Submission for OMB review; comment request, 32361–32362
Meetings:
National Cancer Institute, 32362–32364
National Heart, Lung, and Blood Institute, 32365
National Institute of Neurological Disorders and Stroke, 32367
National Institute on Aging, 32365–32366
National Institute on Alcohol Abuse and Alcoholism, 32366
National Institute on Deafness and Other Communication Disorders, 32366
Scientific Review Center, 32367–32369

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Eastern North Pacific gray whales, 32305–32310
Southern bocaccio, 32304–32305
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, and Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 32312–32313
International fisheries regulations:
Pacific halibut—
Catch sharing plan, 32310–32312
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32316–32320
Digital Electronic Navigational Charts of U.S. waters; intent to distribute on Internet, 32320–32321
Marine mammals:
Incidental taking; authorization letters, etc.—
WesternGeo, LLC; Beaufort Sea; offshore seismic activities; bowhead whales, etc., 32321–32328

National Park Service
PROPOSED RULES
Special regulations:
Wrangell-St. Elias National Park and Preserve, AK; resident zone communities added, 32282–32287
NOTICES
Native American human remains and associated funerary objects:
Cornell University, NY—
Tlingit carved wooden totem pole, 32373
Denver Art Museum, CO—
Zuni War Gods, etc., 32373–32374

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 32338

Nuclear Regulatory Commission
RULES
Fee schedules revision; 98% fee recovery (2001 FY), 32451–32481
NOTICES
Environmental statements; availability, etc.:
Southern Nuclear Operating Co., Inc., 32396–32397
STP Nuclear Operating Co., 32397–32399
Vermont Yankee Nuclear Power Corp., 32399–32400
Reports and guidance documents; availability, etc.:
Missed surveillances requirements; modification using consolidated line item improvement process; model safety evaluation; comment request, 32400–32407

Pension Benefit Guaranty Corporation
RULES
Privacy Act; implementation, 32221–32222

Presidential Documents
ADMINISTRATIVE ORDERS
Russian Federation; blocking Government property relating to disposition of highly enriched uranium from nuclear weapons (Notice of June 11, 2001), 32207–32208

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 32407

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Loading, unloading, and storage, 32419–32449

Small Business Administration
RULES
Small business size standards:
Small business investment companies, certified development companies, and agriculture industry; financial assistance and size eligibility requirements
Correction, 32416–32417
NOTICES
Meetings:
National Regulatory Fairness Board [**Editorial Note:** The entry for this document, published at 66 FR 31961 in the **Federal Register** of June 13, 2001, was inadvertently listed under Securities and Exchange Commission in that issue's table of contents.]

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Edmund S. Muskie/FREEDOM Support Act Graduate Fellowship Program, 32407–32409

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Substance Abuse Prevention Center, Substance Abuse Treatment Center, and Mental Health Services Center—
Early Childhood Intervention; Strengthening by Integrating Behavior Health Services, 32369–32370

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Research and Special Programs Administration
RULES
Workplace drug and alcohol testing programs:
Procedures; revision—
Comments requested, 32248–32250

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32413–32414

Veterans Affairs Department
RULES
Organization, functions, and authority delegations:
Portfolio Loan Servicing Contractor, 32230–32231
Vocational rehabilitation and education:
Veterans education—
Educational Assistance Test Program; increased allowances, 32225–32226
Montgomery GI Bill-Active Duty; rates payable increase, 32226–32230
NOTICES
Agency information collection activities:
Proposed collection; comment request, 32414–32415
Meetings:
Women Veterans Advisory Committee, 32415

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 32419–32449

Part III
Nuclear Regulatory Commission, 32451–32481

Part IV
Environmental Protection Agency, 32483–32526

Part IV
Department of Education, 32527–32528

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders

13159 (See notice of June 11, 2001).....32207

Administrative Orders

Notices:

Notice of June 11, 2001 32207

7 CFR

301.....32209
319.....32210
360.....32213

Proposed Rules:

301.....32268

10 CFR

150.....32452
170.....32452
171.....32452

Proposed Rules:

1008.....32272

13 CFR

121.....32416

14 CFR

Proposed Rules:

39.....32276

19 CFR

206.....32217

26 CFR

Proposed Rules:

1.....32279
31.....32279
301.....32279

27 CFR

46.....32218
70.....32218
270.....32218
275.....32218
290.....32218
296.....32218

29 CFR

4902.....32221

33 CFR

165 (2 documents) 32222, 32223

Proposed Rules:

165.....32280

36 CFR

Proposed Rules:

13.....32282

38 CFR

21 (2 documents) 32225, 32226
36.....32230

40 CFR

52.....32231
300.....32235

Proposed Rules:

52.....32287
60.....32484
62.....32484
300.....32287

44 CFR

Proposed Rules:

59.....32293
64.....32293

47 CFR

73.....32242

Proposed Rules:

73.....32296

49 CFR

40.....32248

Proposed Rules:

171.....32420
173.....32420
174.....32420
175.....32420
176.....32420
177.....32420
178.....32420

50 CFR

17.....32250
20.....32264
21.....32264

Proposed Rules:

20.....32297
223 (2 documents) 32304, 32305
224 (2 documents) 32304, 32305
300.....32310
622.....32312

Federal Register
Vol. 66, No. 115
Thursday, June 14, 2001

Presidential Documents

Title 3—

The President

Notice of June 11, 2001

Continuation of Emergency With Respect to Property of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons

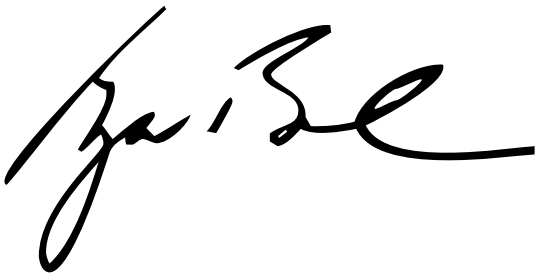
On June 21, 2000, President Clinton issued Executive Order 13159 (the ''Order'') blocking property and interests in property of the Government of the Russian Federation that are in the United States, that hereafter come within the United States, or that are or hereinafter come within the possession or control of U.S. persons that are directly related to the implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation concerning the disposition of highly enriched uranium extracted from nuclear weapons, dated February 18, 1993, and related contracts and agreements (collectively, the ''HEU Agreements''). The HEU Agreements allow for the downblending of highly enriched uranium derived from nuclear weapons to low enriched uranium for peaceful commercial purposes. The Order invoked the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and declared a national emergency to deal with the threat to the national security and foreign policy of the United States posed by the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation.

A major national security goal of the United States is to ensure that fissile material removed from Russian nuclear weapons pursuant to various arms control and disarmament agreements is downblended to low enriched uranium for peaceful commercial uses, subject to transparency measures, and protected from diversion to activities of proliferation concern.

Pursuant to the HEU Agreements, weapons-grade uranium extracted from Russian nuclear weapons is converted to low enriched uranium for use as fuel in commercial nuclear reactors. The Order blocks and protects from attachment, judgment, decree, lien, execution, garnishment, or other judicial process the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2001, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to weapons-usable fissile material in the

territory of the Russian Federation. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
June 11, 2001.

[FR Doc. 01–15190
Filed 6–13–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 66, No. 115
Thursday, June 14, 2001

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–058–1]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding Throckmorton and Young Counties in Texas to the list of areas regulated because of Karnal bunt, a fungal disease of wheat, due to the detection of bunted kernels in grain grown in this area. This action will help prevent the spread of Karnal bunt into noninfected areas of the United States.

DATES: This interim rule was effective June 8, 2001. We invite you to comment on this docket. We will consider all comments that we receive by August 13, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–058–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–058–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), to prevent its spread, the presence of Karnal bunt in the United States could have significant consequence with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations).

Regulated Areas

The regulations in § 301.89–3(e) provide that we will classify a field or area as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that contains at least one field that was found during a survey to contain a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the areas's proximity to a field found during survey to contain a bunted kernel; or
- A distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel. The distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of that area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel.

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89–3 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

- Projections of the spread of Karnal bunt along the periphery of the infestation;
- The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and
- The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

The regulations at § 301.89–3(f) set the boundaries for regulated areas in Arizona, California, New Mexico, and Texas. Certain regulated areas in Arizona, California, and Texas include noninfected acreage that functions as a buffer zone to guard against the spread of Karnal bunt.

When we include noninfected acreage in a regulated area for one or more of the reasons previously listed, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as a buffer zone between fields or areas associated with a bunted kernel and areas outside of the regulated area.

In this document, we are adding to the list of regulated areas in Texas Throckmorton and Young Counties in their entirety. This action is necessary due to the discovery of bunted wheat

kernels in several wheat fields in western Young County, adjacent to Throckmorton County. Initial surveys indicate that Karnal bunt is also present in other fields in the area we are regulating, and that the spread of the disease to the infected fields may have occurred as a result of the movement of contaminated seed into the area or through the movement into the area of cattle that may have grazed in infected fields. Until we are able to determine the extent of this new infection by conducting detection and delimiting surveys, it is essential that we delineate a large enough regulated area to include any fields for which there is a reasonable possibility of infection.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent Karnal bunt from spreading to noninfected areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 533 for making this rule effective less than 30 days after publication in the **Federal Register.**

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.89–3, paragraph (f), under the heading for ''Texas'', add two new entries in alphabetical order to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

Texas

* * * * *

Throckmorton County. The entire county.

Young County. The entire county.

Done in Washington, DC, this 8th day of June, 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–14942 Filed 6–13–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–131–2]

Importation of Mangoes From the Philippines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to allow the importation of mangoes from Guimaras Island in the Republic of the Philippines, subject to inspection and the completion of a prescribed vapor heat treatment. We believe that this action is warranted because there appears to be no significant pest risk associated with the importation of mangoes from Guimaras Island in the Philippines under these circumstances. This action will relieve restrictions on the importation of mangoes from the Philippines without presenting a significant risk of introducing plant pests into the United States.

EFFECTIVE DATE: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On January 22, 2001, we published in the **Federal Register** (66 FR 6488–6491, Docket No. 93–131–1) a proposal to amend the regulations to allow the importation of mangoes from Guimaras Island in the Republic of the Philippines, subject to inspection and the completion of a prescribed vapor heat treatment.

We solicited comments concerning our proposal for 60 days ending March 23, 2001. We received four comments by that date. They were from a State agriculture agency, a foreign government, and a firm representing foreign governmental and nongovernmental organizations.

Two of the commenters suggested several editorial changes to the background section of the proposed rule. Those suggested changes did not, however, relate to the regulatory provisions of § 319.56–2ii or our rational basis for those provisions, so there is no need to make any changes in this final rule as a result of those comments.

With regard to the trust fund agreement provided for by § 319.56–2ii(f), one commenter recommended that the agreement be similar to those that Animal and Plant Health Inspection Service (APHIS) has previously arranged with the Governments of Japan and the Republic of Korea and offered specific examples of the types of expenses that should be covered. While the commenter's suggestions may, in fact, be reflected in the actual trust fund agreement that we arrange with the Republic of the Philippines Department of Agriculture (RPDA), it is not necessary to amend § 319.56–2ii(f) as a result of that comment, as that portion of the final rule simply provides for the use of a trust fund agreement as one element of the mango import program. Specific details such as those suggested by the commenter will be worked out between APHIS and the RPDA before the trust fund agreement is signed.

One commenter opposed the proposed rule based on the risk presented by the fruit fly *Bactrocera philippinensis* and stated that the mangoes should be prohibited from being imported through ports of entry in Florida and should not be sold or distributed in that State. The commenter noted that *B. philippinensis* had been detected in two Florida cities in 1998, which, given that *B. philippinensis* occurs only in the Philippines, suggests that infested fruit had been moved from the Philippines to Florida. The commenter stated that his agency would be willing to reconsider its position on the proposed rule if Philippine efforts to suppress and eventually eradicate *B. philippinensis* prove successful.

In the proposed rule, we noted that several plant pests, including the mango seed weevil *(Sternochetus mangiferae)* and fruit flies of the genus Bactrocera, are known to attack mangoes in the Philippines. While Guimaras Island has been shown to be free of the mango seed weevil, no claims were made as to the freedom of Guimaras Island from fruit flies. Indeed, our concerns about two fruit fly species *B. occipitalis* and *B. philippinensis* led us to propose the vapor heat treatment requirement for the mangoes found in § 319.56–2ii(b) of this final rule. That vapor heat treatment has been shown, through confirmatory tests conducted by the Department's Agricultural Research Service, to be effective in mitigating the risk presented by *B. occipitalis* and *B. philippinensis.* Given the availability and required application of an effective treatment for the fruit flies of concern and the freedom of Guimaras Island from the mango seed weevil, we do not believe that it is necessary or justifiable to prohibit the movement into Florida of mangoes grown and shipped in accordance with the requirements of this rule.

With regard to the economic analysis contained in the proposed rule, one commenter asked how we could conclude that the importation of mangoes from the Philippines would not further damage the economics of Florida mango production, given that State's overwhelming share of domestic production (97 percent) and the negative effects that weather, disease, and falling prices have had on Florida mango producers.

Our conclusions with regard to the potential effects of mango imports from the Philippines were based on several factors. First, while Florida did indeed account for about 97 percent of domestic production in 1997, domestic production accounted for only about 1.5 percent of the total U.S. mango supply that year; the amount of mangoes imported in 1997 (186,530 metric tons) was nearly 66 times greater than the amount of mangoes produced domestically (2,829 metric tons). Between 1997 and 1999, U.S. mango imports increased by more than 17 percent, and it is reasonable to assume that the growth in U.S. mango imports will continue, with Guimaras Island being but one more foreign source. Moreover, we noted that little of Florida's mango crop now enters the national market to compete with fresh fruit imports, as most of the production is either consumed fresh within Florida or is processed into chutney or other products; these markets are unlikely to be affected by the availability of an additional source of imported fresh mangoes. Based on these considerations, we concluded that the importation of mangoes from Guimaras Island, the amount of which is expected to be very small compared to current import levels, would not significantly affect U.S. mango producers.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for mangoes from the Philippines is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the importation of mangoes from the Philippines into the United States.

Analysis

Nearly all of the mangoes consumed in the United States are imported. Mexico is the source of most U.S. mango imports, supplying between 75 percent and 85 percent of all imported mangoes in each of the 5 years between 1995 and 1999. Other major sources are Brazil, Ecuador, and Peru.

The quantity of imported mangoes has grown steadily and rapidly in recent years. Over the 5-year period 1995 through 1999, mango imports increased at an annual rate of about 9 percent (table 1). During this same period, the average value of imported mangoes fell from about $0.85 per kg to about $0.65 per kg. These data suggest a high level of market competition among those countries supplying mangoes to the U.S. market.

TABLE 1.—QUANTITY AND VALUE OF U.S. MANGO IMPORTS, 1995–1999

Year	Metric tons	Value (in millions)
1995	141,673	$121.01
1996	171,349	103.81
1997	186,530	119.07
1998	197,587	132.43
1999	218,941	142.99

Source: USDA, National Agricultural Statistics Service.

U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. The total domestic harvest that year was about 2,829 metric tons, of which about 97 percent was produced in Florida and about 3 percent produced in Hawaii. There are no U.S. mango exports.

Florida's mango producers suffered a severe setback in 1992, when Hurricane Andrew destroyed many of the trees. According to the Florida Agricultural Statistics Service, bearing acres fell from 2,500 in 1992 to 1,400 in 1993. Bearing acres reported for 1997 also stood at 1,400 acres. Yields have also declined sharply, from 160 bushels per acre in 1992 to 71 bushels per acre in 1997, due in part to bloom and disease problems at fruit set. Consequently, the value of Florida's mango production in 1997, $1.45 million, was only one-third of the value of production in 1992, $4.28 million.

The Florida Agricultural Statistics Service has not reported on mango production since 1997, a reflection of the industry's decline. Little of the State's crop now enters the national market to compete with fresh fruit imports. Most of the production is either consumed fresh within Florida or is processed into chutney or other products.

The quantity of mangoes that may be imported into the United States from Guimaras Island as a result of this rule is not known. According to data from the Philippines' Bureau of Agricultural Statistics, about 2,106 metric tons were produced in Guimaras in 1993. Production jumped to 10,740 metric tons in 1994, reached a high of 16,440 metric tons in 1996, declined to 12,736 metric tons in 1997, and stood at 10,041 metric tons in 1998. Data for the years following 1998 were not available, but our experience with mango production on Guimaras leads us to believe that current production levels there are similar those prior to 1998. The proportion of Guimaras' mango production that is represented by export-grade fruit is not available. While specific data for exports from Guimaras are likewise not available, the Philippines already has well-established export markets in at least a dozen countries, with the largest amount of exports going to Hong Kong, Japan, and Singapore. The Philippines can be expected to continue to serve those established export markets as well as its domestic markets. If half of Guimaras' 1997 production (*i.e.,* 6,368 metric tons) was exported to the United States, it would represent an amount roughly double that which was harvested domestically in that year (1997 being the last year for which Florida mango production data were reported). However, given the large quantity of mangoes imported from Mexico and other countries, 6,368 metric tons represent only about 3.3 percent of what the U.S. supply was in 1997, and an even smaller proportion of today's supply; between 1997 and 1999, U.S. mango imports increased by more than 17 percent.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of $750,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in ''other noncitrus fruit farming'' (NAICS code 111339). As noted previously, Florida accounted for about 97 percent of mango production in 1997, thus mango producers in that State are the entities most likely to be affected by this rule. Most, if not all, mango producers in Florida are small entities. According to information provided by the University of Florida's Institute of Food and Agricultural Sciences (IFAS), about 10 to 15 growers manage the bulk of the producing mango acreage in Florida. According to IFAS, about 25 percent of Florida growers produce mangoes alone, while the remaining 75 percent are diversified operations growing other tropical fruits in addition to mangoes. Florida growers occupy niche markets in the State by providing green fruit for processing into chutney and other products and by providing fresh, untreated, tree-ripened fruit for consumption. The introduction of Philippine mangoes into the larger U.S. market is expected to have little to no impact on Florida producers who occupy those niche markets, as the Philippine producers are not expected to be shipping green fruit for processing and would be unable to provide untreated, tree-ripened fruit to U.S. markets.

Conclusion

U.S. mango imports dwarf domestic production. Mango imports during the late 1990's expanded annually by amounts several times greater than the quantity likely to be imported from Guimaras Island. It is reasonable to assume that the growth in U.S. mango imports will continue, with Guimaras Island but one more foreign source. We do not expect that the economic effects of this rule on U.S. entities, large or small, will be significant.

The importation of mangoes from Guimaras Island is not expected to significantly affect U.S. mango producers. The amount imported will be very small compared to current import levels. Moreover, much of Florida's harvest (the source of 97 percent of domestic production in 1997) is consumed within that State or is processed into chutney and other products; these markets are unlikely to be affected by the availability of an additional source of imported fresh mangoes.

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

Executive Order 12988

This final rule allows mangoes to be imported into the United States from the Philippines. State and local laws and regulations regarding mangoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh mangoes are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0172.

List of Subjects in 7 CFR Part 319

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

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 166, 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–2ii is added to read as follows:

§ 319.56–2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

Mangoes (fruit) (*Mangifera indica*) may be imported into the United States from the Philippines only under the following conditions:

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56–2(e)(4) and § 319.56–2(f) with regard to the mango seed weevil (*Sternochetus mangiferae*).

(b) *Treatment.* The mangoes must be subjected to the following vapor heat treatment for fruit flies of the genus *Bactrocera.* The treatment must be conducted in the Philippines under the supervision of an inspector.

(1) Size the fruit before treatment. Place temperature probes in the center of the large fruits.

(2) Raise the temperature of the fruit by saturated water vapor at 117.5 °F (47.5 °C) until the approximate center of the fruit reaches 114.8 °F (46 °C) within a minimum of 4 hours.

(3) Hold fruit temperature at 114.8 °F (46 °C) for 10 minutes.

(4) During the run-up time, temperature should be recorded from each pulp sensor once every 5 minutes. During the 10 minutes holding time, temperature should be recorded from each pulp sensor every minute. During the last hour of the treatment, which includes the 10-minute holding time, the relative humidity must be maintained at a level of 90 percent or higher. After the fruit are treated, air cooling and/or drench cooling are optional.

(c) *APHIS inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56–6.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–2(g).

(e) *Phytosanitary certificate.* Each shipment of mangoes must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section.

(f) *Trust Fund Agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture (RPDA) has entered into a trust fund agreement with APHIS. That agreement requires the RPDA to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection services in the Philippines during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the RPDA to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the RPDA to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more mangoes will be treated or inspected in the Philippines. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the RPDA or held on account until needed, at the RPDA's option.

(g) *Department not responsible for damage.* The treatment for mangoes prescribed in paragraph (b) of this section is judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 8th day of June 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–14937 Filed 6–08–01; 4:39 pm]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 98–091–2]

Noxious Weeds; Permits and Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. Prior to the interim rule, the regulations provided for the issuance of permits for movements of noxious weeds into or through the United States, but did not explicitly address interstate movements. This action is necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5708.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on July 29, 1999 (64 FR 41007–41010, Docket No. 98–091–1), we amended the regulations in 7 CFR part 360 (referred to below as the regulations) to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. Prior to the interim rule, the regulations provided for the issuance of permits for movements of noxious weeds into or through the United States, but did not explicitly address interstate movements.

The interim rule was necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States. The interim rule aligned our interstate movement regulations with our import requirements and is consistent with our obligations under international trade agreements.

Comments on the interim rule were required to be received on or before September 27, 1999. We received six comments by that date. The comments were from State Governments, plant and seed producers, a trade association, and an environmental advocacy organization. Four of those commenters generally supported the interim rule. One commenter opposed the rule. One commenter submitted data on two Federal noxious weeds. We have carefully considered these comments, which are discussed below by topic.

Enforcement of the Interim Rule

Two commenters asked APHIS to describe how it intends to enforce the requirements in the interim rule.

APHIS faces a difficult task in monitoring the interstate movement of noxious weeds, and we depend on State plant officials to identify weeds moved into their States. In the event that APHIS can determine that a person has moved a noxious weed interstate without a permit, or in contradiction to the terms specified in a permit, APHIS has authority to destroy or dispose of such noxious weeds in order to prevent their dissemination in the United States. APHIS also has the authority to impose criminal and civil penalties on those persons who move noxious weeds interstate without a permit or who violate the terms of their permit, as discussed in detail later in this document. Further, if APHIS finds that persons or companies are advertising Federal noxious weeds for sale, we contact the sellers and inform them that they are prohibited from moving noxious weeds interstate except under permit.

Weed Classification System

One commenter requested that APHIS consider codifying a weed classification system, which would make the noxious weed permitting system more transparent. The commenter stated that such a system would involve the identification of ''risk zones'' based on geographic and other climate-based criteria, and would provide for the sale of noxious weeds in areas where there is no invasion potential while prohibiting the sale and movement of weeds in areas where there is invasion potential.

We believe that, due to the number of variables that would be involved, such a system would prove problematic to develop and implement because the risk presented by the movement of any weed is fairly unique to that weed and is further dependent on the climate and environment to which the weed is being moved. Nonetheless, we are considering various types of weed classification systems, and if we determine that it is possible to develop and maintain an accurate system, we may make it the subject of an upcoming rulemaking.

State Weed Lists

One commenter requested that APHIS work to ensure that States are basing their individual weed lists on sound scientific research. The commenter stated that concerns over the effects of invasive plant species on agricultural areas and the environment have led to a proliferation of State and local initiatives to control species that often do not appear to have been science-based.

APHIS does not challenge weed lists maintained by individual States. Persons with concerns regarding States' weed lists may have an opportunity to comment on the scientific merit of weed listings through the separate rulemaking mechanisms employed by States to create their regulations, including regulations that contain weed lists. In short, persons with concerns about the scientific justification for State weed listings should pursue the matter directly with the appropriate State Department of Agriculture.

Sale of Noxious Weeds in Commercial Trade

One commenter asked what actions APHIS is taking to keep noxious weeds from being sold in commercial trade.

As stated earlier in this document, if APHIS finds that persons or companies are advertising Federal noxious weeds for sale, we contact the sellers and inform them that they are prohibited from moving noxious weeds interstate except under permit.

Federal noxious weeds that are moved in violation of the regulations may be seized and destroyed, and violators may be subject to civil and criminal penalties as discussed later in this document.

If Federal noxious weeds are found during inspection of a retail establishment or under other circumstances, APHIS attempts to determine the origin of the weeds and whether the weeds have been imported or moved interstate. If the weeds are found to have been imported or moved interstate, APHIS will determine whether there is a permit on file authorizing the importation or interstate movement. If there is no permit on file, the presence of the weeds will be investigated as a violation of the regulations.

APHIS's Legal Authority

One commenter stated that APHIS does not have the authority to impose restrictions on the interstate movement of noxious weeds.

APHIS believes it has clear authority under section 412 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7712) to regulate the movement of noxious weeds in interstate commerce. Specifically, the Plant Protection Act states, in section 412, paragraph (a), that the Secretary of Agriculture ''may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest or noxious weed within the United States.''

One commenter stated that the interim rule effectively usurps a State's right to decide for itself whether to allow movement of a product (such as a noxious weed) into the State.

When processing an application for a permit to move a noxious weed interstate, APHIS evaluates the effects of the movement of the noxious weed and shares its findings with the affected State. If APHIS determines that movement of a weed will not present a significant risk of disseminating the weed into noninfested areas of the United States, the State has an opportunity to comment on or suggest revisions to the conditions of the permit. Any decision to approve or deny a permit application is made by APHIS after consultation with the affected State.

To elaborate, if a State does not want to allow movement of a noxious weed and has a sound, scientific basis for its position, APHIS is unlikely to issue a permit for the movement of the weeds. Further, if a State wishes to allow entry of a weed, and APHIS has determined that the movement of the weed would not present a significant risk of disseminating the weed into uninfested areas of the United States, APHIS would grant the permit to move weeds interstate. In the event that there is disagreement between APHIS and a State over whether to grant a permit, the final decision rests with APHIS, since permits to move weeds interstate are Federal permits.

One commenter objected to the interim rule on Constitutional grounds that it unfairly interferes with free trade among States.

We believe that this action is well within the scope of our authorizing legislation; as explained elsewhere in this document.

Issuance of Permits

One commenter expressed concern over the possibility that APHIS would issue a permit to move certain weeds to one State, but could refuse to issue a permit to move weeds to another State.

APHIS believes it has authority to allow weeds to be moved to one State but not another, based on risk assessment. When considering each request for a permit to move a noxious weed interstate, APHIS considers the intended use of the weed and the

proposed methods to be used to prevent escape of the weed into the environment. Since a given noxious weed can present a different risk of spread or infestation depending on the climate or environment where it is introduced, APHIS believes that it is essential to consider whether to allow the interstate movement of noxious weeds on a case-by-case basis. This could mean that APHIS could grant a permit to move a given weed to one State, but not another, and also that APHIS could grant a permit to move a given weed into one area of a State, but not another.

Further, most permits for the interstate movement of noxious weeds are granted to containment facilities that use the weeds for research purposes. These facilities use or grow the weeds under controlled conditions that provide assurance that the weeds will not be disseminated into natural or agricultural areas. Some persons seeking permits to move noxious weeds interstate do not intend to grow the weeds in containment facilities. For these permit requests, APHIS considers whether or not the weed is already present in the State. If the weed is present in the State and the State concurs with permit issuance, APHIS will issue a permit. If the weed does not occur in the State, APHIS evaluates the potential effects of the weed on the particular environment to which it would be moved, and confirms its findings with the State. APHIS may deny a permit request based on the possibility that the weeds could be disseminated into agricultural and natural areas where they could affect crop production or crowd out native species, or otherwise pose a high risk of becoming established.

Clarification of the Effects of the Interim Rule

One commenter asked that we answer six specific questions about the interim rule. Those questions and our responses follow.

Question: Does the interim rule apply to seeds shipped from a State where the seed is ''legal and certified'' under U.S. Department of Agriculture (USDA) standards to another State where the seed is ''legal and certified'' under the same USDA standards?

Response: A person moving noxious weeds or noxious weed seeds interstate must have a valid Federal permit, regardless of the State where weeds or seeds originate or their intended destination State. Only one person (*i.e.*, either the person moving the weed or seed or the person receiving the weed or seed) needs to obtain a permit for a single movement of noxious weeds. In most cases, the recipient of the noxious weeds would be granted a permit to receive noxious weeds from another State. When many recipients in a particular State or a defined area within the State are authorized to receive the noxious weed, the original shipper may be granted a permit to move seeds to the defined area. In both cases, the movement is authorized only under the conditions specified in the permit.

Question: Does the rule apply to adjoining States that both allow production and plantings?

Response: Again, either the person receiving noxious weeds from another State or the person sending noxious weeds interstate must have a permit that allows the weeds or seeds to be moved from one State to another, regardless of whether the States allow production or planting of noxious weeds.

Question: Does the rule apply to States exporting to foreign countries when the shipment has to cross State lines to the port of export?

Response: A person who wishes to move noxious weeds from one State to another State so that they can be exported must have a permit stating that the weeds or seeds may be moved into the area of export in the exporting State. The person who obtains the permit should be the recipient in the weeds' destination State (in this case, the exporter of seeds). Further, if a person has a permit to move weeds from one State to another, but the movement requires that the weeds transit other States en route to their destination, the permit would specify relevant safeguarding measures that need to be applied to ensure that the weeds do not pose a risk of being disseminated into the States that they are transiting.

Question: Does this rule give USDA jurisdiction over noxious weeds growing in States where the crop is legal, certifiable, and widespread?

Response: This rule only affects persons moving noxious weeds or seeds interstate.

Question: How does USDA plan to administer thousands of small lot orders of 100 to 500 pounds of certified Federal noxious weed seed on a daily basis going to and from States where it is legal and accepted?

Response: APHIS' permitting policy requires that a person wishing to move certain weeds interstate to a single State would need only one permit, typically valid for 4 years, to move an unlimited number of lots of weeds to that State. However, a person wishing to move a single weed to several States would need a permit for each destination State. Further, some APHIS permits may specify that weeds can only be moved within a defined area in the destination State in order to prevent dissemination of the weed into noninfested areas.

Question: Does this new rule carry any different penalties than the rule it updates?

Response: Since the publication of the interim rule, Congress passed the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772). Under the Plant Protection Act, the Secretary of Agriculture has the authority to hold, treat, or destroy, at the owner's expense, noxious weeds that are moving or have moved interstate without a valid permit or in contradiction to the terms specified in a permit. The Secretary also has the authority to assess civil penalties against persons who violate the terms of permits issued for the interstate movement of noxious weeds. Cases in which persons are believed to knowingly violate the terms of their permit can be referred to the Department of Justice for criminal prosecution.

With regard to criminal penalties, the Act provides that violators may be fined in accordance with Title 18, U.S. Code, imprisoned for a period not exceeding 1 year, or both. With regard to civil penalties, the Act provides that violators may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of: (1) $50,000 in the case of any individual (except that the penalty may not exceed $1,000 in the case of an initial violation by a person moving noxious weeds or seeds not for monetary gain), $250,000 in the case of any partnership, corporation, association, joint venture, or other legal entity, $500,000 for all violations adjudicated in a single proceeding; or (2) twice the gross gain or gross loss for any violation that results in the person deriving pecuniary gain or causing pecuniary loss to another.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set forth below, regarding the economic effects of this rule on small entities. The discussion also serves as a cost-benefit analysis. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effects on a substantial number of small entities.

In accordance with section 412 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7712), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

This rule specifically requires that a permit is necessary for the interstate movement of Federal noxious weeds. Prior to the interim rule, the regulations provided for the issuance of permits for movements of noxious weeds into or through the United States, but did not explicitly address interstate movements.

As part of our analysis of the economic effects of this action, we compared the expected benefits of restricting the interstate movement of Federal noxious weeds with the expected costs to the private sector associated with the new restrictions.

Effects of Noxious Weeds

Noxious weeds affect both crops and native plant species in the same way—by out-competing for light, water, and soil nutrients. Noxious weeds cause estimated crop losses of $2 to $3 billion annually. These losses are attributed to: (1) Decreased quality of agricultural products due to high levels of competition from noxious weeds; and (2) decreased quantity of agricultural products due to noxious weed infestations.

Further, noxious weeds can negatively affect livestock and dairy producers by making forage unpalatable to livestock, thus decreasing livestock productivity and potentially increasing producers' feed costs. Increased costs to agricultural producers are eventually borne by consumers of their products.

Noxious weeds also grow in aquatic habitats and may clog waterways and block irrigation and drainage canals, thus negatively affecting fish and wildlife resources and recreational use of these areas.

Infestations of noxious weeds can have a potentially disastrous impact on biodiversity and natural ecosystems, as evidenced by the case of the Mediterranean clone of *Caulerpa taxifolia,* a listed aquatic Federal noxious weed. The clone was introduced into the Mediterranean in 1984 and has since spread along the French and Italian coasts, covering 10,000 acres of the coastal sea floor, and crowding out many native seaweeds, sea grasses, and invertebrates such as coral, sea fans, and sponges.

In order to combat the negative effects of noxious weeds on crop lands, grazing lands, and waterways, herbicidal and other weed control strategies can be implemented at further costs to producers. Such costs would then likely be passed on to consumers, who would pay more for products due to increased producer costs.

The interim rule is expected to benefit any entities referred to above by curbing the spread of Federal noxious weeds and thereby eliminating potential new costs resulting from infestations.

Entities Potentially Affected by the Interim Rule

Any person involved in moving Federal noxious weeds interstate will be affected by the interim rule because they will have to obtain a permit prior to the interstate movement. Those likely to be affected are nursery stock catalog firms and individual backyard producers who distribute Federal noxious weeds.

We have found that at least 61 nursery stock catalog companies list some Federal noxious weeds, in the form of either seeds or plants, in their inventory of available products. Available data suggests, however, that sales of Federal noxious weeds (and seeds) make up a small fraction of the total receipts for these businesses. In our initial regulatory flexibility analysis, we invited any persons engaged in the sale of Federal noxious weeds, including seeds, to provide us with additional economic data regarding revenue generated by those sales. We received no data in response to our request.

There are entities in some States that import noxious weed seeds under permit and grow them under conditions specified in permits granted by APHIS. We are aware that, in isolated cases, entities that import Federal noxious weeds and seeds under permit may also wish to move them interstate. Under this rule, those entities are required to obtain another permit from APHIS for any movement of noxious weeds that is not authorized in the original permit. Further, APHIS has the authority to deny such a permit if it determines that the movement of such Federal noxious weeds may cause dissemination of the weed into noninfested areas of the United States. This means that, based on the risk of dissemination, APHIS may grant a permit for the movement of a Federal noxious weed into one State, but not into another, or may grant a permit for the movement of one species of Federal noxious weed, but not another. It is possible that this rule could negatively affect sales of noxious weeds because APHIS may refuse to allow movement of weeds to areas where they present a risk of becoming established and infesting agricultural and natural areas. However, the benefits of reducing the probability of a large new infestation of noxious weeds that became established after being moved interstate would far exceed the losses that affected individuals may bear from the rule.

Also among the entities potentially affected by this rule are individual backyard producers. Some listed Federal noxious weeds are known to be valued among certain groups as vegetable crops and are grown in small garden plots for personal use and sale at informal markets. The total number of such entities is not available. However, since most of these entities probably do not depend upon the production of noxious weeds for their livelihood, this rule should have a very limited economic effect on them. In our initial regulatory flexibility analysis, we invited the public to submit any available data on such entities that are affected by this rule. No data was received.

We are also aware that there are producers of *Ipomoea aquatica* (Chinese water spinach—a listed Federal noxious weed and a food valued by some groups) in some counties in Florida, California, and Hawaii who raise the weed as a cash crop for interstate sale to metropolitan and other markets. The exact number of such farms and their size is not available, but most holdings are believed to be as small as an acre or less. Under this rule, persons wishing to move *I. aquatica* interstate will be required to obtain a permit from APHIS. We realize that this may result in a new burden on sellers and purchasers of *I. aquatica*, and we intend to address the situation in an upcoming rulemaking.

Alternatives Considered

The only significant alternative to this rule that we considered was to make no changes in the regulations, *i.e.*, to not restrict the interstate movement of noxious weeds. We have rejected this alternative because of the potential adverse economic and ecological

consequences that we believe could result if listed Federal noxious weeds are disseminated into noninfested areas of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in the interim rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0054.

List of Subjects in 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Transportation, Weeds.

PART 360—NOXIOUS WEED REGULATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 360 and that was published at 64 FR 41007–41009 on July 29, 1999.

Authority: Title IV of Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 8th day of June 2001.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 01–14867 Filed 6–13–01; 8:45 am]

BILLING CODE 3410–34–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 206

Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, and Review of Relief Actions

AGENCY: International Trade Commission.

ACTION: Interim rule with request for comments and opportunity for objection.

SUMMARY: The United States International Trade Commission (Commission) is amending on an interim basis part 206 of its Rules of Practice and Procedure. The amendment will have the effect of providing for disclosure of confidential business information under administrative protective order in certain proceedings, and is prompted by a party request. The Commission requests comments on the interim amendment. The Commission also is providing parties to two currently-pending investigations the opportunity to object to application of the amendment to the investigation to which they are a party.

DATES: *Effective Date:* The interim amendment will take effect, as to both pending and new investigations, on June 14, 2001.

Comment Date: Comments are due on or before 5:15 p.m. August 13, 2001.

Objection Date: Objections are due on or before 5:15 p.m. June 21, 2001.

ADDRESSES: A signed original and 14 copies of each set of comments or objections should be mailed or hand delivered to Donna R. Koehnke, Secretary, United States International Trade Commission, 500 E. Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Office of the General Counsel, U.S. International Trade Commission (telephone 202–205–3091). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. Section 202 of the Trade Act of 1974 (19 U.S.C. 2252) provides for the Commission to promulgate regulations concerning access to confidential business information (CBI) under administrative protective order (APO) in safeguard investigations. The interim amendment set out herein concerns rules of agency organization, procedure, and practice.

A party to Inv. No. TA–204–6, *Certain Steel Wire Rod*, has requested disclosure of CBI under APO. The Commission's Rules of Practice and Procedure do not currently provide for such disclosure. The investigation is subject to statutory deadlines and is scheduled to be completed in a relatively short period of time. Consequently, the Commission cannot pursue the normal notice-and-comment rulemaking schedule called for in the Administrative Procedure Act, under 5 U.S.C. 553, and has good cause for making its rule amendment effective on publication. Therefore, the Commission is amending its rules on an interim basis, effective on the date of publication of this notice.

The Commission is amending section 206.52 of the Commission's Rules (19 CFR 206.52) to add a new paragraph (c) that corresponds to the existing paragraph (e) in section 206.54. This change will permit the disclosure of CBI under APO in monitoring proceedings addressed in section 206.52.

Because of the emergency nature of the amendment, the Commission is providing each party to one of the two currently-pending investigations, Inv. No. TA–204–6, *Certain Steel Wire Rod* and Inv. No. TA–204–5, *Circular Welded Carbon Quality Line Pipe*, the opportunity to object to application of the amendment to the investigation to which it is a party. Any such objection must be filed no later than 7 calendar days after the date of publication of this notice.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission certifies pursuant to 5 U.S.C. 605(b), that the amendment set forth in this notice will not, if promulgated, have a significant economic impact on a substantial number of small entities. The amendment will clarify current Commission procedures, and does not substantially increase the burden of appearing or practicing before the Commission.

Executive Order 12866

The Commission has determined that the amendment does not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993) (E.O.) and thus does not constitute a significant regulatory action for purposes of the E.O., since the revisions will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Executive Order 13132

The amendment does not contain federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 13132 (64 FR 43255, August 4, 1999).

Unfunded Mandates Reform Act of 1995

The amendment will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more

in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et. seq.*).

Small Business Regulatory Enforcement Fairness Act of 1996

The amendment is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et. seq.). The amendment will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Contract With America Advancement Act of 1996

The amendment is exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (5 U.S.C. 801 *et. seq.*) because it concerns rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Paperwork Reduction Act

The amendment is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), since it does not contain any new information collection requirements.

List of Subjects in 19 CFR parts 206

Administrative practice and procedure, Business and industry, Canada, Imports, Investigations, Mexico, Trade agreements.

For the reasons stated in the preamble, the Commission amends 19 CFR part 206 as follows:

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARDS ACTIONS, MARKET DISRUPTION, AND REVIEW OF RELIEF ACTIONS

1. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

2. Amend § 206.52 to add a new paragraph (c) to read as follows:

§ 206.52 Monitoring.

* * * * *

(c) Limited disclosure of certain confidential business information under administrative protective order. Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

Issued: June 12, 2001.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–15164 Filed 6–13–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 46, 70, 270, 275, 290, and 296

[T.D. ATF–457]

RIN 1512–AC41

Recodification of Regulations on Tobacco Products and Cigarette Papers and Tubes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is recodifying the regulations in part 296—Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes, title 27 of the Code of Federal Regulations (CFR). The purpose of this recodification is to reissue the regulations in 27 CFR part 296 as 27 CFR part 46. This change improves the organization of title 27.

DATES: This rule is effective on June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202–927–9347) or e-mail at LMGesser@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

As a part of continuing efforts to reorganize the part numbering system of title 27 CFR, ATF is removing part 296 of title 27 CFR, in its entirety, and is recodifying the regulations as 27 CFR part 46. This change improves the organization of title 27 CFR.

DERIVATION TABLE FOR PART 46

The requirements of—	Are derived from—
Subpart A	
Sec.	Sec .
46.1	296.1
46.2	296.2
46.3	296.3
46.4	296.4
46.5	296.5
46.6	296.6
46.7	296.7
46.8	296.8
46.9	296.9
46.10	296.10
46.11	296.11
46.12	296.12
46.13	296.13
46.14	296.14
46.15	296.15
46.16	296.16
Subpart B [Reserved]	
Subpart C	
46.71	296.71
46.71	296.71
46.72	296.72
46.73	296.73
46.74	296.74
46.75	296.75
46.76	296.76
46.77	296.77
46.78	296.78
46.79	296.79
46.80	296.80
46.81	296.81
Subparts D–E [Reserved]	
Subpart F	
46.141	296.141
46.142	296.142
46.143	296.143
46.146	296.146
46.147	296.147
46.150	296.150
46.153	296.153
46.154	296.154
46.155	296.155

DERIVATION TABLE FOR PART 46—Continued

The requirements of—	Are derived from—
Subpart G	
46.161	296.161
46.162	296.162
46.163	296.163
46.164	296.164
46.165	296.165
46.166	296.166
46.167	296.167
46.168	296.168
Subpart H [Reserved]	
Subpart I	
46.191	296.191
46.192	296.192
46.193	296.193
46.194	296.194
46.195	296.195
46.196	296.196
46.201	296.201
46.202	296.202
46.203	296.203
46.204	296.204
46.205	296.205
46.206	296.206
46.207	296.207
46.208	296.208
46.209	296.209
46.210	296.210
46.211	296.211
46.212	296.212
46.213	296.213
46.221	296.221
46.222	296.222
46.223	296.223
46.231	296.231
46.232	296.232
46.233	296.233
46.234	296.234
46.235	296.235
46.236	296.236
46.237	296.237
46.241	296.241
46.242	296.242
46.243	296.243
46.244	296.244
46.245	296.245
46.251	296.251
46.252	296.252
46.253	296.253
46.254	296.254
46.255	296.255
46.261	296.261
46.262	296.262
46.263	296.263
46.264	296.264
46.270	296.270
46.271	296.271
46.272	296.272
46.273	296.273
46.274	296.274

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It is hereby certified that this final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly, because of the nature of this final rule, good cause is found that it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 46

Cigars and cigarettes, Claims, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 270

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 275

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 290

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 296

Cigars and cigarettes, Claims, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

ATF is amending title 27 of the Code of Federal Regulations as follows:

PART 70—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§§ 70.131 and 70.431 [Amended]

Par. 2. Remove the reference to ''part 296'' and add, in its place, a reference to ''part 46'' in the following places:

a. Section 70.131(b); and

b. Section 70.431(b)(7).

PART 270—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 3. The authority citation for 27 CFR part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§§ 270.11 and 270.49 [Amended]

Par. 4. Remove the reference to ''ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296'' and add, in its place, a reference to ''ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 46, 270, and 275'' in the following places:

a. The definition of ''Appropriate ATF Officer in § 270.11; and

b. Section 270.49.

§ 270.286 [Amended]

Par. 5. Amend § 270.286 by removing the reference to ''part 296'' and adding, in its place, a reference to ''part 46.''

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 6. The authority citation for 27 CFR part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5706, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 18 U.S.C. 2342.

§ 275.162 and 275.205 [Amended]

Par. 7–Par. 8. Remove the reference to ''part 296'' and add, in its place, a reference to ''part 46'' in the following places:

a. Section 275.162; and

b. Section 275.205(b).

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 9. The authority citation for 27 CFR part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§§ 290.154 [Amended]

Par. 10. Amend § 290.154 by removing the reference to ''part 296'' and adding, in its place, a reference to ''part 46.''

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 11. The authority citation for 27 CFR part 296 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

PART 296—[REDESIGNATED]

Par. 12. Redesignate 27 CFR part 296 as 27 CFR part 46.

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 13. The authority citation for redesignated 27 CFR part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

§ 46.4 [Amended]

Par. 14. Amend paragraph (c) of § 46.4 by removing the reference to ''§ 296.10'' and adding, in its place, a reference to ''§ 46.10.''

§ 46.6 [Amended]

Par. 15. Amend § 46.6 as follows:

a. In paragraph (a), remove the reference to ''§ 296.7'' and add, in its place, a reference to ''§ 46.7''; and

b. In paragraph (c) remove the reference to ''§ 296.10'' and add, in its place, a reference to ''§ 46.10.''

§ 46.7 [Amended]

Par. 16. Amend § 46.7 by removing the reference to ''§ 296.8'' and adding, in its place, a reference to ''46.8.''

§ 46.8 [Amended]

Par. 17. Amend § 46.8 as follows:

a. In the introductory text, remove the reference to ''296.7'' and add, in its place, a reference to ''46.7''; and

b. In paragraph (f), remove the reference to ''296.5'' and add, in its place, a reference to ''46.5.''

§ 46.15 [Amended]

Par. 18. Amend § 46.15 by removing the reference to ''296.12'' and adding, in its place, a reference to ''46.12.''

§§ 46.72 and 46.81 [Amended]

Par. 19. Remove the reference to ''ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296'' and add, in its place, a reference to ''ATF Order 1130.24, Delegation Order—Delegation of the Director's Authorities in subpart C and I of 27 CFR part 46,'' in the following places:

a. The definition of ''Appropriate ATF officer'' in § 46.72; and

b. Section 46.81.

§ 46.146 [Amended]

Par. 20. Amend § 46.146 by removing the reference to ''296.147'' and adding, in its place, a reference to ''46.147.''

§ 46.147 [Amended]

Par. 21. Amend § 46.147 by removing the reference to ''296.143'' and adding, in its place, a reference to ''46.143'' in the following places:

a. The introductory text of Paragraph (a); and

b. The introductory text of Paragraph (b).

§ 46.150 [Amended]

Par. 22. Amend paragraph (a) of § 46.150 by removing the reference to ''§§ 296.146 and 296.147'' and add, in its place, a reference to ''§§ 46.146 and 46.147.''

§ 46.153 [Amended]

Par. 23. Amend the introductory text of § 46.153 by removing the reference to ''§§ 296.146 through 296.147'' and add, in its place, a reference to ''§§ 46.146 through 46.147.''

§ 46.192 [Amended]

Par. 24. Amend § 46.192(a) by removing the reference to ''ATF Order 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296'' and adding, in its place, a reference to ''ATF Order 1130.24, Delegation Order—Delegation of the Director's Authorities in subpart C and subpart I of 27 CFR part 46''.

§ 46.270 [Revised]

Par. 24a. Revise § 46.270 to read as follows:

§ 46.270 Delegations of the Director.

The regulatory authorities of the Director contained in this subpart are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.24, Delegation Order—Delegation of the Director's Authorities in subpart C and subpart I of 27 CFR part 46. ATF delegation orders, such as ATF O 1130.24, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

§ 46.194 [Amended]

Par. 25. Amend § 46.194 as follows:

a. Remove the reference to ''§§ 296.207 and 296.208'' and add, in its place, ''§§ 46.207 and 46.208''; and

b. Remove the reference to ''§ 296.209'' and add, in its place, a reference to ''§ 46.209.''

§ 46.196 [Amended]

Par. 26. Amend § 46.196 as follows:

a. In paragraph (a), remove the reference to ''§§ 296.205 and 296.206'' and add, in its place, a reference to ''§§ 46.205 and 46.206'';

b. In paragraph (b), remove the reference to ''§ 296.222'' and add, in its place, a reference to ''46.222'';

c. In paragraph (b), remove the reference to ''§ 296.223'' and add, in its place, a reference to ''46.223''; and

d. In paragraph (d), remove the reference to ''§ 296.241'' and add, in its place, a reference to ''46.241.''

§ 46.205 [Amended]

Par. 27. Amend § 46.205 as follows:

a. In paragraph (a), remove the reference to ''§ 296.222'' and add, in its place, a reference to ''§ 46.222'';

b. In paragraph (a), remove the reference to ''§ 296.203'' and add, in its place, a reference to ''46.203''; and

c. In paragraph (e), remove the reference to ''§ 296.204'' and add, in its place, a reference to ''46.204.''

§ 46.206 [Amended]

Par. 28. Amend § 46.206 as follows:

a. In paragraph (b), remove the reference to ''§ 296.205(a)'' and add, in its place, a reference to ''§ 46.205(a)''; and

b. In paragraph (f), remove the reference to ''§ 296.205(e)'' and add, in its place, a reference to ''46.205(e).''

§ 46.213 [Amended]

Par. 29. Amend § 46.213 by removing the reference to ''§§ 296.205 and 296.206'' and add, in its place, a reference to ''§§ 46.205 and 46.206.''

§ 46.221 [Amended]

Par. 30. Amend § 46.221 by removing the reference to ''296.222'' and adding, in its place, a reference to ''46.222.''

§ 46.237 [Amended]

Par. 31. Amend § 46.237 by removing the reference to ''§ 296.223'' and adding, in its place, a reference to ''§ 46.223.''

§ 46.241 [Amended]

Par. 32. Amend paragraph (f) of § 46.241 by removing the reference to ''296.263'' and adding, in its place, a reference to ''46.263.''

§ 46.242 [Amended]

Par. 33. Amend § 46.242 by removing the reference to ''296.234'' and adding, in its place, a reference to ''46.234.''

February 23, 2001.

Bradley A. Buckles,

Director.

Approved: April 19, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–14745 Filed 6–13–01; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4902

Disclosure and Amendment of Records Pertaining to Individuals Under the Privacy Act

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations implementing the Privacy Act of 1974, *as amended*, to exempt certain records maintained in a system of records entitled ''PBGC–12, Personnel Security Investigation Records—PBGC,'' from the access, contest, and certain other provisions of the Privacy Act. The amendment protects the identity of a source who furnishes information in confidence to the PBGC for a background investigation on an individual who works, or who is being considered for work, for the PBGC as a contractor or as an employee of a contractor.

EFFECTIVE DATE: July 16, 2001.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4020 (extension 3672). (For TTY/TDD users, call the federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020 (extension 3672).)

SUPPLEMENTARY INFORMATION: The PBGC conducts background investigations and reinvestigations to establish that applicants for employment and employees are reliable, trustworthy, of good conduct and character, and loyal to the United States. The PBGC maintains records about these investigations in a system of records subject to the Privacy Act of 1974, *as amended* (5 U.S.C. 552a) (''Privacy Act''), entitled ''PBGC–12, Personnel Security Investigation Records—PBGC''. The PBGC's regulations implementing the Privacy Act exempt under 5 U.S.C. 552a(k)(5) certain records maintained in PBGC–12 from the access, contest, and certain other provisions of the Privacy Act (29 CFR 4902.9).

The PBGC is expanding its use of background investigations and reinvestigations to cover individuals who work, or who are being considered for work, for the PBGC as contractors or as employees of contractors. To reflect the change, on April 2, 2001 (66 FR 17586), the PBGC proposed to alter PBGC–12 by revising it to include records pertaining to individuals who work, or who are being considered for work, for the PBGC as contractors or as employees of contractors. The PBGC received no comments on the proposed changes and they became effective May 17, 2001.

Also on April 2, 2001 (66 FR 17518), the PBGC published a proposed rule to amend § 4902.9 by exempting certain records pertaining to individuals who work, or who are being considered for work, for the PBGC as contractors or as employees of contractors from the access, contest, and certain other provisions of the Privacy Act. The PBGC received no comments on the proposed rule and this final rule amends the regulation as proposed. The amendment protects the identity of a source who furnishes information to PBGC in confidence for a background investigation of such an individual.

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 the final rule will not have a significant economic impact on a substantial number of small entities. The rule only affects the maintenance and disclosure of information about individuals by the PBGC under the Privacy Act and therefore would ordinarily be expected to have no economic impact on entities of any size. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects in 29 CFR Part 4902

Privacy.

For the reasons set forth above, the PBGC is amending 29 CFR part 4902 as follows:

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

1. The authority citation for Part 4902 continues to read as follows:

Authority: 5 U.S.C. 552a.

§ 4902.9 [Amended]

2. Paragraph (b) of § 4902.9 is amended by removing the words ''for PBGC employment,'' and adding in their place the words ''for PBGC employment or for work for the PBGC as a contractor or as an employee of a contractor,''.

Issued in Washington, DC, this 7th day of June, 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–14877 Filed 6–13–01; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–051]

RIN 2115–AA97

Safety Zone—Lake Erie, Port Clinton, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Port Clinton, Ohio. This safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This zone is intended to restrict vessels from a portion of Lake Erie for the City of Port Clinton's July 4, 2001, fireworks display.

DATES: This rule is effective from 2 p.m. until 11 p.m. on July 4, 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 [CGD09–01–051] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

This temporary rule is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the City of Port Clinton's 4th of July Fireworks. The fireworks display will occur between 2 p.m. and 11 p.m. on July 04th.

This safety zone will encompass all waters and the adjacent shoreline of Lake Erie, Port Clinton, Ohio, bounded by an arc of a circle with a 420-foot radius with its center in approximate position 41°30′52″ N, 082°55′46″ W. The Captain of the Port Toledo or his designated on scene representative may terminate this event.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Toledo or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic during this time of year.

Small Entities

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

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 and operators of vessels intending to transit or anchor in a portion of Lake Erie off Port Clinton, Ohio.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for less than one day, and vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Toledo (see **ADDRESSES**).

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 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 having first provided the funds to pay those 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.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T09–921 is added as follows:

§ 165.T09–921 Safety zone: Lake Erie, Port Clinton, Ohio.

(a) *Location.* All waters and the adjacent shoreline of Lake Erie, Port Clinton, Ohio, bounded by the arc of a circle with a 420-foot radius with its center in approximate position 41°30′52″ N, 082°55′46″ W. (NAD 1983).

(b) *Effective Period.* This regulation is effective from 2 p.m. until 11 p.m., July 04, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 4, 2001.

David L. Scott,

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

[FR Doc. 01–15048 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–050]

RIN 2115–AA97

Safety Zone—River, Toledo, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River, Toledo, Ohio. This zone is intended to restrict vessels from a portion of the Maumee River during the City of Toledo's July 04, 2001, fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 12:30 p.m. until 11 p.m. on July 04, 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 [CGD09–01–050] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604 (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule if effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the City of Toledo's

4th of July Fireworks. The fireworks display will occur between 12:30 p.m. and 11 p.m. on July 04th.

This safety zone will encompass all waters and the adjacent shoreline of the Maumee River, Toledo, Ohio, extending from the bow of the museum ship SS WILLIS B. BOYER (41°38′35″ N, 083°31′54″ W), then north north-east to the south end of the City of Toledo Street (41°38′51″ N, 083°31′50″ W), then south-west to the red nun bouy #64 (41°38′48″ N, 083°31′58″ W), then south south-east to the museum ship SS WILLIS B. BOYER. The Captain of the Port Toledo or his designated on scene representative have the authority to terminate the event.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Toledo or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic during this time of year.

Small Entities

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

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 and operators of vessels intending to transit or anchor in a portion of the Maumee River off Toledo, Ohio.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for less than one day in conjunction with one event, and vessel traffic can pass safely around the safety zone. In the event that shipping is affected by this temporary safety zone, commercial vessels may request permission from the Captain of the Port Toledo to transit through the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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. 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 Marine Safety Office Toledo (see **ADDRESSES**).

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 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 having first provided the funds to pay those 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. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

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

Energy Effects

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

statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary section 165.T09–920 is added as follows:

§ 165.T09–920 Safety zone: Maumee River, Toledo, Ohio.

(a) *Location.* All waters and the adjacent shoreline of the Maumee River, Toledo, Ohio, extending from the bow of the museum ship SS WILLIS B. BOYER (41°38′35″ N, 083°31′54″ W), then north north-east to the south end of the City of Toledo Street (41° 38′51″ N, 083°31′50″ W), then south-west to the red nun bouy #64 (41°38′48″ N, 083°31′58″ W), then south south-east to the museum ship SS WILLIS B. BOYER.

(b) *Effective Period.* This regulation is effective from 12:30 p.m. until 11 p.m., July 04, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 5, 2001.

David L. Scott,

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

[FR Doc. 01–15047 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK41

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 2000–01 academic year should be increased by 4% over the rates payable for the 1999–2000 academic year. The regulations dealing with these rates are amended accordingly.

DATES: *Effective Date:* June 14, 2001.

Applicability Date: The changes in rates are applied retroactively to October 1, 2000, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 4% in the 1999–2000 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4% increase in the rates payable in the 2000–01 academic year, including changes in § 21.5820 to the adjustments that compensate for rounding. In addition, nonsubstantive changes are made for the purpose of clarification.

Administrative Procedure Act

The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification. Accordingly, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 6, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

Approved: March 7, 2001.

P.A. Tracey,

Vice Admiral, USN, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21 (subpart H) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H is revised to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

§ 21.5820 [Amended]

2. Section 21.5820 is amended by:

a. In paragraph (b)(1), removing ''1999–2000'' and adding, in its place, ''2000–01''; and by removing ''$3,388'' and adding, in its place, ''$3,524'';

b. In the introductory text of paragraph (b)(2)(ii), removing ''1999–2000'' and adding, in its place, ''2000–01'';

c. In paragraph (b)(2)(ii)(A), removing ''$376.44'' and adding, in its place, ''$391.56''; and by removing ''$188.22'' and adding, in its place, ''$195.78'';

d. In paragraph (b)(2)(ii)(B), removing ''$12.55'' and adding, in its place, ''$13.05''; and by removing ''$6.27'' and adding, in its place, ''$6.53'';

e. In paragraph (b)(2)(ii)(C), removing ''increased by 4¢ '' and adding, in its place, ''decreased by 4¢''; and by removing ''increased by 2¢'' and adding, in its place, ''decreased by 2¢''.

f. In the introductory text of paragraph (b)(3)(ii), removing ''1999–2000'' and adding, in its place, ''2000–01'';

g. In paragraph (b)(3)(ii)(A), removing ''$376.44'' and adding, in its place, ''$391.56''; and by removing ''$188.22'' and adding, in its place, ''$195.78'';

h. In paragraph (b)(3)(ii)(B), removing ''$12.55'' and adding, in its place, ''$13.05''; and by removing ''$6.27'' and adding, in its place, ''$6.53'';

i. In paragraph (b)(3)(ii)(C), removing ''increased by 4¢'' and adding, in its place, ''decreased by 4¢''; and by removing ''increased by 2¢'' and adding, in its place, ''decreased by 2¢''.

j. Removing ''shall'' each place in which it appears and adding, in its place, ''will''.

§ 21.5822 [Amended]

3. Section 21.5822 is amended by:

a. In paragraph (b)(1)(i), removing ''$844'' and adding, in its place, ''$878''; and by removing ''1999–2000'' and adding, in its place, ''2000–01'';

b. In paragraph (b)(1)(ii), removing ''$422'' and adding, in its place, ''$439''; and by removing ''1999–2000'' and adding, in its place, ''2000–01'';

c. In paragraph (b)(2)(i), removing ''1999–2000'' and adding, in its place, ''2000–01''; and by removing ''$844'' and adding, in its place, ''$878'';

d. In paragraph (b)(2)(ii), removing ''1999–2000'' and adding, in its place, ''2000–01''; and by removing ''$422'' and adding, in its place, ''$439''.

e. Removing ''shall'' each place in which it appears and adding, in its place, ''will''.

[FR Doc. 01–15068 Filed 6–13–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK44

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing rates of educational assistance payable under the Montgomery GI Bill—Active Duty and the regulations governing rates of Survivors' and Dependents' Educational Assistance to reflect increases required by statutory provisions.

DATES: *Effective Date:* This final rule is effective June 14, 2001.

Applicability Dates. The changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015(g) (as in effect on October 1, 2000) for fiscal year 2001, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty (MGIB) payable to students pursuing a program of education full time must be increased by 3.0%, which is the percentage by which the total of the monthly Consumer Price Index-W (CPI–W) for July 1, 1999, through June 30, 2000, exceeds the total of the monthly CPI–W for July 1, 1998, through June 30, 1999.

In addition, the rates for the months during fiscal year 2001 that follow October 2000 were further increased by the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419). That Act provides that beginning on November 1, 2000, the rates of basic educational assistance under the MGIB must be increased beyond the increase that went into effect on October 1, 2000. Changes are made to the regulations governing rates payable under MGIB to reflect both rate increases.

Moreover, Pub. L. 106–419 requires an increase in the monthly rate of Survivors' and Dependents' Educational Assistance (DEA), effective November 1, 2000. Changes are made to the regulations governing DEA rates and entitlement charges to reflect the statutory changes.

It should be noted that neither the increase attributable to the CPI–W nor the increase attributable to the Act affects all educational assistance payable under MGIB. The increases don't apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called ''kickers''). They don't apply to amounts payable for dependents. Veterans who previously had eligibility under the Vietnam Era GI Bill receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased.

38 U.S.C. 3015(a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

In addition, 38 U.S.C. 3032(c) requires that monthly rates payable to veterans in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there are raises effective October 1, 2000, and November 1, 2000, for such training as well.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1, 2000, and November 1, 2000, in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget Under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 5, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21 (subparts C and K) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3045, paragraph (h) is revised to read as follows:

§ 21.3045 Entitlement charges.

* * * * *

(h) *Entitlement charge for correspondence courses.* The charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each:

(1) $485 paid after September 30, 1998, and before November 1, 2000, to a spouse or surviving spouse as an educational assistance allowance;

(2) $588 paid after October 31, 2000.

(Authority: 38 U.S.C. 3534(b), 3686(a))

* * * * *

3. In § 21.3131, paragraph (a) is revised to read as follows:

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates effective November 1, 2000:

Type of course	Monthly rate
Institutional:	
Full time	$588
¾ time	$441
½ time	$294
Less than ½ but more than ¼ time [1]	$294
¼ time or less [1]	147
Cooperative training (other than farm cooperative) (Full time only)	$588
Apprentice or on-job (full time only) [2]	
First six months	$428
Second six months	$320
Third six months	$212
Fourth six months and thereafter	$107
Farm cooperative:	
Full time	$475
¾ time	$356
½ time	$238
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3]

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $294 or $147, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2))

* * * * *

§ 21.3300 [Amended]

4. In § 21.3300, paragraph (c) is amended by removing ''$152'' and adding, in its place, ''$184''.

§ 21.3333 [Amended]

5. Section 21.3333 is amended by:

a. In paragraphs (a) and (b)(1), removing ''January 1, 1990'' and adding, in its place, ''November 1, 2000,''.

b. In the table in paragraph (a), removing ''$485'' and adding, in its place, ''$588'', and by removing ''$152'' both places it appears and adding, in its place, ''$184'';

c. In paragraph (b)(1), removing ''$16.16'' and adding, in its place, ''$19.60'', and by removing ''$485'' and adding, in its place, ''$588''.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

6. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

7. In § 21.7136, paragraphs (b), (c)(1), (c)(2), and (c)(3) are revised and paragraphs (c)(4) and (c)(5) are added to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2000, and before November 1, 2000, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$552.00
¾ time	414.00
½ time	276.00
Less than ½ but more than ¼ time	276.00
¼ time	138.00

(Authority: 38 U.S.C. 3015)

(2) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after October 31, 2000, and before October 1, 2001, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table:

Training	Monthly rate
Full time	$650.00
¾ time	487.50
½ time	325.00
Less than ½ but more than ¼ time	325.00
¼ time	162.50

(Authority: 38 U.S.C. 3015)

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 2000, and before November 1, 2000, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$414.00
Second six months of pursuit of training	303.60
Remaining pursuit of training	193.20

(Authority: 38 U.S.C. 3015, 3032(c))

(4) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or other on-job training that occurs after October 31, 2000, and before October 1, 2001, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$487.50
Second six months of pursuit of training	357.50
Remaining pursuit of training	227.85

(Authority: 38 U.S.C. 3015, 3032(c))

(5) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $536.00 for training that occurs after September 30, 1999, and before October 1, 2000;

(ii) $552.00 for training that occurs after September 30, 2000, and before November 1, 2000; and

(iii) $650.00 for training that occurs after October 31, 2000, and before October 1, 2001.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2000, and before November 1, 2000, is the rate stated in the following table:

Training	Monthly rate
Full time	$449.00
¾ time	336.75
½ time	224.50
Less than ½ but more than ¼ time	224.50
¼ time or less	112.25

(Authority: 38 U.S.C. 3015, 3032(c))

(2) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after October 31, 2000, is the rate stated in the following table:

Training	Monthly rate
Full time	$528.00
¾ time	396.00
½ time	264.00
Less than ½ but more than ¼ time	264.00
¼ time or less	132.00

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 2000, and before November 1, 2000, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$336.75
Second six months of pursuit of training	246.95
Remaining pursuit of training	157.15

(Authority: 38 U.S.C. 3015, 3032(c))

(4) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-job training that occurs after October 31, 2000, and before October 1, 2001, is the rate stated in the following table:

Training period	Monthly rate
First six months of pursuit of training	$396.00
Second six months of pursuit of training	290.40
Remaining pursuit of training	184.80

(Authority: 38 U.S.C. 3015, 3032(c))

(5) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $436.00 for training that occurs after September 30, 1999, and before October 1, 2000;

(ii) $449.00 for training that occurs after September 30, 2000, and before November 1, 2000; and

(iii) $528.00 for training that occurs after October 31, 2000, and before October 1, 2001.

(Authority: 38 U.S.C. 3015)

8. In § 21.7137, paragraph (a); the introductory texts of paragraphs (b) and (c); and paragraph (c) (2) are revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 2000, and before November 1, 2000, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$740.00	$776.00	$807.00	$16.00
¾ time	555.50	582.00	605.50	12.00
½ time	370.00	388.00	403.50	8.50
Less than ½ but more than ¼ time	370.00	370.00	370.00	0
¼ time or less	185.00	185.00	185.00	0

(Authority: 38 U.S.C. 3015(e), (f), (g))

(2) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after October 31, 2000, and before October 1, 2001, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$838.00	$874.00	$905.00	$16.00
¾ time	629.00	655.50	679.00	12.00
½ time	419.00	437.00	452.50	8.50
Less than ½ but more than ¼ time	419.00	419.00	419.00	0
¼ time or less	209.50	209.50	209.50	0

(Authority: 38 U.S.C. 3015(e), (f), (g))

(3) For veterans pursuing apprenticeship or other on-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2000, and before November 1, 2000, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$516.75	$529.13	$540.00	$5.25
2nd six months of pursuit of program	359.98	369.33	377.03	3.85
3rd six months of pursuit of program	217.00	223.13	227.85	2.45
Remaining pursuit of program	205.10	210.88	216.13	2.45

(Authority: 38 U.S.C. 3015(e), (f), (g))

(4) For veterans pursuing apprenticeship or other on-job training, the monthly rate of basic educational assistance for training that occurs after October 31, 2000, and before October 1, 2001, is the rate stated in the following table:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$590.25	$602.63	$613.50	$5.25
2nd six months of pursuit of program	413.88	423.23	430.93	3.85
3rd six months of pursuit of program	251.30	257.43	262.15	2.45
Remaining pursuit of program	239.40	245.18	250.43	2.45

(Authority: 38 U.S.C. 3015(e), (f), (g))

(5) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is the rate stated in the following table:

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 1, 1999–Sept. 30, 2000	$724.00	$760.00	$791.00	$16.00
Oct. 1, 2000–Oct. 31, 2000	740.00	776.00	807.00	16.00
Nov. 1, 2000–Sept. 30, 2001	838.00	874.00	905.00	16.00

(Authority: 38 U.S.C. 3015)

(b) *Less than one-half-time training.* Except as provided in paragraphs (d) and (e) of this section, the monthly rate of basic educational assistance for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

* * * * *

(c) *Rates for servicemembers.* The monthly rate of basic educational assistance for a servicemember may not exceed the lesser of the following rates (except as provided in paragraph (d) of this section):

* * * * *

(2) (i) The following monthly rates for training that occurs after September 30, 2000, and before November 1, 2000—

(A) $740.00 for full-time training;

(B) $555.50 for three-quarter-time training;

(C) $370.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $185.00 for one-quarter-time training; and

(ii) The following monthly rates for training that occurs after October 31, 2000, and before October 1, 2001—

(A) $838.00 for full-time training;

(B) $629.00 for three-quarter-time training;

(C) $419.00 for one-half-time training and training that is less than one-half but more than one-quarter-time training; and

(D) $209.50 for one-quarter-time training.

(Authority: 38 U.S.C. 3015(d), (f))

* * * * *

[FR Doc. 01–15070 Filed 6–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AK72

Delegation of Authority—Portfolio Loan Servicing Contractor

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document delegates to certain officers of the entity performing loan servicing functions under a contract with the Secretary authority to execute all documents necessary for the servicing and termination of a loan made or acquired by the Secretary.

DATES: *Effective Date:* June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Fyne, Assistant Director for Loan Management (261), Veterans Benefits Administration, 810 Vermont Ave., Washington, DC 20420, telephone 202–273–7380.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. chapter 37 authorize the Secretary of Veterans Affairs (VA) to guarantee or make loans to veterans. Under a number of circumstances VA becomes the holder of a housing loan. The most common reasons are: VA acquired the property securing a guaranteed loan following foreclosure and sold the security on terms (sometimes called a ''vendee loan.''), VA took an assignment of (or ''refund'') a guaranteed loan pursuant to 38 U.S.C. 3732(a)(2), or VA made a direct loan to a veteran pursuant to 38 U.S.C. 3711 or 3761.

VA has contracted with a private entity for the servicing of its housing loan portfolio. In order to increase the efficiency of this contract, certain officers of the contractor are being delegated authority to execute, on behalf of VA, routine documents necessary for the servicing and foreclosing of the loans being serviced.

Currently, 38 CFR 36.4342 authorizes certain VA officials, such as field station Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers, to execute these documents. Regional Offices are required to maintain a cumulative list of all employees of that office who have held the designated positions since May 1, 1980.

This rule adds a new paragraph (e) to 38 CFR 36.4342 which delegates to persons holding the office of Vice President, Assistant Vice President, and Assistant Secretary of the entity performing loan servicing functions under a contract with VA the authority to execute all documents necessary for the servicing and termination of a housing loan made or acquired by VA. Documents authorized to be executed will include loan modification agreements, notices of default, notices of appointment or substitution of trustees, releases or satisfactions of mortgages,

loan assumption agreements, deeds tendered upon satisfaction or conversion of an installment land sales contract, and documents related to filing, pursuing and settling claims with hazard insurance companies.

The Director of the VA Loan Guaranty Service, Washington, DC, will maintain a log listing all corporate officers of the contractor who have been authorized to execute documents and the dates during which these persons were authorized to act. VA will also maintain copies of resolutions of the contractor's board of directors authorizing these persons to execute these documents. Those files will be available for public inspection and copying during normal business hours at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

This authority does not apply, however, with respect to loans under the pilot program for multifamily transitional housing projects for homeless veterans under 38 U.S.C. chapter 37, subchapter vi. Such loans will not be serviced by the contractor servicing the VA loan portfolio.

The provisions of 38 CFR 36.4342(e) are published without regard to the notice and comment and delayed effective date provisions of 5 U.S.C. 553 since they relate to agency management and personnel and are not substantive rules.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule relates to agency management and personnel and does not contain substantive provisions. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this program.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs, Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: March 14, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation of part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4342, paragraph (e) is added immediately following paragraph (d); and the authority citation at the end of the section is revised to read as follows:

§ 36.4342 Delegation of authority.

* * * * *

(e)(1) Authority is hereby delegated to the officers, designated in paragraph (e)(2) of this section, of the entity performing loan servicing functions under a contract with the Secretary to execute on behalf of the Secretary all documents necessary for the servicing and termination of a loan made or acquired by the Secretary pursuant to 38 U.S.C. chapter 37 (other than under subchapter vi of that chapter). Documents executed under this paragraph include but are not limited to: loan modification agreements, notices of default and other documents necessary for loan foreclosure or termination, notices of appointment or substitution of trustees under mortgages or deeds of trust, releases or satisfactions of mortgages or deeds of trust, acceptance of deeds-in-lieu of foreclosure, loan assumption agreements, loan assignments, deeds tendered upon satisfaction or conversion of an installment land sales contract, and documents related to filing, pursuing and settling claims with insurance companies relating to hazard coverage on properties securing loans being serviced.

(2) The designated officers are: Vice President, Assistant Vice President, and Assistant Secretary.

(3) The Director, Loan Guaranty Service, Washington, DC, shall maintain a log listing all persons authorized to execute documents pursuant to paragraph (e) of this section and the dates such persons held such authority, together with certified copies of resolutions of the board of directors of the entity authorizing such individuals to perform the functions specified in paragraph (e)(1) of this section. These records shall be available for public inspection and copying at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

(Authority: 38 U.S.C. 501, 3720(a)(5))

[FR Doc. 01–15069 Filed 6–13–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE053–1029a; FRL–6996–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Conversion of the Conditional Approval of the NO_X RACT Regulation to a Full Approval and Approval of NO_X RACT Determinations for Three Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP) submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). These revisions were submitted to satisfy the condition imposed by EPA in its conditional limited approval of Delaware's regulation requiring reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_X). This action converts EPA's conditional limited approval of Delaware Regulation 12, Control of NO_X Emissions, to a full approval. EPA is also taking direct final action to approve three source-specific NO_X RACT determinations. These actions are being taken under the Clean Air Act (CAA).

DATES: This rule is effective on August 13, 2001 without further notice, unless EPA receives adverse written comment by July 16, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 and Melik Spain, (215) 814–2299, at the EPA Region III address above, or by e-mail at *quinto.rose@epa.gov* and *spain.melik@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of CAA, Delaware is required to implement RACT for all major NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Delaware portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area consists of New Castle and Kent Counties and is classified as severe. Under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements, including RACT as specified in sections 182(b)(2) and 182(f), apply throughout the OTR. The entire State of Delaware is in the OTR. Therefore, RACT is applicable statewide in Delaware.

On June 16, 1999 (64 FR 32187), EPA granted conditional limited approval of Delaware's Regulation 12, Control of NO_X Emissions which requires all major sources of NO_X to implement RACT. Section 5 of Regulation 12 provides for DNREC to make source-specific NO_X RACT determinations and to submit them to EPA as SIP revisions. To fulfill the condition imposed by EPA in its June 16, 1999 conditional limited approval of Regulation 12, DNREC was required to certify, by no later than July 17, 2000, that it had submitted all required case-by-case NO_X RACT determinations for all known subject sources to EPA. The conditional nature of EPA's June 16, 1999 approval of Regulation 12 would be removed once EPA determined that DNREC had satisfied this condition. The limited nature of EPA's June 16, 1999 approval would be removed once EPA had approved all of the case-by-case RACT determinations submitted by DNREC in fulfillment of the condition described above.

II. Summary of SIP Revision and EPA's Evaluation

On July 13, 2000, DNREC formally submitted revisions to its SIP consisting of four case-by-case RACT determinations made for four processes located at three separate major sources of NO_X in Delaware. The July 13, 2000 submittal also included certification by the Secretary of DNREC that the four case-by-case RACT determinations submitted to EPA to establish RACT at these three major sources of NO_X represent all required case-by-case NO_X RACT determinations for all known subject sources. EPA has determined that DNREC has satisfied the condition imposed in the June 16, 1999 conditional limited approval (64 FR 32187).

The three major sources for which DNREC has submitted case-by-case RACT determinations are: SPI Polyols, Incorporated, New Castle; CitiSteel, Claymont; and General Chemical Corporation, Claymont. The NO_X RACT determinations and requirements of each source are included in the Delaware Register of Regulations, Volume 3, Issue 12, June 1, 2000. The specific NO_X RACT determinations for these three sources are summarized below.

Case-by-Case NO_X RACT Evaluations

SPI Polyols, Incorporated, Atlas Point Site, New Castle, Delaware: SPI Polyols, Incorporated (SPI) operates a Polyhydrate Alcohol Catalyst Regenerative process at its Atlas Point Plant in New Castle County, Delaware. This batch process involves treatment and regeneration of the spent nickel catalyst that is recovered from process waste streams of the sugar reduction process. One step in the catalyst regeneration process involves the use of nitric acid (HNO_3) digesters. SPI operates 4 batch HNO_3 digesters. The exothermic reaction of HNO_3 with spent nickel catalyst generates NO_X. The NO_X emissions are mainly associated with the addition of HNO_3 to the digester tanks. Stack testing at the site indicates that the average emissions rate from this process is approximately 0.8 pounds per hour, or 3.5 tons of NO_X per year. DNREC imposes two means of controlling the NO_X emissions that come from this process: (1) Process control and (2) operation of a counter flow spray scrubbing system and packed column. With respect to process control, SPI must minimize the formation of NO_X by controlling the rate of HNO_3 added to the digesters. SPI must submerge the HNO_3 feed into the mixing zone of the digester tank. SPI must add HNO_3 to only one digester tank at any particular time under a controlled temperature range. SPI must monitor the flow rate of HNO_3 addition and calibrate each HNO_3 flow meter and temperature monitor in accordance with the recommendations of the manufacturer, using sound engineering and air pollution control practices. With respect to the scrubber system, off-gas from the digester tanks will be collected and routed to the scrubber. There are to be no visible emissions at the scrubber outlet. There are two water spray nozzles at the bottom of the scrubber, upstream of the column, to cool the temperature of the gas before entering the column. The column is packed with plastic. The scrubbing system is equipped with an air dilution valve to promote the oxidation of any NO_X to water soluble nitrogen dioxide. It should be noted that the scrubber treats NO_X from a process that operates in batch mode. Therefore, NO_X emissions are not continuous. Moreover, emissions of NO_X from this process are inherently low. At temperatures of 70 to 120 degrees Fahrenheit, NO_X concentrations of approximately 5 to 350 parts per million (ppm), and flow rates of 2000 to 9000 square cubic feet per minute (scfm); the reaction rates are slow and the removal of NO_X using a water contact scrubber is minimal. Therefore, DNREC views NO_X RACT as maintenance of these low NO_X levels using the scrubber. SPI must inspect the components of the scrubber and calibrate the differential pressure gauge pursuant to the manufacturer's recommendation at least once per year. The scrubber will be operated using good engineering and air pollution control practices. DNREC has imposed record-keeping requirements on SPI sufficient to determine compliance with the applicable RACT determinations. EPA is approving the NO_X RACT determination made by DNREC for SPI as a revision to the Delaware SIP.

CitiSteel USA, Incorporated, Claymont, Delaware: Citisteel USA, Incorporated (Citisteel) produces molten steel by melting scrap steel. Citisteel operates an Electric Arc Furnace (EAF) rated at a 150 tons per charge. The EAF is operated in a batch mode. Citisteel's EAF operates at temperatures above 3,000 degrees Farenheit, which is conducive to thermal NO_X formation. The majority of the facility's NO_X emissions result from conditions conducive for thermal NO_X formation combined with the infiltration of ambient shop air. Nitrogen contained in the scrap steel is oxidized and released inside the EAF vessel, but contributes very little to the total NO_X emissions. Stack tests conducted on April 24 and 25, 1996 established an average emission rate of 0.36 pounds per ton of steel produced or 97.2 tons of NO_X per

year based 540,000 tons of steel produced per year. Typical fuel fired combustion equipment applied to NO_X emitting sources are not technically feasible for an EAF. As noted above, the EAF operates in batches and thus has varying temperatures and flow rates as well as high particulate concentrations that would blind a catalyst. Therefore, DNREC will impose no additional requirements on the Citisteel's EAF operations. A well designed exhaust system constitutes RACT in compliance with Regulation No. 12 of the Delaware Regulations Governing the Control of Air Pollution. EPA is approving Delaware's submittal containing the NO_X RACT determination made by DNREC for Citisteel's steel manufacturing operations.

General Chemical Corporation, Claymont, Delaware: General Chemical Corporation (General Chem) has two process operations subject to a NO_X RACT evaluation: (1) A sulfuric acid (H_2SO_4) and interstage absorption system (ISA) process and (2) a metallic nitrite process. The H_2SO_4/ISA process involves burning elemental sulfur, spent H_2SO_4, and hydrogen sulfide to generate sulfur dioxide. Sulfur dioxide is catalytically oxidized to sulfur trioxide and is absorbed into strong H_2SO_4. General Chem uses two boilers rated at 46 million British thermal units (MMBtu) per hour to conduct this burning process. Nitrogen oxide emissions are only generated by the burning process. The combustion of sulfur is not is not burned primarily for heat. The sulfur used in the burning process is highly exothermic, providing the majority of the heat to the burners and is in and of itself a low nitrogen bound fuel. The combustion gases are an integral part of the ISA process. Therefore, DNREC determined that combustion modifications are not warranted. The DNREC also confirmed that the low exhaust concentrations of NO_X (26.74 ppm or 0.2 lbs. per MMBtu), combined with the high flow rates (54,737 scfm), and the low combustion temperatures disqualifies wet scrubbing as a means of pollution control. Selective catalytic reduction cannot be used due to the existence of particulate matter. Therefore, DNREC imposed no additional controls on General Chem for its H_2SO_4/ISA processes. EPA is approving DNREC's NO_X RACT determination for General Chem's H_2SO_4/ISA processes.

General Chem's metallic nitrite process is a batch process that produces a 50% solution of potassium nitrite (KNO_2). The process involves reacting controlled quantities of ammonia and air over a catalyst. The air-ammonia mixture reacts to form nitric oxide and water, which combines with oxygen to form nitrogen dioxide. The mixture of nitric oxide and nitrogen dioxide is absorbed using potassium hydroxide (KOH) which yields KNO_2. The rate of NO_X formation is proportional to the level of free alkalinity in the absorption tower. As the batch process progresses, the absorption of NO_X by KOH decreases, so there is less potassium available to form KNO_2. Hence, the air to ammonia feed rate is of particular interest in controlling NO_X levels from this batch process. The metallic nitrite process incorporates an off-gas single stage packed tower scrubber which uses KOH to absorb the majority of the NO_X emissions that are generated. The DNREC determined that RACT is continued operation of the scrubber. The scrubber must be tested and calibrated according to the manufacturer's specification and operated using good engineering and air pollution control practices. General Chem must also monitor and keep continuous records of pressure drop, the level of free alkalinity in the scrubber liquor, and the air to ammonia feed rate to the process. EPA is approving DNREC's NO_X RACT determination for General Chem's metallic nitrite process.

III. Final Action

EPA is approving revisions to the Delaware's SIP submitted by DNREC on July 13, 2000 which include certification by the Secretary of DNREC that the four case-by-case RACT determinations submitted to EPA (as part of that same July 13, 2000 submittal) establishing RACT for four processes located at three major sources of NO_X represent all required case-by-case NO_X RACT determinations for all known subject sources. EPA is also approving those RACT determinations made by DNREC for three major sources of NO_X in Delaware. As a result of these approvals, both the conditional and limited nature of EPA's June 16, 1999 approval of Delaware's Regulation 12 are, hereby, removed and converted to a full approval. This action is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the ''Proposed Rules'' section of this **Federal Register** publication, we are proposing to approve the Delaware SIP revision that establishes and requires RACT for three major sources of NO_X. This action will be effective without further notice unless we receive relevant adverse comment by July 16, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by July 16, 2001, you are advised that this action will be effective on August 13, 2001.

IV. 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 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), 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 August 13, 2001. Filing a petition for reconsideration by the Administrator of the rule approving Delaware's NO_X RACT regulation and three source-specific RACT determinations 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 31, 2001.

Elaine B. Wright,

Acting 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 I—Delaware

2. In § 52.424, paragraph (d) is removed and reserved.

3. Section 52.420 is amended:

a. In the table in paragraph (c) is amended by revising the existing entries for Regulation 12, Sections 1 to 7.

b. In the table in paragraph (d) by revising the title of the table and by adding the entries for ''SPI Polyols, Inc.'', ''Citisteel'', and ''General Chemical Corp.'' at the end of the table.

The revisions and additions read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Regulation 12—Control of Nitrogen Oxide Emissions				
Section 1	Applicability	11/24/93	6/14/01, 66 FR 32234	
Section 2	Definitions	11/24/93	6/14/01, 66 FR 32234	
Section 3	Standards	11/24/93	6/14/01, 66 FR 32234	
Section 4	Exemptions	11/24/93	6/14/01, 66 FR 32234	
Section 5	Alternative and Equivalent RACT Determinations	11/24/93	6/14/01, 66 FR 32234	
Section 6	RACT Proposals	11/24/93	6/14/01, 66 FR 32234	
Section 7	Compliance Certification, Record Keeping, and Reporting Requirements.	11/24/93	6/14/01, 66 FR 32234	
*	*	*	*	*

(d) * * *

EPA-APPROVED DELAWARE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Comments
*	*	*	*	*
SPI Polyols, Inc.	Secretary's Order No. 2000–A–0033	07/11/00	6/14/01, 66 FR 32235	Polyhydrate Alcohol's Catalyst Regenarative Process—Approved NO_X RACT Determination
Citisteel	Secretary's Order No. 2000–A–0033	07/11/00	6/14/01, 66 FR 32235	Electric Arc Furnace— Approved NO_X RACT Determination
General Chemical Corp.	Secretary's Order No. 2000–A–0033	07/11/00	6/14/01, 66 FR 32235	(1) Sulfuric Acid Process & Interstage Absorption System (2) Metallic Nitrite Process—Approved NO_X RACT Determinations

* * * * *

[FR Doc. 01–14898 Filed 6–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6994–4]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list, and is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. This rule adds 10 new sites to the General Superfund Section of the NPL. These sites will be assessed to determine the nature and extent of public health and environmental risks associated with them, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

EFFECTIVE DATE: The effective date for this final rule shall be July 16, 2001.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What Are CERCLA and SARA?
B. What Is the NCP?
C. What Is the National Priorities List (NPL)?
D. How Are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. How Are Site Boundaries Defined?
G. How Are Sites Removed from the NPL?
H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?
I. What Is the Construction Completion List (CCL)?
II. Availability of Information to the Public
A. Can I Review the Documents Relevant To this Final Rule?
B. What Documents Are Available for Review at the Headquarters Docket?
C. What Documents Are Available for Review at the Regional Docket?
D. How Do I Access the Documents?
E. How Can I Obtain a Current List of NPL Sites?
III. Contents of This Final Rule
A. Additions to the NPL
B. Status of NPL
C. What Did EPA Do With the Public Comments It Received?
IV. Executive Order 12866
A. What Is Executive Order 12866?
B. Is This Final Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What Is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Final Rule?
VI. Effects on Small Businesses
A. What Is the Regulatory Flexibility Act?
B. Does the Regulatory Flexibility Act Apply to This Final Rule?
VII. Possible Changes to the Effective Date of the Rule
A. Has This Rule Been Submitted to Congress and the General Accounting Office?
B. Could the Effective Date of This Final Rule Change?
C. What Could Cause the Effective Date of This Rule To Change?
VIII. National Technology Transfer and Advancement Act
A. What Is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to this Final Rule?
IX. Executive Order 12898
A. What Is Executive Order 12898?
B. Does Executive Order 12898 Apply to This Final Rule?
X. Executive Order 13045
A. What Is Executive Order 13045?
B. Does Executive Order 13045 Apply to This Final Rule?
XI. Paperwork Reduction Act
A. What Is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to This Final Rule?
XII. Executive Orders on Federalism
What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?
XIII. Executive Order 13175
What Is Executive Order 13175 and Is It Applicable to This Final Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on

October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on December 1, 2000 (65 FR 75179).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms

of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of May 21, 2001, the Agency has deleted 232 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of May 21, 2001, EPA has deleted portions of 23 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL.

As of May 21, 2001, there are a total of 766 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—June 2001.''

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA,

Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–6699.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 10 sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the 10 sites in the General Superfund Section. Sites in the tables are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State and site name	City/county
CA—Cooper Drum Company.	South Gate.
MA—Nuclear Metals, Inc.	Concord.
MA—Sutton Brook Disposal Area.	Tewksbury.
NM—Griggs & Walnut Ground Water Plume.	Las Cruces.
NY—Consolidated Iron and Metal.	Newburgh.
NY—Shenandoah Road Ground Water Contamination.	East Fishkill.
OR—Taylor Lumber and Treating.	Sheridan.
PA—Lower Darby Creek Area.	Delaware/Philadelphia Counties.
TX—Malone Service Company, Inc..	Texas City.
VT—Elizabeth Mine	Strafford.

Number of Sites Added to the General Superfund Section: 10.

B. Status of NPL

With the 10 new sites added to the NPL in today's final rule; the NPL now contains 1,236 final sites; 1,076 in the General Superfund Section and 160 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 10 new sites to the NPL, there are now 67 sites proposed and awaiting final agency action, 61 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,303. (These numbers reflect the status of sites as of May 21, 2001. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The Lower Darby Creek site was proposed May 11, 2000 (63 FR 30489). The Nuclear Metals, Inc. and Sutton Brook Disposal Area sites were proposed on July 27, 2000 (65 FR 46131). The Malone Service Company, Inc. site was proposed on Aug 24, 2000 (65 FR 51567). The Consolidated Iron and Metals, Taylor Lumber and Treating, and Elizabeth Mine sites were proposed on December 1, 2000 (65 FR 75215). The Copper Drum Company, Griggs & Walnut Ground Water Plume, and Shenandoah Road Ground Water Contamination sites were proposed on January 11, 2001 (65 FR 2380).

For the Copper Drum Company and the Griggs & Walnut Ground Water Plume sites, EPA received no comments and therefore, EPA is placing them on the final NPL at this time.

For Shenandoah Road Ground Water Contamination site, EPA received only comments supporting the listing of the sites to the NPL and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—June 2001.''

IV. Executive Order 12866

A. What Is 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.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a 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.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

No. The RFA does not apply to NPL listings (See 65 FR 46135 (July 27, 2000)). The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule for which an agency must publish a notice of general rulemaking under the Administrative Procedure Act or any other statute. Under RFA section 601(2), however, the term ''rule'' means any rule for which the agency publishes a general notice of rulemaking but does not include a rule of ''particular applicability relating * * * to facilities* * *.'' 5 U.S.C. 601(2). Here, while EPA published a notice of rulemaking for these listings, each listing is based on determinations unique to individual sites and the listing applies only to one facility or site. Consequently, each listing is a rule of particular applicability and thus, the RFA does not apply to the listing of these individual sites on the NPL.

Moreover, the listing of these individual sites on the NPL does not impose any obligations on small entities or any other identifiable group. The rule sets no standards or a regulatory regime that any small entity must meet. The listing imposes no liability or costs on any small entity (65 FR 46135 (July 27, 2000)). Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists irrespective of whether the site is listed on the NPL.

A commenter questioned whether we had adequately assessed the impact on small businesses located near one of the sites included in today's final rule (the Nuclear Metals, Inc. site). However, even if the RFA did apply to the listing of the Nuclear Metals Inc. site (or any of the other sites added to the NPL in today's rule), the statute does not require EPA to assess the impact on small entities which are not subject to a rule. *Motor & Equipment Mfrs. Ass'n* v. *N Nichols,* 142 F.3rd 449, 467 (D.C. Cir. 1998). As discussed above, the listing of a site on the NPL does not apply to any small entity because it imposes no obligations. Certainly, no regulatory obligations are imposed on small businesses which may be located near a site listed in today's final.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

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 has submitted 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). This rule will be effective on July 16, 2001.

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995

(describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the University of *Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the 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.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

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.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

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.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

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 rules, 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).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XIII. Executive Order 13175

What Is Executive Order 13175 and Is It Applicable to This Final Rule?

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

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.''

Under section 3(b) of 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. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

List of Subjects in 40 CFR Part 300

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

Dated: June 1, 2001.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes [a]
*	*	*	*
CA	Cooper Drum Company	South Gate.	
*	*	*	*
MA	Nuclear Metals, Inc	Concord.	
*	*	*	*
MA	Sutton Brook Disposal Area	Tewksbury.	
*	*	*	*
NM	Griggs & Walnut Ground Water Plume	Las Cruces.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/County	Notes [a]
*	*	*	*
NY	Consolidated Iron and Metal	Newburgh.	
*	*	*	*
NY	Shenandoah Road Ground Water Contamination	East Fishkill.	
*	*	*	*
OR	Taylor Lumber and Treating	Sheridan.	
*	*	*	*
PA	Lower Darby Creek Area	Delaware/Philadelphia Counties.	
*	*	*	*
TX	Malone Service Company, Inc	Texas City.	
*	*	*	*
VT	Elizabeth Mine	Strafford.	
*	*	*	*

* * * * *

[FR Doc. 01–14616 Filed 6–13–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–108; FCC 01–133]

RIN 4211

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's ''dual network'' rule. That rule effectively prevented mergers among the four major television broadcast networks (ABC, CBS, Fox and NBC) or between one of the four major networks and the UPN and/or the WB television networks. The action taken eliminates that portion of the rule that effectively prevents mergers between a major television network and the UPN and/or WB television networks.

DATES: Effective August 13, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg or Danny Bring, Mass Media Bureau, Policy and Rules Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* (*R&O*) in MM Docket No. 00–108, FCC 01–133, adopted April 19, 2001, and released May 15, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW., Room CY–B402, Washington, DC. This *R&O* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis of Report and Order

I. Introduction

1. In this *R&O* we amend § 73.658(g), the ''dual network'' rule, to permit one of the four major television networks—ABC, CBS, Fox and NBC—to own, operate, maintain or control the UPN and/or the WB television network. The rule already permits any of the four major television networks to own any television network created subsequent to the date that the Telecommunications Act of 1996 was enacted. By this action, we recognize that the economics of the broadcast television network industry have changed to the point that retention of the rule in its current form is no longer in the public interest.

II. Background

2. The dual network rule goes back some sixty years. The Commission first adopted a dual network rule in 1941, following its investigation of ''chain'' broadcasting. The rule adopted then mandated a flat prohibition on an entity maintaining more than a single radio network. As we noted in the *Notice of Proposed Rule Making* (''*NPRM*'') in this proceeding (65 FR 41393 (July 5, 2000)), when the Commission extended the rule to television networks in 1946, it determined that permitting an entity to operate more than one network might preclude new networks from developing and affiliating with desirable stations.

3. Title 47 CFR 73.658(g) sets forth the current version of the dual network rule. It reflects the provisions of section 202(e) of the 1996 Act. That section directed the Commission to modify its dual network rule to prohibit a television station from affiliating with any entity that owns more than one of the four major networks (ABC, CBS, Fox, or NBC) or one of the four major networks and an emerging English-language network which, on the date of the 1996 Act's enactment, ''provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes. * * *'' The legislative history of this provision indicated that it was intended to apply to only the UPN and WB television networks. Moreover, these two networks were the only two entities other than the four major networks that met this definition of a network on the relevant date. (Both UPN and WB argue that they did not meet the legislative definition of a network for these purposes. We rejected UPN's argument in this regard in considering the Viacom/CBS merger. We need not reach the merits of The WB Network's argument in this regard given our resolution herein, which renders its argument moot.)

4. The current dual network rule differs markedly from the dual network rule that existed from 1946 to 1996. The

earlier rule prohibited a broadcast station from affiliating with a network organization that maintained more than one broadcast network. As such, the old rule effectively prevented network organizations from creating a new broadcast network or merging with an existing broadcast network. In contrast, the current dual network rule permits a broadcast station to affiliate with a network organization that maintains more than one broadcast network. Such affiliation is prohibited, however, if the multiple network combination is created by a merger among ABC, CBS, Fox, or NBC, or a merger between one of these four networks and UPN or WB. While the current rule gives all network organizations the opportunity to pursue any economic efficiencies that may arise from the maintenance of multiple broadcast networks, it restricts the manner in which specific network organizations become multiple broadcast networks. The current rule facilitates the maintenance of multiple broadcast networks created through internal growth and new entry. A broadcast network may develop multiple broadcast networks by creating new broadcast networks from scratch, or acquiring video networks from nonbroadcast media (*e.g.,* cable or satellite) and moving them to broadcast. In addition, the current rule facilitates the creation of multiple broadcast networks by permitting (1) mergers between a broadcast network created before the 1996 Act (*i.e.,* ABC, CBS, FOX, NBC, UPN, and WB) and broadcast networks created subsequent to the 1996 Act (*e.g.,* PAXtv); (2) mergers between broadcast networks created subsequent to the 1996 Act; and (3) a merger between UPN and WB.

5. Section 202(h) of the 1996 Act also requires the Commission to review its broadcast ownership rules, including rules such as the instant rule that were amended pursuant to Section 202, every two years beginning in 1998 and to ''repeal or modify any regulation it determines to be no longer in the public interest.'' In our first biennial review proceeding we examined, among other broadcast ownership rules, the dual network rule. Section 202(h) requires us to determine whether any of these rules remained ''necessary in the public interest as the result of competition.'' As a result of our analysis according to that standard we tentatively determined that the component of the dual network rule that currently prevents the UPN or WB networks from being owned by one of the four major networks may no longer be necessary in the public interest as a result of competition

6. As a result of the findings made in the *Biennial Review Report,* we issued the *NPRM* initiating the instant proceeding. In the *NPRM,* we analyzed the dual network rule pursuant to a framework that involved concepts developed in the transaction cost economics (''TCE'') literature. From a TCE perspective, the economic organization of firms and industries reflects specific attributes of the contracting process between buyer and seller. We stated that application of TCE concepts suggests that vertical integration between program suppliers and major networks may produce substantial economic efficiencies that might benefit both advertisers and viewers. We also stated that horizontal mergers between a major network and an emerging network may produce efficiencies that might benefit both advertisers and viewers. Moreover, we found that there should be little or no adverse effect on the price for network advertising as the result of such a merger. Therefore, we proposed to eliminate the major network/emerging network merger prohibition from our dual network rule.

III. Discussion

7. In this *R&O,* we consider our proposal to relax the dual network rule by eliminating the restriction on mergers between the top 4 broadcast networks and UPN or WB. Our focus, pursuant to section 202(h), is whether this aspect of the rule remains ''necessary in the public interest as the result of competition.'' Accordingly, we first identify several competitive changes and trends in the video services market that we consider relevant to the continued necessity for the rule. We then apply the framework, developed in the *NPRM,* for analyzing both the vertical and horizontal competitive impacts of the potential combinations that are currently prohibited by the rule. After addressing the impact of the rule on competition, we turn to the impacts of maintaining or changing the rule on diversity, the other primary public interest concern. Weighing these factors, we decide, as proposed in the *NPRM,* to eliminate that portion of the rule that effectively prohibits mergers between UPN or WB and one of the four major networks. We conclude that this change will not harm, and indeed is likely to promote, both competitive efficiency and diversity. Although some commenters also urged us to go beyond the tentative conclusions of the *Biennial Review Report* and the *NPRM* and to eliminate the dual network rule in its entirety, we note that the questions presented in the *NPRM* related solely to the emerging networks portion of the rule. We therefore decline to eliminate the dual network rule in its entirety at this time, finding that more information and analysis would be necessary to address the more complex issues that action would involve.

8. *Marketplace Developments.* Since the enactment of the 1996 Act, significant changes have occurred to the competitive environment in which networks, including emerging networks, operate. These changes, which have occurred both within the television broadcast industry and throughout the multichannel video programming distribution (''MVPD'') industry, have substantial implications for both the competition and diversity concerns that underpin the dual network rule. We will first detail some of these developments and then turn to an analysis of the components of the rule in light of these changes.

9. Within the broadcast industry, the number of commercial and noncommercial television stations has increased from 1550 in August 1996 to 1663 as of September 2000. This represents an increase of over 7% in 4 years. During roughly the same time, prime time viewership among the top six broadcast networks declined from 71% in 1996 to 58% in 2000. Thus, within the last 4 years, there has been both a small but significant increase in the number of television broadcast outlets available to viewers (and potentially to new broadcast networks such as PAXtv) and a substantial decrease in the dominance of broadcast networks in terms of viewership.

10. Accompanying, and largely causing, the reduction in broadcast network viewership during the last 4 years has been the steady expansion of the cable industry. At the end of 1995, the cable industry had a penetration rate of 67.8% of homes passed. By 2000, the penetration rate had grown slightly to 69.7%. While this represents only an incremental increase in penetration, the increase is significant when viewed in connection with the increase in channel capacity on cable networks. As of October 1995, 15.6% of cable systems offered 54 or more channels of video programming, and 63.8% of cable systems offered between 30 and 53 channels, indicating that 79.4% of systems provided 30 or more channels of programming. In 2000, the number of high capacity cable systems was significantly higher. By 2000, 24.2% of cable systems offered 54 or more channels of programming. With the percentage of cable systems offering 30–53 channels virtually unchanged since 1996, the increase in high capacity cable

systems means that in 2000 86.6% of cable systems offered 30 or more channels of programming to subscribers. We anticipate that channel capacity on cable systems will continue to expand as more cable systems adopt digital technology.

11. Because each additional channel of capacity on a cable system represents a distinct avenue that may be used to deliver video programming, the increase in channel capacity provides video programming producers a greater opportunity to distribute their programming to consumers. Many cable networks have been formed to take advantage of this opportunity, and, as a whole, they appear to have been successful in capturing a significant portion of viewers over the last 4 years. In 1996, there were 162 cable programming services; by 2000, the number had increased to 214. In 1996, cable networks had a 30% full-day audience share; in 2000, cable networks' share was 45.5%. As channel capacity grows, we expect that new cable networks will be formed and the reach of existing cable networks will be extended.

12. Perhaps the most significant competitive change over the last 4 years has been the rapid growth of the Direct Broadcast Satellite (''DBS'') industry. When the 1996 Act was enacted, DBS service had been available to consumers for less than 2 years. Although the DBS industry had garnered 3.82 million subscribers by October 1996, this represented only 5% of MVPD subscribers, and many of these subscribers were located in rural areas not served by cable. DBS also suffered from certain competitive disadvantages, such as the inability to offer subscribers access to local broadcast signals via the satellite signal. Over the last 4 years, the industry has significantly matured. By 2000, the DBS industry had almost 13 million subscribers, representing more than 15% of MVPD households. Moreover, bolstered in part by the new statutory right to provide ''local-into-local'' broadcast service, DBS has grown from a predominantly rural service to a viable alternative to cable in all parts of the country.

13. The growth of the DBS industry since 1996 significantly affects the opportunities available to network programming producers and consumers. Currently, the two operating DBS providers, DirecTV and EchoStar, each offer subscribers access to hundreds of channels of video programming. As with a cable channel, each DBS channel provides an independent avenue through which producers of video programming can distribute, and viewers may access, video programming. Although a certain number of DBS channels are used to provide the same network programming found on cable channels, a DBS operator could choose, except where must carry obligations are involved, to provide regional or local programming in response to market demand.

A. Competition

14. *Mergers Between A Major Network and UPN or WB.* The developments in the broadcast, cable, and DBS industry have had a significant effect on the competitive landscape in which broadcast networks operate. Where almost 84 percent of households subscribe to an MVPD service, and as television broadcast stations and MVPDs, because of the increase in the number of available channels, seek a greater number of attractive programs to offer their viewers, new opportunities are created for producers to obtain distribution channels. Moreover, non-broadcast networks, whose niche programming can provide advertisers with more focused demographics, may continue to erode the audience share of broadcast networks and compete for advertising revenue, especially with the emerging networks. While we cannot definitively predict how these competitive forces will play out, we believe that competitive developments since the enactment of the 1996 Act have diminished the importance of obtaining broadcast affiliates to establish a successful video programming network. We believe that these developments require us to consider whether the dual network rule should be modified.

15. As discussed above, markets for video services have broadened and grown, reflecting shifts in market demand and supply in recent years. Competitive rivalry between and among suppliers of video services has intensified as consumers find increased choice of video programming and new vendors that supply video programming and video delivery services. Increased competitive rivalry intensifies the pressure on management to (1) improve internal operating efficiency by using inputs of production more effectively and organizing the firm to reduce redundancy in staffing or business functions; and (2) reorganize the firm through horizontal and vertical mergers to achieve economies of scale and scope. We focus here on the effect our rules may have on the networks' ability to achieve economic efficiencies through vertical and horizontal integration. As explained in the *NPRM,* TCE provides a conceptual framework for assessing possible gains and losses in organizational efficiency that may result from the intensified pressure on firm management to improve operating efficiency induced by the greater competitive rivalry confronting the firm.

16. In the *NPRM,* the Commission noted that the commercial television broadcast network industry today consists of a number of vertically-integrated firms. For example, ABC (a broadcast network) is vertically integrated with Disney (a program supplier), Fox (a broadcast network) is vertically integrated with 20th Century Fox (a program supplier), UPN (a broadcast network) is vertically integrated with Viacom (a program supplier), and WB (a broadcast network) is vertically integrated with AOL Time Warner (a program supplier). In addition to these well-know examples, NBC produces programs through NBC Studios and CBS produces programs through CBS Enterprises (formerly Eyemark Entertainment and King World Productions). Because mergers between broadcast networks may involve mergers between vertically-integrated firms, the Commission examined and sought comment on (1) the potential efficiencies of vertical integration between a program supplier and a broadcast network and (2) the effects of a horizontal merger between two broadcast networks.

17. Our analysis of the economic effects of the dual network rule decomposes a hypothetical merger between two vertically-integrated broadcast networks into two parts. First, the relationship between a program supplier and a broadcast network is examined to determine whether vertical integration is either more or less efficient than simply negotiating an arms-length contractual relationship between the program supplier and the broadcast network. The comparative assessment of the efficiency of contracting versus vertical integration relies on TCE concepts. Second, the effects of a horizontal merger between two broadcast networks is assessed by relying on measures of market concentration and an analysis of price competition in the national market for network television advertising. Finally, the economic gains or losses resulting from the analysis of vertical integration are combined with the expected economic gains or losses resulting from the horizontal merger to determine the overall benefits and costs of a merger between two vertically-integrated firms.

18. As explained in the *NPRM,* our economic analysis focuses on the contemporary contracting environment between television networks and

program producers. We have concluded that specific attributes of television network output and the complexities of contract negotiations between a television network and a program supplier tend to favor the replacement of market contracting with a vertical organizational relationship between the network and the program supplier. Applying TCE concepts, we further conclude that this substitution of vertical integration for a contractual relationship is most likely an economically-efficient response to the hazards of market contracting rather than the exercise of market power by the television network. Thus, the vertical integration of program suppliers and television networks (1) reflects competitive pressures induced by more intense competition for viewers that now enjoy greatly expanded video programming choices compared to a decade ago; and (2) minimizes transaction costs by eliminating the costly adverse effects of negotiating contractual relationships between the programmers and the networks. We conclude that the merger of a program supplier with a broadcast network would result in transaction efficiencies compared to a contractual relationship between the network and the program supplier. Given the growing competition for viewers of video programming, we anticipate that the efficiencies of vertical integration between the programming assets of an emerging network and a major network could accrue to the benefit of consumers.

19. We also explained in the *NPRM* how our analytical framework allows us to assess the horizontal effects of the merger of an emerging network with a major network on the national market for network advertising. We explained that within the national television advertising market, which includes national spot sales by affiliated and independent stations, a *strategic group* consisting of the major networks, *i.e.,* ABC, NBC, CBS, and Fox, can be identified. (A strategic group refers to a cluster of independent firms within an industry that pursue similar business strategies.) At present, the network firms comprising this strategic group provide the greatest reach of any medium of mass communications. Major broadcast networks attract much larger audiences than emerging broadcast networks. Since delivering a mass audience is becoming more difficult for all media with the proliferation of media outlets, media that can still produce mass audiences have become more valuable. As a result, notwithstanding some recent erosion in revenue growth, broadcast networks have achieved substantial gains in revenues in recent years despite their loss of audience relative to years past. The major mobility barrier impeding entry into the major network strategic group is the availability of affiliated stations. Mobility barriers are barriers to entry that deter the movement of a firm *within* a given industry from shifting from one strategic group to another. Different strategic groups will be defended by different mobility barriers that vary in their effectiveness in restricting entry into a given strategic group. In general, firms protected by high mobility barriers will have greater profit potential than firms in other strategic groups protected by low mobility barriers. Notwithstanding some growth in the number of stations over the last decade, obtaining sufficient affiliated stations remains a major obstacle to developing a new broadcast network that can achieve sufficient national reach to be attractive to national advertisers seeking to reach a mass audience.

20. With respect to our analysis of the potential benefits of vertical integration of a program producer and a television network, Viacom was the only commenter to specifically address the potential efficiencies associated with vertical integration, and Viacom's pleadings support the Commission's findings. With respect to our analysis of the effects of horizontal integration of an emerging network with a major network, no commenter disagrees with our finding that a horizontal merger between a major network and an emerging network (*e.g.*, UPN or WB) would generate net economic benefits.

21. We conclude that a merger between an emerging network, such as WB or UPN, and a major network is likely to produce net benefits to network advertisers and viewers of network television. With respect to vertical integration, such a merger may produce significant efficiencies by internalizing the contentious issue of program production risk-sharing within a vertical relationship. For example, an emerging network acquired by a major network provides the major network with an additional ''window'' for the distribution of network programming. In effect, this additional window allows the merged network to broadcast the same program in different time slots in the same market if both the major and emerging networks have affiliates in the same city. Alternatively, if the emerging and major network do not have affiliates in the same city, then the merged network entity will now reach more households than before the merger. In either case, the fixed costs of program production are spread over additional viewers in different time slots or additional cities. As a result, the effective program cost per viewer is reduced in either case. Similarly, a network program that fails, or is only marginally successful, on the major network's affiliated station might succeed when broadcast to the niche audience reached by the affiliates of the emerging network. The risks of network program development are clearly attenuated for the merged networks as a consequence of reaching additional viewers at different times or in additional cities or with audience attributes that may differ from the mass audience ordinarily targeted by a major network.

22. With respect to horizontal integration of a major and emerging television network, the merger should have little or no adverse effect on competition or pricing in the market for television network advertising, since major and emerging networks compete in different strategic groups. To the extent that the emerging network continues to offer programming following the merger that targets niche or special interest audiences, then the welfare of viewers of both mass audience and niche programming should not be adversely affected by the merger and may indeed be advanced by the resulting efficiencies.

23. *Mergers Among the Four Major Networks.* After the rule change we are making herein, the only multiple network operations that will be prohibited by our dual network rule will be the common ownership of multiple broadcast networks created by mergers between ABC, CBS, Fox, or NBC. Although the questions presented in the *NPRM* related solely to the emerging networks portion of the dual network rule, Fox, Viacom, and WB argue for elimination of the rule in its entirety. They contend that the rule, established over fifty years ago, is no longer justified in light of prevailing conditions. They argue that new competitors—both broadcast and nonbroadcast—have entered and attracted large portions of the market formerly controlled by the networks. They also argue that developments over the past 20 years have increased competition, reduced the networks' share of television viewership, and reduced the networks' share of television advertising revenue. These developments, they conclude, support elimination of the dual network rule.

24. The questions presented in the *NPRM* related solely to the emerging networks portion of the dual network rule; the question of eliminating the rule

in its entirety was not squarely presented to this Commission for review. Therefore, we will not address that issue in this proceeding. This issue was considered in the 1998 Biennial Review, which was completed in 2000.

B. Diversity

25. In addition to the competitive concerns discussed above, the modification of the dual network rule involves diversity issues. In fact, the only commenter urging retention of the entire current dual network rule did so on the basis that the proposed modification would undermine traditional Commission diversity concerns. In this regard, UCC argues that the *NPRM* in this proceeding ignored the ''vital first amendment issues that animate the dual network rule.'' Allowing one of the top four networks to buy UPN and/or WB will, by definition, result in the elimination of one or more independently owned broadcast outlet at the national level. The record demonstrates that emerging networks make a significant contribution to diversity of programming at the national level and the stability of their affiliates, thus promoting outlet diversity at the local level. The record also demonstrates, however, that maintaining the dual network rule in its current form would actually jeopardize those contributions to diversity, rather than promote them.

26. The record shows that some form of relief from the dual network rule will promote the viability of the UPN network and thus promote diversity at the national level. Viacom now owns and operates both the CBS and UPN broadcast networks. Absent today's action, Viacom/CBS would have until May 4, 2001, to come into compliance with the rule, which, as a practical matter, would involve divestiture of UPN. The record reflects that UPN is a financially struggling network that has suffered losses in every year of its existence. The reasons for UPN's financial struggles include competition from both broadcast and non-broadcast video sources, decreasing broadcast network viewership, and diversion of investment capital to other competitors partly as a result of the current dual network rule. These factors affect both UPN and the WB networks. Given these factors, there is substantial likelihood that the present level of independent network ownership would not be maintained absent the action we take herein. In addition, as noted above, our analysis suggests that the UPN broadcast television network benefits from the efficiencies of vertical integration with Viacom's program production facilities. Divestiture would deprive UPN of these efficiencies.

27. Retaining the current version of the dual network rule could also have cascading adverse consequences on diversity at the local level. Affiliates of a failed network, without network affiliation and the programming it brings, may not be able to sustain the increases in the cost of programming that they would have to bear should they have to purchase programming in the syndication market. Additionally, such affiliates would be deprived of a recognized brand that is promoted locally by each affiliate and nationally by the network and of first run programming that affiliates would have to replace by purchasing programming in the syndication market. Thus, the failure of a network could imperil the position of many of that network's affiliates and have a negative impact on diversity of outlets at the local level.

28. Additionally, we agree with those that argue that the proliferation of video programming networks warrants relaxing the rule. At present, some 83.8 percent of television households obtain their service from an MVPD such as cable, direct broadcast satellite or Multichannel Multipoint Distribution Service. Most of the subscribers to such systems have available to them a cornucopia of video services. As discussed above, nearly 87 percent of cable television systems have 30 or more channels. These systems serve 99 percent of cable subscribers. Although many of the video programming networks presented on cable systems are vertically integrated with cable multiple system operators, they nevertheless contribute to diversity by providing programming to most viewers that is from a source other than the six broadcast television networks covered by the instant rule. Such developments have diminished the importance of maintaining UPN and WB as independently owned network ''voices.''

29. Also, we agree with commenters that a major network and an emerging network under common ownership would have a strong economic incentive to diversify their program offerings, particularly by increasing service to minority or ''niche'' tastes and interests. A single broadcast network has the incentive to attract the largest possible audience with mass appeal programming (which is similar to the programming offered by its rivals). However, if two networks are owned by a single entity, the entity has an incentive to attract an array of viewers with differing interests to produce the largest combined audience for the overall enterprise. This allows for the major network to pursue mass tastes, with the smaller network programming to minority and niche tastes.

30. The record also supports the proposition that eliminating the emerging network portion of the dual network rule will not adversely affect the provision of news and public affairs programming. As noted by Viacom, common ownership may offer the only realistic potential for the carriage of a substantial amount of news and public affairs programming by affiliates of the emerging network by allowing the resources of the larger network to be re-deployed in ways that serve the viewers of the emerging networks by providing them with news and public affairs.

C. Additional Matters

31. The WB Network argues that if we relax the dual network rule we are obligated to also eliminate the cable/television cross-ownership rule. Otherwise, it contends, we will actually be allowing only the UPN Network to be merged with a major network because the cable/television cross-ownership rule precludes The WB from such a merger. It argues that the Commission cannot, as a matter of law, grant regulatory relief to certain competitors but not equivalent relief to others. Since the cable/television cross-ownership rule ''stands in the way of similar creative business arrangements with an established network, The WB cannot be part of a corporate family with any attributable interests in licensed broadcast stations in numerous major DMAs. This, it asserts, violates fundamental fairness and administrative law that requires the Commission to accord comparable treatment to similarly situated parties.

32. Modification or elimination of the cable/television cross-ownership rule is not within the scope of the *NPRM* issued in this proceeding. We will consider it again in a future proceeding or our next biennial review of our broadcast ownership rules. WB network is receiving equal treatment by reason of the modification of the dual network rule we are making herein.

33. Additionally, the UPN and WB Networks have each raised arguments that the provision of the 1996 Act that defines an emerging network does not include it. Given our decision herein, this issue is moot.

34. Finally, we have previously granted Viacom, Inc., a period of twelve months, commencing May 3, 2000, within which to come into compliance with the dual network rule. Given our action herein, we will extend that temporary waiver of the rule until the

effective date of the instant rule amendment.

IV. Conclusion

35. Based upon the record and our own analysis, we find that the benefits of vertical integration between a program producer and television networks will not be lost and may well be augmented by a merger of one or more emerging networks with a major network. Additionally, the horizontal integration of an emerging and major network should not adversely affect competition or pricing in the relevant television advertising markets and may produce merger-specific efficiencies that provide new benefits to viewers and advertisers not otherwise available prior to the merger. The aggregation of the possible efficiencies of both vertical and horizontal integration that provide the resources for viewer and advertiser benefits support our decision to abolish today that part of the dual network rule that prohibits the merger of one or more emerging network with a major television network.

36. With regard to diversity, we do not believe that the loss of up to two independently owned networks that potentially could result from our modification of the dual network rule would seriously compromise our diversity concerns. On the contrary, diversity of programming will be fostered at the national level as a result of our permitting struggling emerging networks to combine with major networks, thereby allowing them to continue serving their current niche and minority audiences. At the local level, our action will contribute to outlet diversity by strengthening the emerging networks and thus promoting the stability of their affiliated stations. Therefore, on balance, we believe that the modification of the dual network rule is warranted on diversity grounds, as well.

37. We do not believe that a waiver is the better approach to this issue and so do not reach those arguments of commenters favoring such relief. The subject portion of the dual network rule is unusual because, while in form it is a rule of general applicability, in effect it only applies to one entity other than UPN (*i.e.,* the WB Network). Thus, the rule is so narrow that the specific facts concerning one of the only two parties to which the rule applies are quite relevant. Also, the two networks are similarly situated from the standpoint of economic analysis. Both UPN and WB are nascent broadcast networks that target younger audiences compared with the major networks. In addition, both networks use UHF stations and LPTV facilities that result in a substantial coverage disadvantage compared with the major networks. Our foregoing analysis pertains equally to UPN and WB and demonstrates that distinct benefits for either or both of them can be derived generally from elimination of that section of the rule that prohibits these two entities to merge with a major network. Accordingly, elimination of that provision of the rule itself, rather than grant of waiver relief to only one of the two parties affected by that portion of the rule, is appropriate.

38. In view of the foregoing, we conclude that the dual network rule should be amended by eliminating the provision prohibiting the common ownership of one of the four major networks and the emerging networks. We will reexamine that part of the dual network rule that prohibits mergers between the major networks in a future proceeding, possibly our next Biennial Review. At that time we will explore in greater detail how repeal or modification of that part of the rule may affect diversity and consider whether the rule remains necessary in the public interest as the result of competition.

V. Administrative Matters

39. *Paperwork Reduction Act of 1995 Analysis.* This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new reporting requirements on the public.

40. *Regulatory Flexibility Analysis.* Pursuant to the Regulative Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, the Commission's Final Regulatory Flexibility Analysis in this *R&O* is as follows. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in this *NPRM,* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

41. *Need For, and Objectives of, Report and Order.* In February 1996, the Telecommunications Act of 1996 (''1996 Act'') was signed into law. Section 202 of the 1996 Act directed the Commission to make a number of significant revisions to its broadcast media ownership rules. Section 202(h) also requires us to review our broadcast ownership rules every two years commencing in 1998. One of the rules reviewed in our first such biennial reviews was § 73.658(g), the dual network rule. In our *Biennial Review Report* we tentatively concluded that a portion of this rule was no longer necessary in the public interest. Accordingly, we issued an *NPRM* proposing the elimination of this rule consistent with the goals of the 1996 Act.

42. *Significant Issues Raised by the Public in Response to the Initial Analysis.* No comments were received concerning the Initial Regulatory Flexibility Analysis.

43. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term ''small entity as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of 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 SBA.

44. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

45. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) have revenues of less than $10.5 million dollars.

Approximately 90 of these small TV broadcast television stations are affiliates of the WB or UPN networks and may be affected by our rule change. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there would be no more than 800 entities affected.

46. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The *R&O* imposes no reporting, recordkeeping, or compliance requirements.

47. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* 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.

48. As indicated, the *R&O* allows licensees to affiliate with a network entity that maintains two or more networks unless such multiple networks consist of more than one of the ''big four'' networks (NBC, ABC, CBS and Fox). This eliminates the bar on affiliation with an entity that maintains one of the ''big four'' networks and the UPN and/or WB networks. All significant alternatives, *i.e.,* retention of the existing rule, modification of the existing rule, and elimination of the dual network rule altogether, were considered in the Commission's 1998 biennial review of its broadcast ownership rules (MM Docket No. 98–35) and herein. In the Biennial Review proceeding the Commission tentatively determined that elimination of the subject provision would be in the public interest. The Commission considered the results of this top-to-bottom review of the subject rule in its consideration of alternatives to the course proposed herein in the instant proceeding. The instant action provides television licensees, including those considered to be ''small businesses,'' with increased flexibility with regard to the broadcast networks with which they may affiliate. It also may help small stations that are affiliated with the UPN or WB networks survive and prosper in an increasingly competitive media marketplace. Finally, it gives the four major and two emerging broadcast television networks, none of which are small businesses, more merger flexibility.

49. *Report to Congress.* The Commission will send a copy of this *R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *R&O,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

50. Accordingly, pursuant to the authority contained in 47 U.S.C. 154(i) and (j), 303(r), 308, 310 and 403, as amended, 47 CFR part 73 is amended as set forth in ''Rule Change.''

51. Viacom, Inc.'s, temporary waiver of 47 CFR 73.658(g) of the Commission's Rules, will be extended until the effective date of this rule amendment.

52. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *R&O,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy, Secretary.

List of Subjects in 47 CFR Part 73

Television.

Rule Change

For the reasons discussed in the preamble the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The Authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.658 is amended by revising paragraph (g) to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(g) *Dual network operation.* A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations *unless* such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were ''networks'' as defined in § 73.3613(a)(1) of the Commission's regulations (that is, ABC, CBS, Fox, and NBC).

* * * * *

[FR Doc. 01–14936 Filed 6–13–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–99–6578]

RIN 2105–AC49

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments on final rule.

SUMMARY: On December 19, 2000, the Department of Transportation published its final rule on drug and alcohol testing procedures. One provision of this rule requires employers to inquire into the drug and alcohol testing records of applicants for employment. A group of maritime industry organizations requested that the Department provide a comment period on this provision. In response to this request, the Department is opening a comment period for 30 days.

DATES: Comments on 40 CFR 40.25 must be received by July 16, 2001.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–99–6578, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9:00 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically.

Instructions for electronic submission may be found at the following web address: http://dms.dot.gov/submit/. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: http://dms.dot.gov/search/.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC, 20590, 202–366–9306 (voice), 202–366–9313 (fax), or bob.ashby@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: On December 19, 2000 (65 FR 79462), the Department published a final rule revising its drug and alcohol testing procedures (49 CFR Part 40). One provision of this rule, § 40.25, requires employers to make inquiries about the drug and alcohol testing history of applicants for employment in jobs involving the performance of safety-sensitive functions. The employee must provide a written consent to the inquiry before it is made. The purpose of the provision is to ensure that new employers have the opportunity to learn about recent violations (within two years of the application) of the Department's rules. This information is important to allow employers to comply with the obligation to ensure that employees fully complete return-to-duty process requirements. The provision is based on a long-standing provision of the Federal Motor Carrier Safety Administration's drug and alcohol testing rule (49 CFR Part 382).

The history of this provision in the Part 40 rulemaking is as follows: In § 40.329 of the Department's December 1999 notice of rulemaking (NPRM) on this subject, the Department proposed allowing medical review officers (MROs) to provide information on employees' drug test results to third-party employers under some circumstances. Most commenters, while agreeing that providing information to third-party employers about violations of drug testing rules has value for safety purposes, found the specifics of the proposal problematical. Some urged the Department to find an alternative. Employing a provision like the Federal Motor Carrier Safety Administration provision mandating pre-employment inquiries about applicants' drug and alcohol testing history was one suggestion mentioned in comments (see 65 FR 79475, December 19, 2000). An agency is entitled to respond to comments on a proposed rule by changing, adding, or deleting provisions. As explained in the preamble to the final rule, this is the course the Department chose in moving from the NPRM's § 40.329 to the final rule's § 40.25.

Nevertheless, a group of maritime organizations requested that the Department open a comment period for the purpose of commenting on § 40.25. While we believe the Department acted fully in accordance with all applicable rulemaking procedures, we will, in response to this request, open a comment period on the provision for 30 days. We are able to be responsive to this request because we have sufficient time, before the August 1, 2001, effective date of the revised Part 40, to consider comments and make any changes we believe to be appropriate without disrupting the implementation of the rule. We do not believe that a longer period is needed to provide comments on this one particular provision of the rule that we published on December 19, 2001. Interested persons should therefore be able to comment readily within the 30-day period.

The groups that requested the opportunity to comment on this provision of the final rule also requested that the Department suspend the implementation of § 40.25. This provision goes into effect August 1, 2001. It is not necessary to suspend a provision that is not yet in effect.

Please note that this opportunity for comment concerns only § 40.25, and the Department is not accepting comments on other provisions of the rule at this time. For readers' convenience, we are reprinting below the text of § 40.25:

Section 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

(1) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(2) Verified positive drug tests;

(3) Refusals to be tested (including verified adulterated or substituted drug test results);

(4) Other violations of DOT agency drug and alcohol testing regulations; and

(5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the

requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

Regulatory Analyses and Notices

The Department has previously considered all of 49 CFR Part 40 with respect to rulemaking process requirements (see 65 FR 79516–79518; December 19, 2000). The proposed rule, analyses concerning it, and the comments on it can be found in the Department's docket or on the Department's Dockets Management System (DMS) web site. The address for the Dockets office and the DMS web site are listed under **ADDRESSES** above. This action is simply a response to an industry request for, essentially, the reopening of a comment period; the Department does not propose to take any new action through this document that would be subject to statutory or Executive Order requirements concerning the regulatory process.

Issued this 11th Day of June, 2001, at Washington DC.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance.

[FR Doc. 01–15072 Filed 6–12–01; 10:41 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE92

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 16 Freshwater Mussels and 1 Freshwater Snail (Anthony's Riversnail) in the Free-Flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), plan to reintroduce 16 federally listed endangered mussels—Alabama lampmussel (*Lampsilis virescens*), birdwing pearlymussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearlymussel (*Hemistena lata*), Cumberland bean (pearlymussel) (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearlymussel (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled blossom (pearlymussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearlymussel) (*Epioblasma turgidula*), winged mapleleaf (mussel) (*Quadrula fragosa*), and yellow blossom (pearlymussel) (*Epioblasma florentina florentina*)—and 1 federally listed endangered aquatic snail, Anthony's riversnail (*Athearnia anthonyi*), into historical habitat in the free-flowing reach of the Tennessee River. The geographic boundaries of the nonessential experimental populations (NEPs) extend from the base of the Wilson Dam (River Mile 259.4 (414.0 kilometers)) to the backwaters of the Pickwick Reservoir (RM 246.0 (393.6 km)) and include the lower 5 RM (8 km) of all tributaries that enter the Wilson Dam tailwaters.

These reintroduced populations will be classified as NEPs under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on the evaluation of species experts, none of these species are currently known to exist in this river reach or its tributaries.

These reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historical ranges. This rule provides a plan for establishing the NEPs and provides for limited allowable legal taking of the aforementioned mollusks within the defined NEP Area.

DATES: The effective date of this rule is July 16, 2001.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at 828/258–3939, Ext. 228; facsimile 828/258–5330; and e-mail richard_biggins@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.''

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the

Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. Threatened designation gives us more discretion in developing and implementing management programs and special regulations for such a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, most of the section 9 prohibitions that apply to threatened species no longer apply, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEP's may be developed to be more compatible with routine human activities in the reintroduction area.

Based on the best available information, we must determine whether experimental populations are ''essential,'' or ''nonessential,'' to the continued existence of the species. An experimental population that is essential to the survival of the species is treated as a threatened species. An experimental population that is nonessential to the survival of the species is also treated as a threatened species. However, for section 7 interagency cooperation purposes, if the NEP is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the Act, in situations where there is a nonessential experimental population located within a National Wildlife Refuge or National Park (treated as threatened), section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act would apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitats. When NEPs are located outside a National Wildlife Refuge or National Park, only two provisions of section 7 would apply; section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to informally confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, since we determined that the NEP is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

2. *Biological:* Muscle Shoals (sometimes referred to as Mussel Shoals), a 53 RM (85-km) reach of the Tennessee River in Colbert and Lauderdale Counties, Alabama, once supported the world's greatest assemblage of freshwater mussels (van der Schalie 1939) and was one of the finest mussel habitats ever known (Isom 1969). Ortmann (1924) stated that no other place on earth could compare to this shoal with respect to freshwater mussels. This river reach historically contained nearly 80 percent of all the mussel taxa known from the entire Tennessee River system (ca. 100 taxa) and about 25 percent of the total North American mussel fauna (ca. 300 taxa). Ortmann (1925) listed 69 mussel species and varieties from this shoal complex. Stansbery (1964), using current nomenclatural concepts, excluding subspecies, and adding a species not reported by Ortmann (1925), reported the mussel diversity at 63 species. A biologist with the Alabama Division of Wildlife and Freshwater Fisheries (ADWFF) (J. Garner, personal communication, 1997) combined historic distribution records (Ortmann 1925, van der Schalie 1939, Scruggs 1960, Stansbery 1964, Gooch *et al.* 1979) with personal observations and the observations of malacologists (scientists who study mollusks) familiar with the area (P. Yokley and T. Richardson, University of North Alabama, and S. Ahlstedt, U.S. Geological Survey, personal communication, 1997) and found that a total of 78 mussel taxa had been reported from Muscle Shoals. Goodrich (1931) reported that Anthony's riversnail also occurred at Muscle Shoals. However, the species is no longer found in the area (Garner, personal communication, 1997).

With the completion of Wilson Dam (completed in 1924), Wheeler Dam (completed in 1936), and Pickwick Dam (completed in 1938), about 41 RM (66 km) of shoal habitat were impounded. Although some mussel species survived in the remaining 12 RM (19 km) of shoal habitat between Wilson Dam and the backwaters of Pickwick Reservoir, much of the diversity and abundance of mussels in that reach began to disappear. Based largely on a 1931 survey of Muscle Shoals, van der Schalie (1939) reported the resident mussel fauna at 40 species; Stansbery (1964) listed 30 species from a 1963 mussel survey of remaining shoal habitat; and Isom (1969) reported that 31 species existed on the shoal. Garner (personal communication, 1997) reviewed current and recent historical records (last 20 years) and concluded that possibly as many as 44 mussel species, including 6 federally listed mussels—fanshell (*Cyprogenia stegaria*), orange-foot pimple back pearlymussel (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), and white wartyback (pearlymussel) (*Plethobasus cicatricosus*)—are known, or presumed to still exist in the free-flowing riverine habitat below Wilson Dam. Because these six listed mollusks exist, or are believed to still exist in this river reach, they are not included in this reintroduction effort. However, these populations could be augmented with artificially propagated juveniles. They will retain their endangered status and associated protections. Based on a review of the most recent records, it is presumed that 34 mussel species, including 16 federally listed mussels and the Anthony's riversnail, have been extirpated from the Muscle Shoals complex (Garner, personal communication, 1997).

Although many aquatic mollusks have been lost from Muscle Shoals, habitat quality has been improving in the remaining shoal habitat in recent years. The Tennessee Valley Authority (TVA) (1993), reporting on their Clean Water Initiative, rated macroinvertebrates below Wilson Dam as excellent. The Reservoir Fish Assemblage Index, a measure the TVA uses to rate the health of the fish fauna at sites throughout the Tennessee River valley, was rated as good in the Wilson Dam tailwaters during 1993, 1994, and 1996; no figure was given for 1995 (E. Scott, TVA, personal communication, 1997). Additionally, the ADWFF Director, in a December 9, 1996, letter to us, points to the improving water quality and the

improved health of mussel and snail populations below Wilson Dam and other TVA dams on the Tennessee River in Alabama.

The Tennessee River from about 1.4 RM (2.2 km) below Wilson Dam to the backwaters of Pickwick Reservoir (about 12 RM (19 km)) now appears suitable for a mollusk reintroduction effort for several reasons: (1) habitat quality in the Wilson Dam tailwaters has improved; (2) existing aquatic mollusk populations have responded positively to the improved habitat quality; (3) Muscle Shoals historically contained a rich mollusk fauna, and some of the shoal habitat that once supported this fauna still remains; and (4) the reestablishment of listed mollusks to historic habitat is identified as a high-priority task in listed aquatic mollusk recovery plans.

3. *Recovery Efforts:* The Alabama lampmussel (*Lampsilis virescens*) (Lea 1858), a Tennessee River system endemic, was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for this species in July 1985 (Service 1985a). The Alabama lampmussel was historically known from seven rivers in the Tennessee River system (Ortmann 1918, Bogan and Parmalee 1983, Service 1985a). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species is known to survive only in the upper Paint Rock River system, Jackson County, Alabama (Service 1985a). The delisting objectives in the recovery plan call for: (1) restoring the viability of the population in the Paint Rock River and its tributaries; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting (reclassification from endangered to threatened) criteria are provided in the recovery plan.

The birdwing pearlymussel (*Conradilla caelata*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). We finalized a recovery plan for the species in July 1984 (Service 1984c). This species was originally known from 11 rivers in the Tennessee River system, and one record exists from an unknown location in the Cumberland River. The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. It currently survives in the Clinch and Powell Rivers in Tennessee and Virginia and in the Duck and Elk Rivers in Tennessee (Service 1984c). The delisting objectives presented in the recovery plan call for: (1) Restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing or discovering viable populations in three additional rivers (only two rivers if Columbia Dam on the Duck River is not built); (3) ensuring there are no foreseeable threats to the continued existence of any of the populations; and (4) noticeable improvements in coal-related problems and substrate quality in the Powell River and no increase in coal-related sedimentation in the Clinch River. No downlisting criteria are given in the recovery plan.

The clubshell (*Pleurobema clava*) (Lamarck 1819) was listed as an endangered species on January 22, 1993 (58 FR 5642). We finalized a recovery plan for the species in September 1993 (Service 1993a). This widespread species occurred in the Ohio River and Lake Erie basins but now survives in only a few small and isolated populations in both basins (Service 1993a). It was last found at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed no longer to survive in this river reach. The downlisting objectives in the recovery plan call for the establishment of 10 viable populations and ensuring there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for: (1) The establishment of 10 viable populations; (2) populations to be large enough to survive a single adverse ecological event; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations.

The cracking pearlymussel (*Hemistena lata*) (Rafinesque 1820) was listed as an endangered species on September 28, 1989 (54 FR 39853). We finalized a recovery plan for the species in July 1991 (Service 1991). This widespread species historically occurred in the Ohio, Cumberland, and Tennessee River systems (Bogan and Parmalee 1983, Service 1991). It has been extirpated throughout much of its range. It was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed no longer to survive in this river reach. It is presently known to survive at only a few shoals in the Clinch and Powell Rivers in Tennessee and Virginia (Bogan and Parmalee 1983, Neves 1991). This species possibly survives in the Green River, Kentucky, and below Pickwick Reservoir in the Tennessee River, Tennessee (Service 1991). The downlisting objectives in the recovery plan call for the establishment of five viable populations and ensuring that there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for the establishment of eight viable populations.

The Cumberland bean (pearlymussel) (*Villosa trabalis*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved August 22, 1984 (Service 1984d). This species was historically known from 10 river systems in the Cumberland and Tennessee river basins (Service 1984d). It was last collected at Muscle Shoals, which may represent its type locality, prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The Cumberland bean currently survives only in the Hiwassee River in Tennessee and in Buck Creek, the Little South Fork of the Cumberland River, and the Rockcastle River system in Kentucky (Service 1984d). The delisting objectives in the recovery plan call for: (1) Restoring the viability of its populations in Buck Creek, the Rockcastle River, and the Little South Fork River in Kentucky; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The Cumberlandian combshell (*Epioblasma brevidens*) (Lea 1831) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although there is no recovery plan for the Cumberlandian combshell, we developed a recovery outline, which briefly enumerates anticipated recovery actions, prior to publishing the final listing decision. The recovery outline identifies reintroduction into historic habitat as a method that would likely be needed to recover the species.

The Cumberland monkeyface pearlymussel (*Quadrula intermedia*) (Conrad 1836) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in July 1984 (Service 1984a). This species was historically known from 11 rivers in the Tennessee River system (Service 1984a).

It was last collected from Muscle Shoals around 1900 by R. E. Call and A. A. Hinkley (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species survives only at a few shoals in the Powell River, Tennessee and Virginia, and the Elk and Duck Rivers, Tennessee (Service 1984a). The delisting objectives presented in the recovery plan call for: (1) Restoring the viability of the populations in the Powell and Elk Rivers; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The dromedary pearlymussel (*Dromus dromas*) (Lea 1845) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in July 1984 (Service 1984b). This species was historically widespread in the Cumberland and Tennessee River systems (Bogan and Parmalee 1983). It was last collected at Muscle Shoals prior to 1931 (van der Schalie 1939) and is presumed to be extirpated from the shoal. The species survives at a few shoals in the Powell and Clinch Rivers, Tennessee and Virginia, and possibly in the Cumberland River, Tennessee (Service 1983b, Neves 1991). The delisting objectives in the recovery plan call for: (1) Restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing viable populations in three additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The fine-rayed pigtoe (*Fusconaia cuneolus*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved in September 1984 (Service 1984e). This species was historically known from 15 Tennessee River tributaries and is currently known from 7 rivers (Service 1984e). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The delisting objectives call for: (1) Restoring the viability of the populations in the Clinch, Powell, and North Fork Holston Rivers and in the Little River and Copper Creek (Clinch River tributaries); (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given.

The oyster mussel (*Epioblasma capsaeformis*) (Lea 1834) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although there is currently no recovery plan for the oyster mussel, we developed a recovery outline, which briefly enumerates anticipated recovery actions, prior to publishing the final listing decision. The recovery outline identified reintroduction into historic habitat as a method that would likely be needed to recover the species.

The Catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*) (Rafinesque 1820) was listed as an endangered species on July 10, 1990 (55 FR 28210). We finalized a recovery plan for the species in March 1992 (Service 1992). This once-widespread species historically occurred in the larger rivers of the Ohio River system (Service 1992). The species is currently known from two apparently nonreproducing populations (the Green River in Kentucky and the Cumberland River in Tennessee) and one reproducing population in Killbuck Creek, Muskingum River system, Ohio. It was last collected at Muscle Shoals by A. E. Ortmann sometime prior to 1925 (Ortmann 1925) and is presumed no longer to survive in this river reach. The downlisting objectives in the recovery plan call for: (1) The establishment of four viable populations; (2) establishment of two naturally produced year classes in each of the four populations; (3) completion of biological studies on the species; and (4) increasing the population density and/or length of the river inhabited. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (4) above.

The shiny pigtoe (*Fusconaia cor*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in July 1984 (Service 1984f). This species was historically known from the Tennessee River and 10 of its tributaries. It is currently known from five river systems—the Clinch, Powell, North Fork Holston, Elk, and Paint Rock (Service 1984f). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The delisting objectives call for: (1) Restoring the viability of the populations in the Clinch, Powell, North Fork Holston, and Paint Rock Rivers; (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The tubercled blossom (pearlymussel) (*Epioblasma torulosa torulosa*) (Rafinesque 1820) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in January 1985 (Service 1985b). This species was historically known from nine rivers in the Ohio River system (Service 1985b). The species was last collected at Muscle Shoals around 1900 by A. A. Hinkley (Ortmann 1925); it has not been collected anywhere since 1969 (Stansbery 1976, Service 1985b). However, we continue our efforts to determine whether any extant populations occur; thus, the species is included in this NEP rule. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The turgid blossom (pearlymussel) (*Epioblasma turgidula*) (Lea 1858) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was completed in January 1985 (Service 1985b). This widespread species was historically known from 12 rivers in Arkansas, Missouri, Tennessee, and Alabama (Service 1985b). The species was last collected at Muscle Shoals (its type locality, along with the Cumberland River in Tennessee) prior to 1925 (Ortmann 1925); it has not been collected anywhere since the early 1960s (Stansbery 1971, Service 1985b). However, we continue our efforts to determine whether any extant populations occur; thus, the species is therefore included in this NEP rule. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The winged mapleleaf (mussel) (*Quadrula fragosa*) (Conrad 1835) was listed as an endangered species on June 20, 1991 (56 FR 28349). We completed the final recovery plan for the species in June 1997 (Service 1997a). This species was historically reported from 34 rivers in 12 States in the Mississippi River drainage (Service 1997a). It is now believed to be extirpated from all but one remnant population in the St. Croix River between Minnesota and Wisconsin. The species was recorded in the Tennessee River, Mussel Shoals, Alabama by Ortmann (1924). The downlisting objectives in the recovery plan call for: (1) The existence of three distinct viable populations in at least two tributaries of the Mississippi River basin and (2) the long-term protection of all three populations. Delisting objectives call for: (1) The existence of five distinct viable populations and (2) the long-term protection of all five populations.

The yellow blossom (pearlymussel) (*Epioblasma florentina florentina*) (Lea 1857) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in January 1985 (Service 1985b). This species was historically known from 13 rivers in the Cumberland and Tennessee River systems (Service 1985b). The species was last collected at Muscle Shoals, its type locality, prior to 1925 (Ortmann 1925); it has not been collected anywhere in over 50 years (Stansbery 1971, Service 1985b). However, we continue our efforts to determine whether any extant populations occur; thus, the species is included in this NEP rule. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan; however, it does call for the recovery efforts to be reevaluated if the species is found.

Anthony's riversnail (*Athearnia anthonyi*) was listed as an endangered species on April 15, 1994 (59 FR 17994). We completed the final recovery plan for the species in August 1997 (Service 1997b). This snail was historically found in the Tennessee River and the lower reaches of some of its tributaries from Muscle Shoals, Colbert and Lauderdale Counties, Alabama, upstream to the Clinch and Nolichucky Rivers, Tennessee (Bogan and Parmalee 1983). Currently, two populations are known to survive—one in Limestone Creek, Limestone County, Alabama, and one in the Tennessee River and the lower portion of the Sequatchie River (a tributary to this reach of the Tennessee River), Marion County, Tennessee, and Jackson County, Alabama (Service 1997b). It is apparently extirpated from Muscle Shoals (Garner, personal communication, 1997). The downlisting objectives in the recovery plan call for: (1) The establishment of four viable populations; (2) establishment of two naturally produced year classes in each of the four populations; (3) completion of biological studies on the species; (4) documentation of noticeable improvements in water and substratum quality where habitat is degraded; (5) protection of each of the populations from present and foreseeable threats; and (6) maintaining all four populations as stable or increasing over a 10-year period. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (5) above and for maintaining six populations as stable or increasing over a 15-year period.

The recovery objectives in the recovery plans and recovery outlines for the aforementioned species generally agree that, to reach recovery: (1) Existing populations should be restored to viable levels; (2) the species should be protected from threats to their continued existence; and (3) viable populations should be reestablished in historic habitat. The number of secure, viable populations (existing and restored) needed to achieve recovery varies from species to species, depending on the extent of the species' former range (i.e., species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historic populations is a critical component to the recovery of all these species.

4. *Reintroduction Site:* In 1996, the Director of the ADWFF indicated that, due to recent improvements in water quality, mollusk populations below Guntersville, Wheeler, and Wilson Dams were in excellent condition. He indicated that, although several species have been extirpated from these areas in the past, both mussels and snails which now occur there are abundant and a healthy range of size classes are present.

Based on the improving status of mollusks in these river reaches and the fact that recent advances in mussel culture techniques will likely lead to the availability of endangered juvenile mussels for release, the ADWFF Director requested that we consider designating NEP status for the reintroduction of federally listed mussel and snail species that historically existed in the riverine habitat below these dams.

A Service biologist met with representatives of the ADWFF in January 1997 to discuss the possibility of designating NEP status for the reintroduction of federally listed mollusks into the tailwaters of Guntersville, Wheeler, and Wilson Dams. The consensus at that meeting was that: (1) The tailwaters of Wilson Dam (the remains of Muscle Shoals) provided the best opportunity for successfully reestablishing federally listed mollusks and (2) the tailwaters of Guntersville and Wheeler Dams should be considered for mollusk reintroductions at a later time.

We will reintroduce populations of 16 mussels—Alabama lampmussel, birdwing pearlymussel, clubshell, cracking pearlymussel, Cumberland bean (pearlymussel), Cumberlandian combshell, Cumberland monkeyface pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, catspaw (purple cat's paw pearlymussel), shiny pigtoe, tubercled blossom (pearlymussel), turgid blossom (pearlymussel), winged mapleleaf (mussel), and yellow blossom (pearlymussel)—and 1 freshwater snail, Anthony's riversnail, into the historical habitat of the free-flowing reach of the Tennessee River from about RM 258.0 (412.8 km) (1.4 RM [2.2 km]) below Wilson Dam downstream to about RM 248.0 (396.8 km) (2 miles [3.2 km]) above the backwaters of Pickwick Reservoir in Colbert and Lauderdale Counties, Alabama. None of these species is known to currently exist in this river reach or in tributaries to this reach.

5. *Reintroduction Procedures:* The date the mollusks will be reintroduced, the number of individuals to be released, and the exact locations of the releases within the NEP Area cannot be determined at this time. Individual endangered mussels that will be used for these reintroductions will be primarily artificially propagated juveniles. However, it is possible that wild adult stock of some mussels could also be released into the area.

Mussel propagation and juvenile rearing technology are currently being developed, and juvenile endangered mussels of some species could be available for reintroduction next year. The parent stock for juvenile mussels that will be used for the reintroductions will come from existing wild populations, and in most cases, they will be returned live to that wild population. Under some circumstances, adult endangered mussels could be permanently relocated to propagation facilities or could be moved directly into the NEP Area. Anthony's

riversnails will be collected from a large naturally reproducing population located in the Tennessee River, Jackson County, Alabama, and Marion County, Tennessee, and relocated directly into the NEP.

The permanent removal of adults from the wild for their use in reintroduction efforts could occur when one or more of the following conditions exist: (1) Sufficient adult endangered mollusks are available within a donor population to sustain the loss without jeopardizing the species; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present in an area; or (3) when the population is not reproducing. An enhancement of propagation or survival permit under section 10 (a)(1)(A) of the Act will be issued before any take occurs, and we will coordinate these actions with the Service's appropriate lead regions and State natural resources agencies.

Status of Reintroduced Populations

We determine that these reintroduced mussel populations are not essential to the continued existence of the species. Therefore, we believe it is appropriate to designate these populations as nonessential in accordance with section 10(j) of the Act. We will ensure, through our section 10 permit authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species. Therefore, if any of the reintroduced populations become established and are subsequently lost, it would not reduce the likelihood of the species' survival in the wild or jeopardize its continued existence. In fact, the anticipated success of these reintroductions will enhance the conservation and recovery potential of these species by extending their present ranges into currently unoccupied historic habitat.

Location of Reintroduced Population

The NEP Area, which encompasses all the sites for the planned reintroductions, will be located in the free-flowing reach of the Tennessee River between Wilson Dam and the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama. The NEP Area is totally isolated from existing populations of these species by large reservoirs, and none of these mollusks are known to occur in reservoir habitat. These reservoirs will act as barriers to the expansion of these species upstream or downstream in the main stem of the Tennessee River and ensure that these NEPs remain geographically isolated and easily distinguishable from existing wild populations.

Management

We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public use of the NEP Area. Experimental population special rules contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are more compatible with routine human activities in the reintroduction area.

If any of the reintroduced endangered mollusks move beyond the current boundaries of this NEP Area, the animals will be presumed to have come from the NEP Area. In that case, the rule will be amended and the boundaries of the NEP Area will be enlarged to include the entire range of the expanded population.

Previous Federal Actions

On June 18, 1997, we mailed letters to 54 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering proposing NEP status for 17 mollusks. We received six written responses. The majority of these comments were very supportive of the potential reintroduction efforts, and few concerns were raised.

On May 27, 1999, we published the proposed rule in the **Federal Register** (64 FR 28779) to designate NEP status, under section 10(j) of the Act, for the reintroduction of the aforementioned 16 mussels and 1 snail into the Tennessee River below Wilson Dam in Alabama. Additionally, we announced this proposal in faxes dated May 26, 1999, in letters dated May 27, 1999, and in a legal notice published in the *Times Daily,* Florence, Alabama, on June 12, 1999. Those documents notified affected congressional offices, the Governor of Alabama, Federal and State agencies, local governments, scientific organizations, and interested parties of the proposed action, and requested comments and information that might contribute to the development of a final determination.

Summary of Comments and Recommendations

In the May 27, 1999, proposed rule (64 FR 28779), we opened a 60-day public comment period. We received two responses. These comments did not result in any changes to the final rule. Key issues raised in the comments are presented below.

Issue 1: Concerns were raised that a project by the Shoal Economic Development Authority (SEDA) along the Tennessee River, below the Colbert Steam Plant in Colbert County, Alabama, might be impacted by the NEP designation.

Our Response: Because of the regulatory flexibility provided through a NEP designation and the fact that the project is downstream of the NEP Area, we do not believe the reintroductions will have any effect on SEDA's project. The SEDA project, which starts at about RM 244 (390.4 km), is approximately 2 miles (3.2 km) below the downstream extent of the NEP Area (RM 246 [393.6 km]) and 3 to 4 miles (4.8 to 6.4 km) below the area where the species will be released. Because of habitat suitability problems, we do not expect these reintroduced species to inhabit the river below RM 246 (393.6 km). However, if they did move downstream into Pickwick Reservoir, we would assume that the animals came from the existing NEP Area, and we would amend the rule to extend the NEP Area boundaries downstream to include the expanded population.

Issue 2: The TVA was generally supportive of the NEP designation and offered their assistance in the reintroduction effort. They again expressed concerns about the long-term viability of mussels in this river reach but stated that their concern had been noted in the proposed rule. The TVA is concerned that, although reintroduced Cumberlandian mussel species might survive below Wilson Dam, they might not be able to reproduce there.

Our Response: Based on the improved reproductive success of the mussel fauna below Wilson Dam, we are optimistic that at least some of the Cumberlandian species will reproduce. However, even if these species are unable to reproduce, the establishment of nonreproducing populations of listed Cumberlandian mussels will assist in the recovery effort. Mussels are long-lived (40 years or more); thus, any surviving mussels could be available to researchers and managers for a number of years after they are reintroduced.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the final rule to designate NEP status for 16 endangered mussels and 1 endangered aquatic snail in the free-flowing reach of the Tennessee River below Wilson Dam in Colbert and Lauderdale Counties,

Alabama, is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect on any economic sector, productivity, jobs, the environment, or other units of government. The area affected by this rule consists of a very limited and discrete geographic segment (only 12 RM (19 km)) of the Tennessee River in northern Alabama. Therefore, a cost-benefit and economic analysis is not required.

Shellfish harvesting in the United States is dominated by small firms. Of the 441 firms included in Standard Industrial Code 0913 for ''establishments primarily engaged in the catching or taking of shellfish,'' 421 have fewer than 20 employees, and 353 have fewer than 5 employees. These figures include saltwater shellfishing (lobsters, crabs, clams, etc.), so freshwater mussel harvesting is only a fraction of this small industry (Office of Advocacy, U.S. Small Business Administration, based on data provided by the Department of Commerce, Bureau of the Census).

A recent die-off of the pearl oyster stock in Japan has almost eliminated the market for freshwater mussels this year. In fiscal year 1998, there were 79 licensed mussel harvesters in the entire State of Alabama but almost no sales. In normal years, there may be as many as 270 mussel harvesters. County level data is not available.

Because there are no expected impacts or restrictions to existing human uses of the Tennessee River as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule will not raise novel legal or policy issues. Since 1984, we have promulgated 10(j) rules for many other listed threatened and endangered species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is not expected to have any impact on the use of the river. Mussels are harvested from the relevant reach, primarily by diving from one- or two-person boats. Harvesters are seeking larger mussels of a dozen specific permitted species to be used as seeds in the Japanese cultured pearl industry. Several endangered mussels still occur in the area, and divers are careful to identify species on site in order to avoid carrying extra weight to the surface. The addition of NEP species is not expected to complicate this task. Other river activities will not be affected.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipalities. The ADWFF, which manages the aquatic mollusks in the Tennessee River below Wilson Dam, requested that we consider this reintroduction. However, they will not be required by the Endangered Species Act to specifically manage for any reintroduced species. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Because this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2, U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land. This rule will substantially advance a legitimate government interest (conservation and recovery of listed freshwater mussel and snail species) and will not present a bar to all reasonable and expected beneficial use of private property. Because of the regulatory flexibility provided by NEP designations under section 10(j) of the Act, we do not believe the reintroduction of these mollusks would conflict with existing or proposed human activities or hinder public use of the Tennessee River system.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. This rule will not have substantial direct effects on the States in their relationship between the Federal government and the States or on the distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Alabama on the reintroduction of freshwater mussels into the Tennessee River. The State wildlife agency (ADWFF) requested that we undertake this rulemaking in order to assist the State in restoring and recovering its native aquatic fauna. Achieving the recovery goals for these 17 species will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal government and is being undertaken at the request of a State agency. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Paperwork Reduction Act

This rule contains no information collection. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

We have determined that the issuance of this rule is categorically excluded under our National Environmental

Policy Act procedures (516 DM 6, Appendix 1.4 B(6)).

References Cited

Bogan, A.E., and P.W. Parmalee. 1983. Tennessee's Rare Wildlife, Volume II: The Mollusks. 123 pp.

Gooch, C.H., W.J. Pardue, and D.C. Wade. 1979. Recent mollusk investigations on the Tennessee River, 1978. Tennessee Valley Authority, Water Quality and Ecology Branch. 126 pp.

Goodrich, C. 1931. The pleurocerid genus *Eurycaelon*. Occasional Papers of the Museum of Zoology 223:1–11.

Gordon, M.E. 1991. Species accounts for Cumberland elktoe (*Alasmidonta atropurpurea*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*Epioblasma capsaeformis*), rough rabbitsfoot (*Quadrula cylindrica strigillata*), and purple bean (*Villosa perpurpurea*). Unpublished reports to The Nature Conservancy. 75 pp.

Isom, B.G. 1969. The mussel resources of the Tennessee River. Malacologia 7(2–3): 397–425.

Neves, R.J. 1991. Mollusks. *IN:* Virginia's Endangered Species, Proceedings of a Symposium. Coordinated by Karen Terwilliger. McDonald & Woodward Publishing Co., Blacksburg, VA. 672 pp.

Ortmann, A.E. 1918. The nayades (freshwater mussels) of the upper Tennessee drainage with notes on synonymy and distribution. Proceedings of the American Philosophical Society 57:521–626.

———. 1924. Discussions and Correspondence—Mussel Shoals. Science 60(1564):565–566.

———. 1925. The naiad fauna of the Tennessee River system below Walden Gorge. The American Midland Naturalist 9(8):321–372.

Scruggs, G.D. 1960. Status of freshwater mussel stocks in the Tennessee River. U.S. Fish and Wildlife Service, Special Report, Fisheries, 370:1–40.

Stansbery, D.H. 1964. The Mussel (Muscle) Shoals of the Tennessee River revisited. Annual Report for 1964 of the American Malacological Union: 25–28.

———. 1971. Rare and endangered mollusks in Eastern United States. *IN:* S.E. Jorgenson and R.E. Sharp (Ed.). Proceedings of a Symposium on Rare and Endangered Mollusks (naiades), U.S. Bureau of Sport Fisheries and Wildlife, U.S. Fish and Wildlife Service, Department of the Interior, Twin Cities, MN. 79 pp.

———. 1976. Naiad mollusks. *IN:* Endangered and Threatened Plants and Animals of Alabama. Bulletin, Alabama Museum of Natural History, No. 2:42–52.

Tennessee Valley Authority. 1993. Tennessee Valley reservoir and stream quality—1993. Summary of vital signs and use suitability monitoring. Vol. 1. 200 pp.

U.S. Fish and Wildlife Service. 1984a. Cumberland Monkeyface Pearlymussel Recovery Plan. Atlanta, GA. 59 pp.

———. 1984b. Dromedary Pearlymussel Recovery Plan. Atlanta, GA. 58 pp.

———. 1984c. Birdwing Pearlymussel Recovery Plan. Atlanta, GA. 56 pp.

———. 1984d. Cumberland Bean Pearlymussel Recovery Plan. Atlanta, GA. 58 pp.

———. 1984e. Fine-rayed Pigtoe Recovery Plan. Atlanta, GA. 67 pp.

———. 1984f. Shiny Pigtoe Recovery Plan. Atlanta, GA. 67 pp.

———. 1985a. Alabama Lampmussel Recovery Plan. Atlanta, GA. 41 pp.

———. 1985b. Tubercled-blossom Pearlymussel, Turgid-blossom Pearlymussel, and Yellow-blossom Pearlymussel Recovery Plan. Atlanta, GA. 42 pp.

———. 1991. Cracking Pearlymussel Recovery Plan. Atlanta, GA. 25 pp.

———. 1992. Purple Cat's Paw Pearlymussel Recovery Plan. Atlanta, GA. 26 pp.

———. 1993a. Clubshell and Northern Riffleshell Recovery Plan. Hadley, MA. 55 pp.

———. 1997a. Winged Mapleleaf Mussel (*Quadrula fragosa*) Recovery Plan. Ft. Snelling, MN. 69 pp.

———. 1997b. Recovery Plan for Anthony's Riversnail. Atlanta, GA. 21 pp.

van der Schalie, H. 1939. Additional notes on the naiades (freshwater mussels) of the lower Tennessee River. The American Midland Naturalist 22:452–457.

Author

The principal author of this rule is Richard G. Biggins (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, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, 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. Amend § 17.11(h), by revising the existing entries for ''Bean, Cumberland (pearlymussel)''; ''Blossom, tubercled (pearlymussel)''; ''Blossom, turgid (pearlymussel)''; ''Blossom, yellow (pearlymussel)''; ''Catspaw (=purple cat's paw pearlymussel)''; ''Clubshell''; ''Combshell, Cumberlandian''; ''Lampmussel, Alabama''; ''Mapleleaf winged (mussel)''; ''Monkeyface, Cumberland (pearlymussel)''; ''Mussel, oyster''; ''Pearlymussel, birdwing''; ''Pearlymussel, cracking''; ''Pearlymussel, dromedary''; ''Pigtoe, fine-rayed''; and, ''Pigtoe, shiny'' under CLAMS and for ''Riversnail, Anthony's'' under ''SNAILS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Bean, Cumberland (pearlymussel).	*Villosa* (= *Micromya*) *trabalis*.	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Blossom, tuberoled (pearlmyussel).	*Epioblasma* (=Dysnomia) *torulosa torulosa*.	U.S.A. (AL, IL, IN, KY, TN, WV).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Blossom, turgid (pearlymussel).	*Epioblasma (=Dysnomia) turgidula*.	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Blossom, yellow (pearlymussel).	*Epioblasma (=Dysnomia) florentina florentina*.	U.S.A. (AL, TN)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Catspaw, (=purple cat's paw pearlymussel).	*Epioblasma (=Dysnomia) (=sulcata sulcata)*.	U.S.A. (AL, IL, IN, KY, OH, TN).	NA	E	394	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	* *		*	*	
Clubshell	*Pleurobema clava*	U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	NA	E	488	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	* *		*	*	
Combshell, Cumberlandian.	*Epioblasma brevidens*.	U.S.A. (AL, KY, MS, TN, VA).	NA	E	602	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Lampmussel, Alabama.	*Lampsilis virescens*	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Mapleleaf, winged (mussel).	*Quadrula fragosa*	U.S.A. (AL, IA, IL, IN, KY, MN, MO, NE, OH, OK, TN, WI).	NA	E	426	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Monkeyface, Cumberland (pearlymussel).	*Quadrula intermedia*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Mussel, oyster	*Epioblasma capsaeformis*.	U.S.A. (AL, GA, KY, NC, TN, VA).	NA	E	602	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, birdwing.	*Conradilla caelata*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Pearlymussel, cracking.	*Hemistena* (=*Lastena*) *lata*.	U.S.A. (AL, IL, IN, KY, OH, TN, VA).	NA	E	366	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, dromedary.	*Dromus dromas*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*	*	
Pigtoe, fine-rayed	*Fusconaia cuneolus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*	*	
Pigtoe, shiny	*Fusconaia cor* (=*edgariana*).	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*	*	
SNAILS							
*	*	*	*	*	*	*	
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (AL, GA, TN)	NA	E	538	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*	*	

3. Add § 17.85 to read as follows:

§ 17.85 Special rules—invertebrates.

(a) Cumberland bean (pearlymussel) (*Villosa trabalis*), tubercled blossom (pearlymussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearlymussel) (*Epioblasma turgidula*), yellow blossom (pearlymussel) (*Epioblasma florentina florentina*), catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*), clubshell (*Pleurobema clava*), Cumberlandian combshell (*Epioblasma brevidens*), Alabama lampmussel (*Lampsilis virescens*), winged mapleleaf (mussel) (*Quadrula fragosa*), Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*), oyster mussel (*Epioblasma capsaeformis*), birdwing pearlymussel (*Conradilla caelata*), cracking pearlymussel (*Hemistena lata*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), shiny pigtoe (*Fusconaia cor*), Anthony's riversnail (*Athearnia anthonyi*).

(1) Where are these mollusks designated as nonessential experimental populations (NEPs)?

(i) The NEP Area for these 17 mollusks is within the species' historic ranges, and is defined as follows: The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (river mile (RM) 259.4 [414.0 km] to RM 246.0 [393.6 km] and includes the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

(ii) None of the identified species are known to exist in any of the tributaries to the free-flowing reach of the Tennessee River below Wilson Dam or from below the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama. In the future, if any of the 17 mollusks are found upstream of the lower 5 RM (8 km) of these tributaries or downstream into Pickwick Reservoir, we will presume the animals came from the reintroduced NEP, and we will amend this rule and enlarge the boundaries of the NEP Area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP Area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What activities are not allowed in the NEP Area?

(i) Except as expressly allowed in this rule, all the prohibitions of 17.31(a) and (b) apply to the mollusks identified in this special rule.

(ii) Any manner of take not described under paragraph (a)(3) of this section will not be allowed in the NEP Area. We may refer the unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified 17 mollusks, or parts thereof, that are taken or possessed in violation of these regulations or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (a).

(3) What take is allowed in the NEP Area?

(i) Take of these species that is accidental and incidental to an otherwise lawful activity such as fishing, boating, commercial navigation, trapping, wading, or mussel harvesting, is allowed.

(ii) Any individual collecting or harvesting mussels must check their collection prior to leaving the immediate area and return any NEP mussels to the site where they were obtained.

(4) How will the effectiveness of these reintroductions be monitored?

We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

Dated: May 31, 2001.

Marshall P. Jones, Jr.

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–14878 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AI00

Migratory Bird Hunting; Regulations Designed to Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule is intended to notify the public of a clarification of the expiration date of regulations imposed by Congress to reduce the population of mid-continent light geese (MCLG). In this rule we clarify the expiration date of special regulations pertaining to hunting methods (electronic calls and unplugged shotguns) for taking mid-continent light geese. We also clarify the expiration date of the conservation order for the reduction of the mid-continent light goose population.

DATES: This rule takes effect immediately upon publication on June 14, 2001.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Dept. of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, Dept. of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Service (or ''we'') promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of MCLG and established a conservation order for the reduction of the MCLG population. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) on light goose management beginning in 2000. The light goose regulations were subsequently challenged in a United States District Court by several groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on light goose management and to preclude further litigation on the issue, we published a Notice of Intent to begin immediate preparation of the EIS on May 13, 1999 (64 FR 26268). Subsequent to this action, on June 17, 1999, we withdrew the regulations promulgated on February 16, 1999 (64 FR 32778). On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Act), which effectively reinstated the MCLG regulations that we withdrew on June 17, 1999. On December 20, 1999 (64 FR 71236) we published a final rule that reinstated the MCLG regulations in the CFR and stipulated that such regulations would remain in effect until May 15, 2001 at the latest. However, this stipulation is contrary to the expiration date that Congress mandated in the Act.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross' (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as mid-continent light geese (MCLG). MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become seriously injurious to its Arctic and sub-Arctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation and impacts to other species.

On February 16, 1999, we published rules that: (1) authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, several groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10 (the latest date allowable under the Treaty), and that an EIS should have been prepared prior to implementation of the rules. In his memorandum opinion the judge indicated that ''the scientific evidence regarding the overpopulation of snow geese strongly favors FWS'' and that we had exercised a reasonable use of our authority under the Migratory Bird Treaty Act to initiate population control measures. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we decided to withdraw the regulations and begin immediate preparation of the EIS. We concluded the public scoping phase of the EIS process on November 22, 1999. We anticipate publication of a draft EIS in the summer of 2001.

On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) to ''reduce the population of mid-continent light geese,'' and ''to assure the long-term conservation of mid-continent light geese and the

biological diversity of the ecosystem upon which many North American migratory birds depend''. The Act further states that,

> the rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 Fed. Reg. 7507–7517) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 Fed. Reg. 7517–7528), shall have the force and effect of law.

The Act instructed the Secretary of the Interior, acting through the Director of the Service, to take such action as is necessary to appropriately notify the public of the force and effect of the rules referenced above. Furthermore, these provisions of the Act are to apply until,

> the latest [emphasis is ours] of
>
> (A) The effective date of rules issued by the Service after such date of the enactment to control overabundant mid-continent light geese populations;
>
> (B) The date of publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C); and
>
> (C) May 15, 2001.

We initiated preparation of an EIS on light goose management on May 13, 1999 (64 FR 26268). Nine public scoping meetings were held throughout the country during September and October, 1999 (64 FR 47332). We are currently completing an internal review of a draft EIS, and expect to release the draft for public comment by June 2001. However, we do not expect to publish a final EIS until at least the fall of 2001. Therefore, new rules that would implement our proposed alternative for controlling light goose populations will not be developed until after the fall of 2001. Because the milestones in paragraphs (A) and (B) will not be reached prior to May 15, 2001, paragraph (C) above is no longer germane. During preparation of our December 20, 1999 final rule (64 FR 71236), we mis-interpreted the language in the Act pertaining to expiration dates of light goose regulations and incorrectly identified May 15, 2001 as the latest of the milestones. In fact, May 15, 2001 is the earliest of the milestones, and therefore cannot serve as the expiration date of special light goose regulations. We note that the House Resources Committee report on the bill and some of the floor debate on the legislation identified May 15, 2001, as a ''sunset''. However, the law does not establish a ''sunset'' date and provides that ''force and effect'' will expire when the last of the three triggers occurs. Therefore, according to the Act, the light goose regulations shall remain in effect until the latest of paragraphs (A) and (B) above. As we stated above, that is expected to be some time after the fall of 2001. Because in the December 20, 1999, final rule (64 FR 71236), we had erroneously added an expiration date of May 15, 2001, to the effective dates of certain paragraphs in 50 CFR 20.21, 20.22, and 21.60, those paragraphs have now expired. Through this rule, we are adding those paragraphs back to the CFR.

Effective Date

Under 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553 (d)(3), we find good cause to take this action without prior notice and public procedure and to make this action effective upon publication because, for the following reasons, notice and public procedure are unnecessary and contrary to the public interest. We are clarifying, in the nature of a correction, the effective date of rules that were reinstated as a result of a directive contained in law. As we noted in our December 20, 1999, **Federal Register** notice (64 FR 71236), the rules with regard to light geese were in place previously and were adopted after notice and opportunity for public comment. Finally, the law imposing these rules requires that they remain effective as is provided herein.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Other Required Determinations

We published all of the required determinations in the February 16, 1999, final rules (64 FR 7507; 64 FR 7517).

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons given in the preamble, we hereby amend parts 20 and 21, of the subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742 a-j; Pub. L. 106–108.

2. Add paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

3. Revise § 20.22 to read as follows:

§ 20.22 Closed seasons.

No person shall take migratory game birds during the closed season except as provided in part 21.

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

5. Subpart E, consisting of § 21.60, is added to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation Order for Mid-continent light geese.

(a) Which waterfowl species are covered by this order?

This conservation order addresses management of lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese that breed, migrate, and winter in the mid-continent portion of North America, primarily in the Central and Mississippi Flyways (mid-continent light geese).

(b) In what areas can the conservation order be implemented? (1) The following States, or portions of States, that are contained within the boundaries of the Central and Mississippi Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) Tribal lands within the geographic boundaries in paragraph (b)(1) of this section.

(3) The following areas within the boundaries in paragraph (b)(1) of this section are closed to the conservation order after 10 March of each year: Monte Vista National Wildlife Refuge (CO); Bosque del Apache National Wildlife Refuge (NM); the area within 5 miles of the Platte River from Lexington, Nebraska to Grand Island, Nebraska; the following area in and around Aransas National Wildlife Refuge; those portions of Refugio, Calhoun, and Aransas counties that lie inside a line extending from 5 nautical miles offshore to and including Pelican Island, thence to Port O'Conner, thence northwest along State Highway 185 and southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel, extending to 5 nautical miles offshore; except that it is lawful to take mid-continent light geese after 10 March of each year within the Guadalupe WMA. If at any time we receive evidence that a need to close the areas in this paragraph (b)(3) no longer exists, we will publish a proposal to remove the closures in the **Federal Register**.

(c) What is required in order for State/Tribal governments to participate in the conservation order? Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, mid-continent light geese under the following conditions:

(1) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal Agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of this section.

(7) States and Tribes must inform participants of the requirements/conditions of this section that apply.

(8) States and Tribes must keep records of activities carried out under the authority of this section, including the number of mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The States and Tribes must submit an annual report summarizing activities conducted under this section on or before August 30 of each year, to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240.

(d) What is required in order for individuals to participate in the conservation order? Individual participants in State or tribal programs covered by this section are required to comply with the following requirements:

(1) Nothing in this section authorizes the take of mid-continent light geese contrary to any State or Tribal laws or regulations; and none of the privileges granted under this section may be exercised unless persons acting under the authority of the conservation order possesses whatever permit or other authorization(s) required for such activities by the State or Tribal government concerned.

(2) Participants who take mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants acting under the authority of this section must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants acting under the authority of this section may take mid-continent light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(ii) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the person a means of concealment beneath the surface of the water;

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving,

rallying, or stirring up of mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, ''baiting'' means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and ''baited area'' means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(j). Season limitations in that section do not apply to participants acting under this order.

(e) Under what conditions would the conservation order be revoked? The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time we receive that clearly demonstrates a serious threat of injury to the area or areas involved no longer exists, we will initiate action to revoke the conservation order.

(f) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018–0103. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The recordkeeping and reporting requirements imposed under regulations established in this subpart E will be utilized to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take mid-continent light geese within the guidelines provided by the Service.

Dated: June 7, 2001.

Marshall P. Jones, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–15019 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 66, No. 115
Thursday, June 14, 2001

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–053–2]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal and reproposal.

SUMMARY: We are proposing to amend the black stem rust quarantine and regulations by requiring that persons who request the addition of *Berberis*, *Mahoberberis*, or *Mahonia* spp. plants to the list of rust-resistant varieties in the regulations must provide the Agency with a description of the variety that can be used by State nursery inspectors to clearly identify the variety and distinguish it from others. We are proposing to require that inspectors verify, prior to interstate movement, that varieties match their description. In addition, we are also proposing to add 32 new varieties to the list of rust-resistant *Berberis*, *Mahoberberis*, and *Mahonia* species. These proposed changes replace a previously published proposed rule, which we are withdrawing as part of this document, that would have added 15 new varieties to the list of rust-resistant *Berberis*, *Mahoberberis*, and *Mahonia* species without requiring the submission of descriptions of those varieties to the Agency. This proposed rule would help prevent the spread of black stem rust by providing for and requiring the accurate identification of rust-resistant varieties by inspectors and would provide for the interstate movement of newly developed varieties without unnecessary restrictions.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 13, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 97–053–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 97–053–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, Agriculturist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations, contained in 7 CFR 301.38 through 301.38–8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks.

Section 301.38–2 of the regulations includes a listing of regulated articles and indicates those species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate.

On April 7, 1998, we published in the **Federal Register** (63 FR 16908–16909, Docket No. 97–053–1) a proposed rule to amend the regulations by adding 15 varieties to the list of rust-resistant *Berberis*, *Mahoberberis*, and *Mahonia* species.

We solicited comments concerning our proposal for 45 days ending on May 22, 1998. We received a total of two comments by that date. They were from a representative of the nursery industry and a State government official.

One commenter supported the proposed rule, but asked that we correct the nomenclature of one proposed rust-resistant barberry variety. The commenter also requested that we consider other changes to the black stem rust quarantine that were outside the scope of the proposed rulemaking.

The other commenter opposed the addition of more rust-resistant barberry varieties to the list in § 301.38–2 without the distribution of proper field identification aids to State inspectors. The commenter recommended that before additional plants are added to the list of rust-resistant barberry varieties in the regulations, the Animal and Plant Health Inspection Service (APHIS) should require persons who develop new varieties to provide APHIS with written descriptions and color photographs of the plants that can be used by inspectors to properly identify and distinguish between barberry varieties. The commenter stated that such a requirement would help to ensure that State inspectors can verify that plants moving into their States are indeed APHIS-approved rust-resistant barberry varieties.

Since this comment raises a new issue, we are reproposing the April 7, 1998, proposed rule and including regulatory text to address this comment. Also, several additional varieties of rust-resistant varieties have been submitted to APHIS for inclusion in the

regulations since the publication of the proposed rule. Therefore, we are proposing to amend the regulations to include these recently developed varieties.

In this document, we are proposing to require that persons who request APHIS to add a variety to the list of rust-resistant barberry varieties in the regulations must provide APHIS with a description of the variety, including a written description and color pictures that can be used by State nursery inspectors to clearly identify the variety and distinguish it from other varieties. This requirement would be contained in § 301.38–2(b) of the regulations. We are proposing this requirement in order to ensure that State plant inspectors can clearly determine whether plants moving into or through their States are rust-resistant varieties listed in § 301.38–2 of the regulations.

In conjunction with this requirement, we are also proposing to require that inspectors who issue certificates for the movement of rust-resistant barberry varieties under the regulations in § 301.38–4(b)(2) must, prior to issuing certificates, verify that the barberry varieties to be shipped match the description of the varieties that were provided to APHIS in accordance with the proposed regulations in § 301.38–2(b).

We are also proposing to add the following varieties to the lists of rust-resistant *Berberis*, *Mahoberberis*, and *Mahonia* species:

Berberis

B. aggregata x *B. wilsoniae* 'Pirate King'
B. x *carminea* 'Pirate King'
B. 'Amstelveen'
B. candidula x B. *verruculosa* 'Amstelveen'
B. x *frikartii* 'Amstelveen'
B. gagnepainii 'Chenault'
B. integerrima 'Wallichs Purple'
B. lologensis 'Mystery Fire'
B. poirettii 'BJG 073', 'MTA'
B. soulieana 'Claret Cascade'
B. thunbergii 'Antares'
B. thunbergii 'Aurea Nana'
B. thunbergii 'Bailone' (Ruby Carousel®)
B. thunbergii 'Bailtwo' (Burgundy Carousel®)
B. thunbergii 'Bailgreen' (Jade Carousel™)
B. thunbergii 'Concorde'
B. thunbergii 'Criruzam' Crimson Ruby™
B. thunbergii 'Golden Pygmy'
B. thunbergii 'Green Carpet'
B. thunbergii 'Lime Glow'
B. thunbergii 'Midruzam' Midnight Ruby™
B. thunbergii 'Painter's Palette'
B. thunbergii 'Royal Burgundy'
B. thunbergii 'Royal Cloak'
B. thunbergii x 'Bailsel' (Golden Carousel®)
B. thunbergii x 'Tara' (Emerald Carousel®)

Mahoberberis

M. aquifolium 'Smaragd'
M. x 'Magic'

Mahonia

M. aquifolium 'Undulata'
M. japonica x *M. lomariifolia* 'Charity'
M. x *media* 'Charity'
M. x *media* 'Winter Sun'

The nurseries that developed these rust-resistant species of *Berberis, Mahoberberis,* and *Mahonia* have provided identification guides to APHIS and to the receiving States. The proposed addition of these species to the list of rust-resistant species is based on recent testing to determine rust-resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis, Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20 to 80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plant does not, the test results indicate that the test plant is rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., 6 plants tested twice or 3 plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would allow the interstate movement of 32 new varieties of *Berberis, Mahoberberis*, and *Mahonia* that have been determined to be resistant to black stem rust into and through States or parts of States designated as protected areas in accordance with the requirements in the regulations. Based on the information provided to us, we have determined that this proposed rule, if adopted, would affect three or four nurseries that might propagate the new species and numerous retail sales nurseries that might purchase and resell the varieties. This proposed rule would enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas.

Currently, 123 varieties of barberry plants are listed as rust-resistant. Of those 123 varieties, many are no longer propagated for commercial sale. Many consumers are choosing newer varieties that are horticulturally more attractive. This rule would add 32 new varieties to the current list of 123 varieties. The addition of these 32 new varieties would simply create a greater selection of barberry plant varieties from which consumers can choose. This proposed rule could encourage innovation by allowing nurseries that develop new rust-resistant *Berberis, Mahoberberis*, and *Mahonia* varieties the opportunity to market those varieties in protected areas; however, there is no indication that the periodic introduction of new varieties to the market has any effect on overall sales volumes. Therefore, we do not anticipate that there will be any significant economic impact on those nurseries that might handle the new varieties.

This proposed rule would require that persons requesting the addition of a barberry variety to the list of rust-resistant varieties in the regulations must first provide APHIS with a description of the variety, including a written description and color pictures that can be used by State nursery inspectors to clearly identify the variety and distinguish it from other varieties. This rule would also require that, prior

to interstate movement, an inspector must verify that a rust-resistant variety matches the description of the variety provided to APHIS. However, these proposed requirements are not expected to result in any measurable cost to persons involved in the production or movement of the plants.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–053–2. Please send a copy of your comments to: (1) Docket No. 97–053–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to require that persons who request APHIS to add a variety to the list of rust-resistant barberry varieties in the regulations must provide APHIS with a description of the variety, including a written description and color pictures that can be used by State nursery inspectors to clearly identify the variety and distinguish it from other varieties. This requirement would be contained in § 301.38–2(b) of the regulations. We are proposing this requirement in order to ensure that State plant inspectors can clearly determine whether plants moving into or through their States are rust-resistant varieties listed in § 301.38–2 of the regulations. We are asking OMB to approve the collection of this information for 3 years.

In conjunction with this requirement, we are also proposing to require that inspectors who issue certificates for the movement of rust-resistant barberry varieties under the regulations in § 301.38–4(b)(2) must, prior to issuing certificates, verify that the barberry varieties shipped match the description of the varieties that were provided to APHIS in accordance with the proposed regulations in § 301.38–2(b).

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Nurseries that propagate new rust-resistant species and varieties of *Berberis* spp., *Mahoberberis* spp., and *Mahonia* spp.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 8.

Estimated total annual burden on respondents: 32 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under sec. 204, Title II, Pub. L.106–113, 113 Stat. 1501A–293 and Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400.

§ 301.38–1 [Amended]

2. Section 301.38–1 would be amended as follows:

a. In the definition for *Rust-resistant plants*, by removing the words ''§ 301.38–2 (b) and (c)'' and adding the words ''§ 301.38–2 (a)(2) and (a)(3)'' in their place.

b. In the definition for *Rust-susceptible plants*, by removing the words ''§ 301.38–2 (b) and (c)'' and adding the words ''§ 301.38–2(a)(2) and (a)(3)'' in their place.

c. In the definition for *Regulated article*, by removing the words ''§ 301.38–2 (a) through (d)'' and adding the words ''§ 301.38–2(a)(1) through (a)(4)'' in their place, and by removing the words ''§ 301.38–2(e)'' and adding the words ''§ 301.38–2(a)(5)'' in their place.

3. Section 301.38–2 would be revised to read as follows:

§ 301.38–2 Regulated articles.

(a) The following are regulated articles: [3]

(1) All seedlings and plants of less than 2 years' growth of the genus *Berberis*.

(2) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant Berberis species.

B. aggregata x *B. wilsoniae* 'Pirate King'
B. 'Amstelveen'
B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. calliantha
B. candidula

[3] Permit and other requirements for the interstate movement of black stem rust organisms are contained in part 330 of this chapter.

B. candidula Amstelveen'
B. candidula x *B. verruculosa* 'Amstelveen'
B. cavallieri
B. chenaulti
B. chanaulti 'Apricot Queen'
B. circumserrata
B. concinna
B. coxii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepainii
B. gagnepaini 'Chenault'
B. gilgiana
B. gladwynensis
B. gladwynensis 'William Penn'
B. gyalaica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. integerrima 'Wallichs Purple'
B. julianae
B. julianae 'Nana'
B. julianae 'Spring Glory'
B. koreana
B. koreana x *B. thunbergii* hybrid *Bailsel*
B. koreana x *B. thunbergii* hybrid *Tara*
B. lempergiana
B. lepidifolia
B. linearifolia
B. linearifolia var. 'Orange King'
B. lologensis
B. lologensis 'Mystery Fire'
B. manipurana
B. media 'Park Jewel'
B. media 'Red Jewel'
B. mentorensis
B. pallens
B. poirettii 'BJG 073', 'MTA'
B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana
B. sikkimensis
B. soulieana 'Claret Cascade'
B. stenophylla
B. stenophylla diversifolia
B. stenophylla irwini
B. stenophylla gracilis
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii 'Antares'
B. thunbergii aurea
B. thunbergii 'Aurea Nana'
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea 'Golden Ring'
B. thunbergii atropurpurea 'Intermedia'
B. thunbergii atropurpurea 'Knight Burgundy'
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea 'Redbird'
B. thunbergii atropurpurea 'Rose Glow'
B. thunbergii 'Bagatelle'
B. thunbergii 'Bailone'
B. thunbergii 'Bailtwo'
B. thunbergii 'Bailone' (Ruby Carousel®)
B. thunbergii 'Bailtwo' (Burgundy Carousel®)
B. thunbergii 'Bailgreen' (Jade Carousel™)
B. thunbergii 'Bonanza Gold'
B. thunbergii 'Concorde'
B. thunbergii 'Crimson Pygmy'
B. thunbergii 'Criruzam' Crimson Ruby
B. thunbergii 'Dwarf Jewell'
B. thunbergii erecta
B. thunbergii 'globe'
B. thunbergii 'golden'
B. thunbergii 'Golden Pygmy'
B. thunbergii 'Green Carpet'
B. thunbergii 'Harlequin'
B. thunbergii 'Helmond Pillar'
B. thunbergii 'Kobold'
B. thunbergii 'Lime Glow'
B. thunbergii 'Lustre Green'
B. thunbergii maximowiczi
B. thunbergii 'Midruzam' Midnight Ruby
B. thunbergii minor
B. thunbergii 'Monry'
B. thunbergii 'Monlers'
B. thunbergii 'Monomb'
B. thunbergii 'Painter's Palette'
B. thunbergii 'Pink Queen'
B. thunbergii pluriflora
B. thunbergii 'Royal Burgundy'
B. thunbergii 'Royal Cloak'
B. thunbergii 'Sparkle'
B. thunbergii 'Thornless'
B. thunbergii 'Upright Jewell'
B. thunbergii variegata
B. thunbergii xanthocarpa
B. thunbergii x 'Bailsel' (Golden Carousel®)
B. thunbergii x 'Tara' (Emerald Carousel®)
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon
B. x *carminea* 'Pirate King'
B. x *frikartii* 'Amstelveen'

(3) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species, except *Mahonia* cuttings for decorative purposes:

(i) Genus *Mahoberberis:*

M. aqui-candidula
M. aquifolium 'Smaragd'
M. aqui-sargentiae
M. miethkeana
M. x 'Magic'

(ii) Genus *Mahonia:*

M. amplectens
M. aquifolium
M. aquifolium atropurpurea
M. aquifolium compacta
M. aquifolium compacta 'John Muir'
M. aquifolium 'Donewell'
M. aquifolium 'Kings Ransom'
M. aquifolium 'Orangee Flame'
M. aquifolium 'Undulata'
M. aquifolium 'Winter Sun'
M. 'Arthur Menzies'
M. bealei
M. dictyota
M. fortunei
M. 'Golden Abundance'
M. japonica
M. japonica x *M. lomariifolia* 'Charity'
M. lomarifolia
M. nervosa
M. pinnata
M. pinnata 'Ken Hartman'
M. piperiana
M. pumila
M. repens
M. x *media* 'Charity'
M. x *media* 'Winter Sun'

(4) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera *Berberis, Mahoberberis*, and *Mahonia,* and seedlings from rust-susceptible species and varieties of the genera *Mahoberberis* and *Mahonia,* except *Mahonia* cuttings for decorative purposes.

(5) Any other product or article not listed in paragraphs (a)(i) through (a)(4) of this section that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

(b) The person requesting that a rust-resistant variety be added to paragraphs (a)(2) and (a)(3) of this section must provide APHIS with a description of the variety, including a written description and color pictures that can be used by State nursery inspectors to clearly identify the variety and distinguish it from other varieties.

§ 301.38–4 [Amended]

4. Section 301.38–4 would be amended as follows:

a. In paragraph (b)(2)(i), by removing the words ''§ 301.38–2 (b)'' and adding the words ''§ 301.38–2 (a)(2)'' in their place.

b. In paragraph (b)(2)(ii), by removing the words ''§ 301.38–2 (c)'' and adding the words ''§ 301.38–2 (a)(3)'' in their place.

5. Section 301.38–5(b) would be revised to read as follows:

§ 301.38–5 Assembly and inspection of regulated articles: issuance and cancellation of certificates.

* * * * *

(b) An inspector may issue a certificate for the interstate movement of a regulated article if he or she:

(1) Determines, upon examination, that the regulated article may be moved interstate in accordance with § 301.38–4;

(2) Determines that the regulated article may be moved interstate in accordance with all other Federal domestic plant quarantines and regulations applicable to the regulated article; and

(3) Verifies that the regulated article, if being moved interstate in accordance with § 301.38–4(b)(2), matches the description provided to APHIS in accordance with § 301.38–2(b).

* * * * *

Done in Washington, DC, this 8th day of June 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–14943 Filed 6–13–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 1008

RIN: 1901–AA69

Privacy Act; Implementation

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its Privacy Act regulation by adding three systems of records to the list of systems exempted from certain subsections of the Act. Exemptions for two systems of records are needed to enable the Office of Employee Concerns and the Office of Hearings and Appeals to perform their duties and responsibilities with regard to investigation and/or adjudication of employee and contractor employee concerns or complaints, pursuant to the whistleblower protection provisions in Part 708 of title 10 of the Code of Federal Regulations (CFR) and applicable laws. An exemption for a third system of records is needed to enable the Office of Intelligence to perform its duties and responsibilities.

DATES: Written comments should be made on or before July 16, 2001.

ADDRESSES: Written comments should be directed to: Abel Lopez, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, MA–73, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Abel Lopez (Privacy Act Officer), (202) 586–5955; William Lewis (program contact for Office of Employee Concerns), (202) 586–6530; William Schwartz (program contact for Office of Hearings and Appeals), (202) 287–1522; or Caryl Butler Gross (program contact for Office of Intelligence), (202) 586–5172.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis
III. Regulatory and Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13084
IV. Public Comment

I. Background

Pursuant to the Privacy Act of 1974 (the Act), as amended (5 U.S.C. 552a(j) and (k)), the Secretary of Energy is authorized to promulgate rules, in accordance with the notice and comment requirements in 5 U.S.C. 553, to exempt any system of records within the agency from certain subsections of the Act. Accordingly, DOE is proposing three new systems of records to be added to the list of systems of records exempted from certain subsections of the Act.

One of the proposed exemptions would amend the DOE's Privacy Act regulation to enable the Office of Employee Concerns to carry out its investigative duties and responsibilities. DOE recognizes that free and open expression of DOE Federal and contractor and subcontractor employee concerns is essential to safe and efficient accomplishment of DOE's mission. DOE and contractor employees have the right and responsibility to report concerns relating to the environment, safety, health, or management of Department operations. The Employee Concerns Program is designed to encourage open communication; inform employees of the proper forum for consideration of their concerns; ensure employees can raise issues without fearing reprisal; address employee concerns in a timely and objective manner; and provide employees an avenue for consideration of concerns that fall outside existing systems. Employee Concerns Program records include concerns or complaints brought to the attention of DOE Employee Concerns Program offices. These records include the receipt of complaints filed under 10 CFR part 708, the DOE Contractor Employee Protection Program. The records in this system will be used by employee concerns program offices to document concerns brought to their attention and to assist in the resolution of concerns about various work-related issues including the environment, safety, health, employer-supervisor relationships, or work processes and practices.

A second proposed exemption would amend the DOE's Privacy Act regulation to enable the Office of Hearings and Appeals to carry out its investigative and adjudicatory duties and responsibilities under 10 CFR part 708 and other whistleblower protection laws. These include investigating allegations of acts of reprisal taken against a DOE employee or DOE contractor employee who claims to have made a protected disclosure, as defined in 10 CFR part 708, and subsequently processing such ''whistleblower'' claims, including hearings and appeals on such matters. These duties and responsibilities are carried out pursuant to those regulations and section 3164 of the National Defense Authorization Act for FY 2000 (Pub. L. 106–65), *codified in* 42 U.S.C. 7239.

The third proposed exemption would amend the DOE's Privacy Act regulation to enable the Office of Intelligence to carry out its duties and responsibilities involving national security. More specifically, these include controlling access to and use of Sensitive Compartmented Information (SCI) and other classified intelligence information bearing the Director, Central Intelligence (DCI) authorized control markings; approving access to SCI in compliance with DCI directives; and conducting eligibility determinations, adjudications, revocations and appeals from denials and revocations.

II. Analysis

DOE proposes to amend § 1008.12 (b) of its Privacy Act regulation to exempt the following three new systems of records from certain subsections of the Privacy Act (5 U.S.C. 552a).

The system of records, ''Employee Concerns Program Records'' (DOE–3), will be exempt from subsections (c)(3), (d)(2), and (e)(1) of 5 U.S.C. 552a pursuant to subsections (k)(1), (2), and (5), to the extent that information in this system meets the requirements of those subsections of the Act.

The system of records, ''Whistleblower Investigation, Hearing and Appeal Records'' (DOE–7), will be exempt from subsections (c)(3), (d)(2), and (e)(1) of 5 U.S.C. 552a pursuant to subsections (k)(1), (2), and (5), to the extent that information in this system meets the requirements of those subsections of the Act.

The system of records, ''Intelligence Related Access Authorization'' (DOE–15), will be exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f) of 5 U.S.C. 552a pursuant to subsections (k)(1), (2), and (5), to the extent that information in this system meets the requirements of those subsections of the Act. This system of records will consist of administrative records of DOE and contractor employees, consultants, and certain persons applying for, granted or denied access to certain categories of classified information. The purpose of the system is to satisfy the requirements of Executive Order 12968, the Department of Energy Procedures for Intelligence Activities, and DOE Order 5670.1A ''Management and Control of Foreign Intelligence.''

Subsections (k)(1), (2), and (5)

Generally speaking, subsection (k)(1), 5 U.S.C. 552a(k)(1), provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is subject to Section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552. That section of the Freedom of Information Act protects from disclosure properly classified national security information.

Subsection (k)(2), 5 U.S.C. 552a(k)(2), provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is investigatory material compiled for law enforcement purposes, provided that, if any individual is denied a right, privilege or benefit under Federal law, the material will be provided, except to the extent that disclosure would reveal the identity of a confidential source.

Subsection (k)(5), 5 U.S.C. 552a(k)(5), provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure would reveal the identity of a confidential source.

The detailed reasons for exemptions under 5 U.S.C. 552a(k)(1), (2) and (5) are as follows:

Subsection (k)(1) Exemption

Under subsection (k)(1) of the Privacy Act records may be exempted that are ''specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order,'' 5 U.S.C. 552(b)(1).

To the extent that records in these systems are classified pursuant to an Executive Order, they may not be disclosed. Therefore, this exemption will apply as follows:

Subsections Exempt Pursuant to (k)(1)

(1) Except for disclosures made under (b)(7) of the Act, 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting that reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. Under subsection (k)(1) of the Privacy Act, records may be exempted that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. To the extent that records in these systems are classified pursuant to an Executive Order, they may not be disclosed.

The DOE has programs involving classified material that may be the subject of a whistleblower complaint, and the Office of Intelligence handles certain types of classified information. The application of this accounting provision to records involving properly classified material could reveal classified material. If this information about classified material were disclosed, national security might be compromised. An example of an issue involving classified material that can affect national security would be a whistleblower complaint that discusses security measures at a particular weapons facility. Such information could be utilized improperly to the detriment of national security.

(2) These systems also are exempt from paragraph (d)(2) of this section. To require the Office of Employee Concerns, the Office of Hearings and Appeals and the Office of Intelligence to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations and access adjudications attempting to resolve questions of accuracy.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. The Office of Intelligence maintains records relating to authorization for individuals to have access to classified information. The Office of Employee Concerns and the Office of Hearings and Appeals do not create the material they collect and have no control over the content of that material. An exemption from the foregoing is needed because:

a. It is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation that involves use of properly classified information or of an adjudication of access to classified national security information.

b. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevancy and necessity of such information can be established. Furthermore, information outside the scope of the Office of Employee Concerns' and the Office of Hearings and Appeals' jurisdiction may be helpful in establishing patterns of activities or problems or in developing information that should be referred to other entities. Such information cannot always readily be segregated. Likewise, in any adjudication of access, information may be obtained concerning violations of laws other than those within the scope of the adjudication. In the interest of effective law enforcement, such information should be retained for dissemination to appropriate law enforcement agencies.

c. In interviewing persons or obtaining information from other sources during an adjudication including the background investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the inquiry or investigation, but which also relates to matters under the jurisdiction of another agency. Such information cannot readily be segregated.

Subsection (k)(2) Exemption

Subsection (k)(2) permits the exemption of investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), provided, however,

that if any individual is denied any right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual. The material will be provided except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Subsections Exempt Pursuant to (k)(2)

(1) Except for disclosures made under (b)(7) of the Act, 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting that reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the records and the name and address of the recipient. To the extent that such an accounting would lead directly or indirectly to the disclosure of the identity of a source as described above, the (k)(2) exemption is applicable.

(2) These systems also are exempt from paragraph (d)(2) of this section. To require the Office of Employee Concerns, the Office of Hearings and Appeals and the Office of Intelligence to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations and access adjudications attempting to resolve questions of accuracy.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation involving employee complaints or concerns and whistleblowing or of an adjudication of access to classified national security information.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated or the investigation, hearing or appeal is completed that the relevancy and necessity of such information can be established.

c. In investigating an employee complaint or conducting a whistleblower proceeding, or in the adjudication of access to classified national security information, the relevant office may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, these offices should be able to retain this information as it may aid in establishing patterns of program violations or criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In addition, information obtained by these offices may relate not only to an investigation or proceeding under 10 CFR part 708 or to an adjudication of access to classified national security information, but also to matters under the jurisdiction of another agency. Such information is not readily segregable and should be retained for dissemination to appropriate law enforcement agencies charged with enforcing other criminal or civil law.

(4) The Office of Intelligence system of records is exempt from paragraphs (d), (e)(4)(G) and (H), and (f) as they relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and agency procedures relating to access to records and the content of information contained in such records. The reason for this exemption is that to notify an individual, at the individual's request, of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security, or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

Subsection (k)(5) Exemption

The (k)(5) exemption is for investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. The (k)(5) exemption applies only to the extent that disclosure would reveal the identity of a source who furnished information under an express promise of confidentiality. Where this is the case, the (k)(5) exemption applies, as follows:

Subsections Exempt Pursuant to (k)(5)

(1) Except for disclosures made under (b)(7) of the Act, 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the records and the name and address of the recipient. To the extent that such an accounting would lead directly or indirectly to the disclosure of the identity of a source as described above, the (k)(5) exemption is applicable.

(2) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Any information compiled solely for one of the purposes enumerated in (k)(5) e.g., determining access to sensitive or classified information is properly subject to the (k)(5) exemption when it reveals confidential sources or confidential information. An exemption from the foregoing is needed because:

a. It is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation of a complaint or concern that may involve whistleblowing or in the early stages of an adjudication of access to classified national security information.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated or the investigation, hearing or appeal is completed that the relevancy and necessity of such information can be established.

c. In investigating an employee complaint or concern or in conducting a whistleblower proceeding, or in the adjudication of access to classified national security information, the relevant office may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, these offices should be able to retain this information as it may aid in establishing patterns of program violations or criminal activity and provide leads for those law enforcement

agencies charged with enforcing other segments of criminal or civil law.

d. Information obtained by the Office of Employee Concerns, the Office of Hearings and Appeals, or the Office of Intelligence in an investigation or adjudication, may relate to the DOE proceeding as well as to matters under the jurisdiction of another agency. Such information is not readily segregable and in the interest of effective law enforcement, such information should be retained for dissemination to appropriate law enforcement agencies charged with enforcing other criminal or civil law.

(3) 5 U.S.C. 552a(c)(4) requires disclosure of corrections or notations of disputes in records made in accordance with subsection (d). These systems are exempt from paragraph (d)(2) of this section because to require the Office of Employee Concerns, the Office of Hearings and Appeals or the Office of Intelligence to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations and adjudications attempting to resolve questions of accuracy.

(4) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and agency procedures relating to access to records and the content of information contained in such records. The Office of Intelligence system of records is exempt from the foregoing provisions because to notify an individual, at the individual's request, of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security, or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

III. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any proposed rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It also will not have any indirect economic consequences. The DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that this proposed rule would not represent a major Federal action having significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends an existing regulation and does not change its environmental impact, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policy making discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant

intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This proposed rule does not contain any Federal mandate and, therefore, these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has not prepared a Family Policymaking Assessment.

I. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

IV. Public Comment

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed amendments to the DOE Privacy Act regulation as set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to that determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to 42 U.S.C. 7191(b), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 1008

Government employees, Investigations, Privacy, Security measures, Whistleblowing.

Issued in Washington, DC on May 21, 2001.

Richard H. Hopf,

Acting Director, Office of Management and Administration.

For the reasons set forth in the preamble, part 1008 of Chapter X of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation for part 1008 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. 552a.

2. Section 1008.12 is amended:

a. by adding paragraphs (b)(1)(ii)(K), (b)(1)(ii)(L), (b)(1)(ii)(M);

b. by adding paragraphs (b)(2)(ii)(N), (b)(2)(ii)(O), (b)(2)(ii)(P);

c. by adding paragraphs (b)(3)(ii)(P), (b)(3)(ii)(Q) and (b)(3)(ii)(R).

The additions specified above read as follows:

§ 1008.12 Exemptions.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(K) Employee Concerns Program Records (DOE–3)

(L) Whistleblower Investigation, Hearing and Appeal Records (DOE–7)

(M) Intelligence Related Access Authorization (DOE–15)

(2) * * *

(ii) * * *

(N) Employee Concerns Program Records (DOE–3)

(O) Whistleblower Investigation, Hearing and Appeal Records (DOE–7)

(P) Intelligence Related Access Authorization (DOE–15)

(3) * * *

(ii) * * *

(P) Employee Concerns Program Records (DOE–3)

(Q) Whistleblower Investigation, Hearing and Appeal Records (DOE–7)

(R) Intelligence Related Access Authorization (DOE–15)

* * * * *

[FR Doc. 01–14990 Filed 6–13–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 airplanes, that would have required modification of the electrical power center and modification and overhaul of certain alternating current power relays. That proposal was prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. This new action revises the proposed rule by expanding the applicability to include additional airplanes; removing certain requirements; and revising certain requirements and service information. The actions specified by this new proposed AD are intended to prevent a short in the cross-tie relay, which may result in in-flight electrical fires.

DATES: Comments must be received by July 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain

''Docket No. 99–NM–90–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (0800–0024); or Hamilton Sundstrand, Technical Publications, Mail Stop 302–9, Harrison Avenue, P.O. Box 7002, Rockford, IL 61125–7002. This information may be examined at the FAA, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–90–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 30, 1999 (64 FR 47149). That NPRM would have required modification of the electrical power center and modification and overhaul of certain alternating current (AC) power relays. That NPRM was prompted by reports indicating that the AC cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. That condition, if not corrected, may result in in-flight electrical fires.

Comments

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

Support for the NPRM

Two commenters support the NPRM.

Existing AD With Same Requirements

Two commenters request that the modification requirements of paragraph (a) of the NPRM supersede those of AD 89–07–08, amendment 39–6177 (54 FR 12589, March 28, 1989). One of the commenters also requests that a statement, ''unless previously accomplished,'' be added to paragraph (a) of the NPRM. The commenters state that the proposed modification duplicates the requirements of AD 89–07–08. One commenter states that the NPRM expands the effectivity of AD 89–07–08 to include airplane fuselage numbers up through 972.

The FAA partially agrees. The commenters are correct that the modification (reference McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980) required by paragraph (a) of the NPRM is already required by AD 89–07–08. The commenter is incorrect that the effectivity of AD 89–07–08 was expanded in the NPRM; no additional airplane fuselage numbers were added. For these reasons, the FAA finds that the modification requirements of paragraph (a) of the NPRM are not necessary. We have deleted those requirements in the supplemental NPRM.

Wording of Unsafe Condition

One commenter requests that the term ''cross-tie relay'' specified in the unsafe condition of the NPRM be revised to ''AC power relay.'' The commenter states that the unsafe condition should not single out one position of the affected AC power relays if the NPRM affects relays installed in any position (*i.e.,* cross-tie relays, generator relays, auxiliary power relays, and external power relays) as indicated in paragraph (a)(1) of the NPRM.

The FAA does not agree. In paragraph (a)(1) of the NPRM, the relay positions identified in the parenthetic are for clarification to identify the installed position of the relays. Most of the failures have occurred on the AC power relays installed in the cross-tie position. The six other relays (two each) at generators relays, auxiliary power relays, and external power relays are mounted in a vertical position; therefore, they are not as susceptible to the identified unsafe condition as the AC cross-tie relays. However, for interchangeability convenience, these six relays are modified to the P/N 914F567–4 configuration.

Incorrect Reference to Service Information

One commenter requests that the phrase ''in accordance with'' in paragraph (a)(2) of the NPRM be deleted. Paragraph (a)(2) of the NPRM reads, ''[r]eplace the Westinghouse alternating current power relays, P/N 914F567–3 or –4 with improved relays, P/N 9008D09 series, in accordance with McDonnell Douglas DC–9 Service Bulletin DC9–24–156, dated March 31, 1995.'' The commenter states Service Bulletin DC9–24–156 recommends modifying the AC power relays per Sundstrand Aerospace Service Bulletin AVB79–24–2; however, the Sundstrand service bulletin only describes procedures for modification of AC power relays, part number (P/N)

9008D09 series. The commenter also states that neither service bulletin addresses the modification or replacement of AC power relays, P/N 914F567–3 or –4.

The FAA agrees that neither McDonnell Douglas DC–9 Service Bulletin DC9–24–156, dated March 31, 1995, nor Sundstrand Aerospace Service Bulletin AVB79–24–2 describes procedures for doing the replacement required by paragraph (a)(2) of the NPRM. The correct source of service information for the required replacement is Chapter 24 of Boeing DC–9 or MD–80 Airplane Maintenance Manual (AMM), as applicable. In addition, we find that this replacement alone addresses the identified unsafe condition, and thus, the modification required by paragraph (a)(1) of the NPRM (reference Westinghouse Aerospace Service Bulletin 75–703, dated June 1977) is not necessary. We have revised paragraph (a) of the supplemental NPRM accordingly.

One commenter requests that the overhaul required by paragraph (b) of the NPRM be required per the applicable original equipment manufacturer overhaul maintenance manual (OMM). The commenter states that Westinghouse Service Bulletin 76–703, dated June 1977 (which was referenced in paragraph (b) of the NPRM as the appropriate source of service information), describes procedures for modification of AC power relays, P/Ns 914F567–3 and –4, but does not include overhaul instructions for AC power relays, P/N 9008D09 series.

The FAA agrees. For Sundstrand (Westinghouse) AC power relays, P/N 914F567–4, overhaul procedures are described in Chapter 24–20–46 of Westinghouse Overhaul Manual. For Sundstrand (Westinghouse) AC power relays, P/N 9008D09 series, overhaul procedures are described in Hamilton Sundstrand Component Maintenance Manual 24–20–87. We have revised paragraph (b) and added a new paragraph (c) of the supplemental NPRM accordingly.

Compliance Time of Overhaul

Two commenters request that the compliance time specified in paragraphs (b)(1) and (b)(2) of the NPRM be revised. The commenters note the compliance times specified in those paragraphs do not take into consideration AC power relays that have been previously modified, installed as modified AC power relays, or exceeded the proposed overhaul limit. One commenter suggests to initially require the overhaul within 5,000 hours (or 4 years) after the effective date of the AD, or within 7,000 or 12,000 hours from the last overhaul or modification per paragraph (a) of the AD. The second commenter suggests that, for AC power relays previously installed, a compliance time of ''prior to the accumulation of 7000 hours or 12000 hours (respectively) time since new or time since last overhaul and repeat at intervals not to exceed 7000 hours or 12000 hours (respectively).''

The FAA agrees with the commenters that AC power relays modified or installed before the effective date of this AD can be overhauled within 7,000 or 12,000 flight hours (respectively) after that modification or installation, or within 30 days after the effective date of this AD, whichever occurs later. We have revised paragraphs (b) and (c) (previously designated as (b)(1) and (b)(2) in the NPRM, respectively) of the supplemental NPRM accordingly. In addition, we have added a new paragraph (d) to the supplemental NPRM to allow airplanes on which the flight hours since modification or installation of the AC power relay cannot be determined, to overhaul within 30 days after the effective date of this AD.

One commenter requests that the FAA require a life limit of 6,000 flight hours on the affected AC power relays. The commenter believes that such a life limit would maintain an adequate level of safety for the affected fleet. The commenter states that it has deep concerns about the necessity of the NPRM. The commenter also states that ''The [overhaul] costs to industry would be overwhelming and the profit to Sundstrand would be tremendous.''

The FAA does not agree. We find that the replacement and repetitive overhauls required by this supplemental NPRM adequately address the identified unsafe condition. In addition, we find that the compliance times for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change to the supplemental NPRM is necessary with regards to this point.

Explanation of Change to Applicability Statement and Cost Impact

The Westinghouse AC power relays on certain McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes are identical to those on the affected Model DC–9 series airplanes and C–9 airplanes listed in the applicability of the original NPRM, and thus, may be subject to the identified unsafe condition of this supplemental NPRM. Therefore, the FAA has revised the applicability statement of the supplemental NPRM to include these additional airplanes. In addition, we have added the phrase ''equipped with Westinghouse alternating current power relays, part number (P/N) 914F567–3'' to exclude airplanes that have other relays. Furthermore, since ''Model DC–9 series airplanes'' includes Model C–9 airplanes, we have determined that listing Model C–9 airplanes in the applicability of this AD is not necessary. Therefore, we have removed any reference to ''Model C–9 airplanes'' from the supplemental NPRM.

Based on the changes described above, the FAA has revised the Cost Impact section of the supplemental NPRM accordingly.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,150 McDonnell Douglas Model DC–9 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 690 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 20 work hours per relay (7 relays per airplane) to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,965 per relay. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $15,286,950, or $22,155 per airplane.

It would take approximately 56 work hours per relay (7 relays per airplane) to accomplish the proposed overhaul, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,965 per relay. Based on these figures, the cost impact of the overhaul proposed by this AD on U.S. operators is estimated to be $25,719,750, or $37,275, per airplane, per overhaul cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 99–NM–90–AD.

Applicability: Model DC–9 series airplanes and Model MD–88 airplanes, equipped with Westinghouse alternating current (AC) power relays, part number (P/N) 914F567–3; 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 prevent a short in the cross-tie relay, which may result in in-flight electrical fires, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the Westinghouse AC power relays, P/N 914F567–3 (i.e., cross-tie relays, generator relays, auxiliary power relays, and external power relays), to a –4 configuration or with a Sundstrand (Westinghouse) relay, P/N 9008D09 series, per Chapter 24 of Boeing DC–9 or MD–80 Airplane Maintenance Manual (AMM), as applicable.

Repetitive Overhauls

(b) For airplanes equipped with Sundstrand (Westinghouse) relay, P/N 914F567–4: Overhaul the relay per Chapter 24–20–46 of Westinghouse Overhaul Manual at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Repeat the overhaul every 7,000 flight hours.

(1) For AC power relays replaced per paragraph (a) of this AD: Overhaul within 7,000 flight hours after accomplishing that replacement.

(2) For AC power relays modified or installed before the effective date of this AD: Overhaul within 7,000 flight hours after that modification or installation, or within 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraph (d) of this AD.

(c) For airplanes equipped with Sundstrand (Westinghouse) relay, P/N 9008D09 series: Overhaul the relay per Hamilton Sundstrand Component Maintenance Manual 24–20–87 at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Repeat the overhaul every 12,000 flight hours.

(1) For AC power relays replaced per paragraph (a) of this AD: Overhaul within 12,000 flight hours after accomplishing that replacement.

(2) For AC power relays modified or installed before the effective date of this AD: Overhaul within 12,000 flight hours after that modification or installation, or within 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraph (d) of this AD.

(d) For airplanes on which the flight hours since modification or installation of the AC power relay cannot be determined: Overhaul within 30 days after the effective date of this AD. Repeat the overhaul at the times indicated in paragraph (b) or (c) of this AD, as applicable.

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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 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.

Issued in Renton, Washington, on June 7, 2001.

Donald L. Riggin,

Acting Manager,, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14940 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 301

[REG–107186–00]

RIN 1545–AY50

Electronic Payee Statements; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Rescheduled public hearing on proposed rulemaking.

SUMMARY: This document reschedules the public hearing on proposed regulations relating to voluntary electronic furnishing of payee statements on Forms W–2.

DATES: The public hearing is being held on Wednesday, July 25, 2001, at 10 a.m. Outlines of oral comments must be received by July 6, 2001.

ADDRESSES: The public hearing is being held in room 4716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: Regulations Unit CC (REG–107186–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–107186–00), Courier's Desk, Internal Revenue Service, 1111

Constitution, Avenue NW., Washington, DC. Alternatively, taxpayers may submit outlines of oral comments electronically directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Laura Nash, (202) 622–4910; concerning submissions, Sonya M. Cruse, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Wednesday, February 14, 2001 (66 FR 10247), announced that a public hearing was being held on June 4, 2001, regarding proposed regulations under sections 6041 and 6051. A hearing cancellation document was inadvertently published in the **Federal Register** on May 23, 2001 (66 FR 28408). Thus, the IRS is rescheduling the public hearing for Wednesday, July 25, 2001, at 10 a.m. in room 4716. Outlines of oral comments must be received by July 6, 2001.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 01–14665 Filed 6–13–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–025]

RIN 2115–AA97

Safety Zone: Air and Water Show, Gary, IN

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for an air show at Miller Beach at Marquette Park, Gary, Indiana. This action is necessary to provide for the safety of life and property on the surrounding waters during this event. This action is intended to restrict vessel traffic in a portion of Lake Michigan.

DATES: Comments and related material must reach the Coast Guard on or before June 29, 2001.

ADDRESSES: You may mail comments and related material to: Commanding Officer, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521. Marine Safety Office Chicago 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 MSO Chicago between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Chicago, Illinois 60521 (630) 986–2175.

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 on this rulemaking (CGD09–01–025), indicate the specific section of this proposal to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. If you would like to know they reached us, please enclose a stamped, self-addressed envelope or postcard.

The Coast Guard will consider all comments 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 request a public meeting by writing to MSO Chicago at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone for the Gary Indiana air show occurring on July 20–22, 2001. The proposed safety zone encompasses the waters off Miller Beach at Ogden Dunes bounded by the arc of a circle with a five nautical mile radius with its center in approximate position 41°37′01″ N, 087°15′0″ W.

Based on recent accidents that have occurred in other Captain of the Port zones and the hazards associated with this event, the Captain of the Port has determined that the air show in close proximity to watercraft poses a significant risk to public safety and property. The likely combination of large numbers of recreational boaters, and congested waterways could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement within a 5 nautical mile radius of Miller Beach will help ensure the safety of persons and property at this event and help minimize the associated risk.

Establishing a temporary safety zone by notice and comment rulemaking gives the public the opportunity to comment on the proposed zone, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has not previously received notice of any impact caused by these events.

Discussion of Proposed Rule

The proposed safety zone would be in effect from 8:15 a.m. (local) to 5 p.m. (local), July 20 through July 22, 2001. Vessels may not enter, remain in, or transit through this safety zone during this time frame unless authorized by the Captain of the Port Chicago, or designated on scene Coast Guard patrol personnel, as provided for in 33 CFR 165.23.

This safety zone will include the entrance to the Burns International Harbor and the entrance to the Portage-Burns Waterway. Vessels will be prohibited from entering or exiting either of these while the safety zone is in effect. Vessels may contact the Captain of the Port Chicago or the designated on scene representative if they wish to enter or transit through the safety zone via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

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 this rule 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 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse

impact to mariners from the zones' activation.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for several hours on the days of the event. Vessel traffic can safely pass outside the proposed safety zone during the events. In cases where traffic congestion is greater, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Chicago. Before the effective period, we will issue maritime advisories widely available to users of the Port of Chicago by the Ninth Coast Guard District Local Notice to Mariners, Marine information broadcasts, and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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

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

Environment

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

Indian Tribal Governments

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard 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 and 160.5; 49 CFR 1.46.

2. Add § 165.T09–914 to read as follows:

§ 165.T09–914 Safety Zone: Lake Michigan, Gary, IN.

(a) The following area is designated a safety zone:

(1) *Location.* The waters off Miller Beach at Ogden Dunes, Lake Michigan, bounded by the arc of a circle with a 5 nautical mile radius with its center located at approximate position: 41°37′01″ N, 087°15′0″ W.

(2) *Effective period.* This section is effective daily from 8:15 a.m. (local) to 5 p.m. (local) on July 20–22, 2001.

(b) *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 designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) The safety zone encompasses a portion of Lake Michigan. This safety zone is being established to protect the boating public in the vicinity of an air and water show in Gary, Indiana. In

cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 6, 2001.

R.E. Seebald,

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

[FR Doc. 01–15049 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC83

Special Regulations; Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rulemaking will add the communities of Dot Lake, Tetlin, Tanacross, Northway (including Northway, Northway Village and Northway Junction) and Healy Lake as resident zone communities for Wrangell-St. Elias National Park (WRST). This action is in response to instructions from the Secretary of the Interior and requests by the Park Subsistence Resource Commission (SRC), the Southcentral Alaska Federal Subsistence Regional Advisory Council, and the affected communities. The addition of these communities to the resident zone will allow residents to engage in subsistence activities in the park without a National Park Service (NPS) subsistence permit.

DATES: Written comments will be accepted by mail, fax, or electronic mail through August 13, 2001.

ADDRESSES: Comments should be addressed to: Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Fax (907) 822–7216. Email: Devi_Sharp@nps.gov.

FOR FURTHER INFORMATION CONTACT: Devi Sharp, Chief of Natural Resources, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Telephone (907) 822–5234.

SUPPLEMENTARY INFORMATION:

Background

In 1981, the NPS published regulations in 36 CFR, part 13 to implement the Alaska National Interest Lands Conservation Act (ANILCA) for the national park system units in Alaska. Because ANILCA restricted subsistence use in national parks to local rural residents, the implementing regulations included a method for identifying these residents. The primary method was to designate nearby communities with significant concentrations of subsistence users as ''resident zone communities''. All of the residents in these communities are considered to be local rural residents and, therefore, eligible to use the park for subsistence purposes in accordance with regulations adopted or approved by the Department of Interior. Initially 18 communities near the park were designated as resident zone communities. At the time those communities were selected there were few published sources of information documenting subsistence use of park resources. The authors of the regulations had to rely heavily on the input of local residents regarding their subsistence uses of the park to determine which communities or areas would be eligible for resident zone status. Some communities near the park, including Dot Lake, Tetlin, Tanacross, Northway, and Healy Lake were not fully represented at the meetings when testimony was taken, and were not included in the resident zone when the final part 13 rule was published on June 17, 1981 (46 FR 31836). Section 13.43 provides a method and criteria (see following section, ''Application of Criteria'') for adding communities to the resident zone. The residents of Dot Lake, Tetlin, Tanacross, Northway, and Healy Lake have tried, since the regulations were published, to be added in accordance with § 13.43. This proposed rule responds to that effort.

Origin of Requests To Add New Communities

Discussions by the SRC leading to a formal recommendation to add Northway to the Wrangell-St. Elias National Park resident zone were recorded in 1985. In August 1986, the Subsistence Resource Commission (SRC) forwarded their first recommendation to the Secretary of the Interior requesting that Northway be included as a resident zone community. The State of Alaska responded to the SRC in September of 1986 indicating that the issue was an NPS decision and that the State could not act directly to implement the recommendation. The Secretary of the Interior responded to the request in May of 1988. His response, in part, was,

> In order to designate the community of Northway as a resident zone community, NPS would have to determine whether or not a significant concentration of people who permanently reside in this community have a history of customary and traditional subsistence use in the park * * *

Then, in 1989 the State Regional Advisory Council for the Interior and Southcentral regions of Alaska recommended to the Board of Game the addition of Northway to the resident zone for Wrangell-St Elias National Park. In response to the recommendation the US Fish and Wildlife Service director, who had been delegated the responsibility to review and respond to regional council recommendations, replied;

> The Subsistence Resource Commission for Wrangell-St. Elias National Park did not provide any documentation or indication that such documentation existed in association with their recommendation. Therefore, the recommendation was denied and will not be reconsidered until data is available to indicate a resident zone designation is warranted.

Again in December of 1991, the SRC forwarded a recommendation to the Secretary for the addition of Northway to the resident zone. The Secretary's response (July 1992) was, in part,

> * * * the NPS must first verify that a significant concentration of local rural residents with a history of subsistence use of the park's resources currently resides within the community of Northway. If this ''significant concentration'' requirement is verified, the NPS will define the boundaries of the community for resident zone designation purposes, and initiate a rulemaking process to add Northway as a park resident zone community.

After establishment of the Federal Subsistence Regional Advisory Council system in 1993, the request to add Northway and Tetlin was forwarded by the Southcentral and Eastern Interior Subsistence Regional Advisory Councils to the Federal Subsistence Board, as well. The response to the regional advisory council (February 1994) came from the Regional Director of NPS. His response, in part, said,

> The park is currently seeking funding to conduct the surveys necessary to assess Northway's possible addition as a resident zone community. Before NPS considers conducting any studies regarding the community of Tetlin and its potential designation as a resident zone community, consultation with the SRC is warranted. The Federal Subsistence Board is currently gathering information on the customary and traditional uses of large mammal species in

the Upper Tanana region by communities of that region, including Tetlin and Northway. We expect the information accumulated as a result of that process will contribute to the question of whether the community of Northway had a customary and traditional subsistence use of the lands within the park.

In 1994, information documenting the customary and traditional use of resources by residents of these communities was compiled for the Federal Subsistence Board. During the process, residents of these communities contributed information regarding their use of park resources that had not previously been documented in subsistence studies. This information, coupled with previous study data, indicated that the addition of these communities into the resident zone had substantial merit.

The recommendation to add additional communities to the Wrangell-St. Elias National Park resident zone evolved across a period of 10 years. The Subsistence Resource Commission for the park as well as state and federal regional advisory groups supported the inclusion of new communities to the resident zone. Formal recommendations to regulators as well as meeting minutes indicate the overall support at the public advisory group level. These recommendations have been the subject of public testimony for the past 10 years. Minutes from meetings of the SRC, regional advisory councils and local advisory committees provide a public record reflecting the high level of support for these proposals in the villages. Comments submitted by the villages regarding subsistence issues in the state also reflect their sentiment on this issue.

Studies and Information Used

In determining which additional communities outside the park boundary were eligible for inclusion in the resident zone, the NPS considered all relevant evidence concerning these communities' qualifications. NPS reviewed studies of the subsistence use of resources in the region, independently analyzed data collected in such studies and considered mapped information developed in the past decade. NPS considered comments received from the general public, the state of Alaska and the local and regional advisory groups. NPS also relied on the knowledge of its own local field staff and the considerable traditional knowledge of the people who inhabit the region.

Alternatives Considered and Rejected

The NPS considered issuance of permits (pursuant to 36 CFR 13.44) to all eligible subsistence users in the villages of Dot Lake, Tetlin, Tanacross, Northway, and Healy Lake. This alternative was rejected, however, because of the burden this process would place on the subsistence user and the large administrative workload the NPS would shoulder as a result of taking such an action. For NPS to determine which individuals or households are eligible for a permit each household in these communities would be required to document, in detail, their subsistence use of the park. Previous attempts by NPS to encourage eligible households to come forward for permits have elicited no response. The Native people in these villages find this process foreign to their culture and choose not to participate in it. The NPS is seeking to avoid implementation of such an invasive process when it may clearly and legitimately be avoided. This decision is supported in House and Senate discussions prior to passage of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). (S. Rep. No. 96–413, supra, 170–71; 126 Cong. Rec at H 10541).

Application of Criteria

NPS regulations in 36 CFR 13.43(a)(2) set forth the criteria by which resident zone communities or areas may be added or deleted. This section states, in part, that a resident zone shall include,

> The communities or areas near a national park or monument which contain significant concentrations of rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses * * * have customarily and traditionally engaged in subsistence uses within a national park or monument.

The preamble to these regulations (46 FR 31841, June 17, 1981) clarifies how the agency intended the ''significant concentration'' criteria be interpreted. As a result of public comment on the 1981 proposed rule, NPS recognized that there would necessarily be limitations in any numerical data developed by NPS to make such decisions. NPS determined that an evaluation of communities or areas eligible for inclusion in a resident zone would need to consider the unique variables associated with each area, many of which cannot be reduced to a numerical value.

The 1981 preamble notes that, in establishing the criteria for adding and deleting resident zones, NPS chose to substitute the word ''significant'' for ''preponderant'' in the phrase ''communities and areas * * * which contain significant concentrations of rural residents who, without the use of aircraft * * * have customarily and traditionally engaged in subsistence uses within a national park or monument.'' The term ''preponderant'' implied more numerical precision than is possible without an extensive standardized study of rural villages in the state. The term ''significant'' was adopted to clarify that the subsistence experts must exercise some discretion in examining the nature and needs of each community.

Furthermore, the National Park Service stated that concentrations may be ''significant'' in relative quantity (predominant numbers) or quality (e.g., cultural vitality, community leadership and influence)(46 FR 31850, June 17, 1981). Again, NPS recognized the variability in the subsistence harvest of resources across the state and the incomparable factors that define individual communities and people in each region that should be considered in such an evaluation.

Studies conducted in these communities that attempt to quantify the subsistence use of resources generally only represent a period of use of one year, and usually rely on a sample of the community to produce a harvest picture for the community as a whole. Although these data make important contributions to the literature on subsistence use of resources in this region, the studies were not designed to address the specific question of use of resources in the national park. Therefore, this rulemaking does not rely solely on the limited numeric data generated by these studies. Instead, this analysis focuses on the quality of the use and the importance of resource harvests to the Native people of the region.

Analysis

Dot Lake, Tetlin, Tanacross, Northway, and Healy Lake are rural Alaska Native villages consisting, primarily, of Athabaskan Indian people. According to the 1990 census, the communities contain 58, 95, 94, 77, and 85% Athabaskan Indians, respectively. These Athabaskans are descendants of one of a number of Ahtna, Tanacross and Upper Tanana bands that harvested resources and otherwise occupied the Wrangell-St. Elias National Park area. The non-Native populations of these communities were generally born outside of the state, with an average length of residency of 11 years (based on a 1987 survey).

The Upper Tanana, Tanacross and Ahtna Athabaskan people who reside in these communities are recognized as two of nine linguistic subgroups of Interior Alaska. Historically, these people thought of themselves in terms

of small, local bands constituting both social and geographical units. Bands generally consisted of a group of families with a defined territory. Through marriage, geography and common interests, bands would be sufficiently interlocked to consider themselves part of a larger unit, or regional band (i.e., Upper Tanana, Tanacross or Ahtna).

At the turn of the century there were at least six different bands of central and upper Tanana Athabaskans between the White River and Healy Lake on the Tanana River; and two upper Ahtna bands occupying the area between the Mentasta and Wrangell Mountains. These areas roughly include the northern one-third of the Wrangell-St. Elias National Park and Preserve.

Each band was associated with a specific territory within the region. However, the people were seasonal migrants and households with extensive kin connections and might hunt over large areas of another band's territory. At no one time was the whole area occupied, but it did constitute the hunting territory of the group. Early anthropologists visiting the region described the bands as something of a cultural continuum consisting of a series of interlocking local bands whose culture varied only in minor details from one to the next, rather than as discrete units. A great deal of communication and interaction among the bands occurred. The diversity of resources available was often limited in a given band's territory, necessitating cooperation with other bands for use of their lands and resources.

The Athabaskan culture is based on a flexible system of exchange. Territory, resources and people readily crossed band territories as the need arose. Relations between the Ahtna and Upper Tanana and Tanacross Indians were close enough to allow exchange of goods, information and food when needed. Marriages across lines resulted in a net of kin ties that can be traced today through the Native villages in the region.

The Athabaskan people were seasonal fish and wildlife hunters and gatherers, moving from one temporary dwelling to another as necessary to exploit local resources. Their movement to fall, winter, spring and summer camps was a common practice. As hunters and gatherers in a relatively harsh environment, survival commonly depended upon their ability to know and utilize alternative plant and animal resources when conditions warranted. Often, when resources were in short supply, travel to distant places to harvest resources in another band's territory was necessary.

Ketchumstuk, Mansfield and Batzulnetas are sites of seasonal camps important to the Athabaskan people in this region. Caribou fences located near Ketchumstuk and Mansfield provided a means of harvesting meat for a large number of people of both Upper Tanana, Tanacross and Ahtna descent. Likewise, Batzulnetas is one of the few close places where salmon can be harvested; its resources are used by many through an extensive sharing network. Batzulnetas, located within the boundaries of Wrangell-St Elias National Park, was occupied continuously for more than a century until about 1940.

The late nineteenth to early twentieth century was a time of accelerated cultural change for Interior Athabaskans. From the time of the first non-Native-contact (about 1880), material goods, technological changes, imposed harvest limits and epidemic diseases introduced in the region caused major changes in the Native culture and subsistence lifestyle. Traditional dwellings were abandoned, people adapted to new technology and semi-permanent riverine villages sprang up in place of seasonal camps. Seasonal movements were then reduced to a dual pattern of winter villages and summer fish camps. During that time Batzulnetas continued to be occupied, at least seasonally, for the purpose of subsistence hunting and fishing.

Mining had a tremendous impact on subsistence hunting during the period. In 1913, several thousand people flooded into the region via the White, Tanana and Copper Rivers during the ''Chisana stampede'' in search of gold. Miners largely employed Native people as hunters or hunted themselves for food. Depletion of wildlife resources due to the large influx of people, here as well as in other parts of the state, prompted the implementation of harvest regulations in 1926 that affected the subsistence harvests of resources by Native people in the region.

Mandatory schooling imposed in about 1950, seasonal labor opportunities and steady access to trade goods contributed to a more sedentary lifestyle for most Native people in the region. By then Tetlin, Tanacross, Northway, and Healy Lake had become permanent settlements at or near their modern day locations. Dot Lake was evolving from a seasonal camp for Alaska Highway workers to a village composed primarily of Alaska Native people of Ahtna, Upper Tanana and Tanacross Athabaskan descent who migrated there from several local villages.

After World War II, Alaska gained statehood (1959). Resource development prospered, accelerating the Native land claims process. The trans-Alaska oil pipeline was built from 1974 to 1977, causing economic and demographic changes that continued years after completion. Capital improvements in urban and rural areas of the state funded primarily by oil revenues created employment opportunities. Rapid population growth followed the development of support industries and the growth of state and federal infrastructures. The large influx of people into the region resulted in an increasingly more common imposition of regulatory prohibitions on the harvest of certain species, the season of harvest and so on to protect a dwindling supply of game. Each of these factors in some respect contributed to changes in the subsistence way of life.

Despite the changes that have occurred, in recent decades, the Native people of these villages still identify with the places where they were raised and from which their parents came. Places such as Batzulnetas, Mansfield and Ketchumstuk remain of primary importance to Athabaskan people in these communities. Although none of these sites is permanently occupied today, they continue to be used seasonally for the purpose of hunting, fishing and gathering within the current regulatory structure.

Although some new technological advances have been employed by Native subsistence users, the use of aircraft for harvest of resources seldom occurs. Only a fraction of the people in these communities have used an aircraft in an effort to harvest resources. Documented instances did not occur in the park.

The amount and diversity of resources harvested are two measures that distinguish these five subsistence communities from others. They harvest a wide variety of resources (caribou, moose, fish, and so forth) typical of rural subsistence users across the state; and they are high harvesters of resources. The number of species harvested in these communities rank among the highest of any community in the region. Study data indicate that residents in the five communities harvest salmon, moose and caribou from Batzulnetas. Other species may be harvested from that area as well.

Exchange and gifting of resources harvested for subsistence purposes remain a central component of the Athabaskan culture. Such exchanges occur in the context of a potlatch, to reciprocate for the assistance given by another, or to provide native foods for elders and those unable to hunt.

Reciprocal relations and gifting strengthen kinship ties between the people of these communities and educate the children in the ways of the Athabaskan people. Exchanges are made in the form of harvested resources, use of technology (such as a fishwheel) and the offer of the use of preferred fishing or hunting sites, such as Batzulnetas.

Exchange and gifting result in the distribution of resources throughout households in local communities although the actual harvest may have been accomplished by only a few. Examples of the gifting and exchange of resources harvested from Batzulnetas are documented in the literature for Dot Lake Tetlin, Tanacross, Northway, and Healy Lake.

Conclusion

Dot Lake Tetlin, Tanacross, Northway, and Healy Lake are all rural communities near Wrangell-St. Elias National Park and Preserve. The communities contain a significant concentration of Athabaskan Indians whose lifestyle is centered around the subsistence harvest of resources in the same areas their ancestors used for centuries. This area includes (approximately) the northern third of Wrangell-St. Elias National Park and Preserve, which is composed of both park lands and preserve. Residents of these communities do not use aircraft in the subsistence harvest of resources in this area.

Effects of Proposed Regulation

The purpose of this rule is to add five communities to the subsistence resident zone for Wrangell-St.Elias National Park in accordance with the procedure at 36 CFR 13.43(b). This action is in response to instructions from the Secretary of the Interior and requests from several FACA advisory groups and individual park subsistence users. A collateral administrative purpose consistent with the Secretary's instructions is to add a paragraph to § 13.73 establishing a method for determining community and area boundaries for resident zone purposes.

Drafting Information

The primary authors of this regulation are Jay Wells, Wrangell-St.Elias National Park and Preserve, and Janis Meldrum and Paul Hunter, Alaska System Support Office, Anchorage, Alaska.

Compliance With Other Laws

Regulatory Planning and Review (EO 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or tribal governments or communities. The net effect of adoption of this rule would be to reduce costs by eliminating the need for subsistence users to apply for a permit. The cost saving would accrue to the affected user groups and the park through reduction of actual and potential administrative costs.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. There will be no change in the manner or substance of interaction with other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Current and potential subsistence permittees will continue to be eligible under the resident zone system.

(4) This rule does not raise novel legal or policy issues. This rule is the direct consequence of an existing regulatory method for administering the resident zone system. While the decision concerning adding or deleting a particular community could be controversial, the regulatory process for making the decision is well established in existing regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic consequences of this rule will be to reduce administrative costs for private citizens and for the park. The permitting process that would be eliminated for the residents of five communities operates directly between individual subsistence users and the park. Therefore, there is no impact on small entities and a Regulatory Flexibility Analysis and Small Entity Compliance Guide are not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule applies to individual subsistence users. It has no applicability to small businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will reduce costs for private citizens and the federal government. It will eliminate the need for subsistence users in five communities to apply to the National Park Service for a subsistence permit. The rule will eliminate application costs to individual subsistence users such as the cost of a phone call, postage, or travel to the park office, and will reduce the current and potential administrative processing costs for the park.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule does not affect foreign trade. The interaction of the subsistence economy and the general economy is unchanged by this rule.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (EO 13211) on regulations significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this interim rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule affects the permitting process between individual subsistence users and the park. There is no involvement of small governments in this relationship. The subsistence activities affected occur only on federal public lands within a national park.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will modify regulations in a manner that reduces the regulatory impact on private citizens, and is, therefore, excluded from EO 12630.

Federalism (EO 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule applies to the permitting relationship between individual subsistence users and the park for activities occurring on federal public lands within the park. The rule does not change or impact the relationship of the park with State and local governments.

Civil Justice Reform (EO 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required. This rule will eliminate permit applications for residents of the five affected communities, thus reducing the level of previously approved information collection (see 46 FR 31854) associated with subsistence management in the park.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. However, Environmental Assessments (EA's) and findings of no significant impact (FONSI's) have been completed and are on file in the NPS office at 2525 Gambell St, Anchorage, AK 99503 and at Wrangell-St. Elias National Park and Preserve offices in Copper Center.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2 there are no effects on federally recognized Indian tribes. This rule applies to individual subsistence users. If the rule is adopted, the result will be an elimination of the requirement for certain subsistence users to apply for a permit to engage in allowable subsistence activities in the park. Subsistence use on federal public lands is not managed as a tribal activity and the federal subsistence program does not apply on Native owned lands.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 13.73 [amended]. (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: Exsec@ios.doi.gov.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. You may also comment via the Internet to Devi_Sharp@nps.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''ATTN: RIN 1024–AC83'' and your name and address in your Internet message. Fax: (907) 822–7216. Finally, you may hand-deliver comments to Wrangell-St. Elias National Park and Preserve, Mile 105.5 Old Richardson Highway, Copper Center, Alaska. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances I which we would withhold from the rulemaking record a respondent's identity as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR part 13 is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart C—Special Regulations—Specific Park Areas in Alaska

1. The authority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; § 13.65 also issued under 16 U.S.C. 1a–2(h), 1361, 1531.

2. Amend § 13.73 as follows:

a. By revising the heading of paragraph (a)(1) and by adding the following entries in alphabetical order to the list of communities in paragraph (a)(1);

b. By redesignating paragraph (a)(2) as paragraph (a)(3);

c. By adding a new paragraph (a)(2);

d. By revising the heading of newly redesingated paragraph (a)(3).

The addition and revisions read as follows:

§ 13.73 Wrangell-St. Elias National Park and Preserve.

(a) Subsistence—(1) What communities and areas are included in the park resident zone?

* * * * *

Dot Lake

* * * * *

Healy Lake

* * * * *

Northway/Northway Village/Northway Junction

* * * * *

Tanacross

* * * * *

Tetlin

* * * * *

(2) How are boundaries determined for communities added to the park resident zone? Boundaries for communities and areas added to the park resident zone will be determined by the Superintendent after consultation with the affected area or community. If the Superintendent and community are not able to agree on a boundary within two years, the boundary of the area or

community added will be the boundary of the Census Designated Place, or other area designation, used by the Alaska Department of Labor for census purposes for that community or area. Copies of the boundary map will be available in the park headquarters office.

(3) What communities are exempted from the aircraft prohibition for subsistence use?

* * * * *

Dated: June 5, 2001.

Marshall Jones, Jr.,

Acting Assistant to the Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 01–14787 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE053–1029b; FRL–6996–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Conversion of the Conditional Approval of the NO_X RACT Regulation to a Full Approval and Approval of NO_X RACT Determinations for Three Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Delaware State Implementation Plan (SIP) submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). These revisions were submitted to satisfy the condition imposed by EPA in its conditional limited approval of Delaware's regulation requiring reasonably available control technology (RACT) for major sources of nitrogen oxides (NO_X). EPA is proposing to convert its conditional limited approval of Delaware Regulation 12, Control of NO_X Emissions, to a full approval. EPA is also proposing to approve three source-specific NO_X RACT determinations. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 16, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, and Melik Spain, (215) 814–2299, at the EPA Region III address above, or by e-mail at *quinto.rose@epa.gov* and *spain.melik@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action with the same title that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 31, 2001.

Elaine B. Wright,

Acting Regional Administrator, Region III.

[FR Doc. 01–14899 Filed 6–13–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6994–5]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 36

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list, and is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. This rule proposes to add 10 new sites to the General Superfund Section of the NPL. These sites will be assessed to determine the nature and extent of public health and environmental risks associated with them, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before August 13, 2001.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW., Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov.* E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What Are CERCLA and SARA?
B. What Is the NCP?
C. What Is the National Priorities List (NPL)?

D. How Are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. How Are Site Boundaries Defined?
G. How Are Sites Removed From the NPL?
H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?
I. What Is the Construction Completion List (CCL)?
II. Public Review/Public Comment
A. Can I Review the Documents Relevant to This Proposed Rule?
B. How Do I Access the Documents?
C. What Documents Are Available for Public Review at the Headquarters Docket?
D. What Documents Are Available for Public Review at the Regional Dockets?
E. How Do I Submit My Comments?
F. What Happens to My Comments?
G. What Should I Consider When Preparing My Comments?
H. Can I Submit Comments After the Public Comment Period Is Over?
I. Can I View Public Comments Submitted by Others?
J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?
III. Contents of This Proposed Rule
A. Proposed Additions to the NPL
B. Status of NPL
IV. Executive Order 12866
A. What Is Executive Order 12866?
B. Is This Proposed Rule Subject to Executive Order 12866 Review?
V. Unfunded Mandates
A. What Is the Unfunded Mandates Reform Act (UMRA)?
B. Does UMRA Apply to This Proposed Rule?
VI. Effect on Small Businesses
A. What Is the Regulatory Flexibility Act?
B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?
VII. National Technology Transfer and Advancement Act
A. What Is the National Technology Transfer and Advancement Act?
B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?
VIII. Executive Order 12898
A. What Is Executive Order 12898?
B. Does Executive Order 12898 Apply to This Proposed Rule?
IX. Executive Order 13045
A. What Is Executive Order 13045?
B. Does Executive Order 13045 Apply to This Proposed Rule?
X. Paperwork Reduction Act
A. What is the Paperwork Reduction Act?
B. Does the Paperwork Reduction Act Apply to this Proposed Rule?
XI. Executive Orders on Federalism
What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?
XII. Executive Order 13175
What is Executive Order 13175 and Is It Applicable to this Proposed Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425© of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

• The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

• EPA determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on December 1, 2000 (65 FR 75179).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of May 21, 2001, the Agency has deleted 232 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of May 21, 2001, EPA has deleted portions of 23 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) The site qualifies for deletion from the NPL.

As of May 21, 2001, there are a total of 766 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8127.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–110, Seattle, WA 98101; 206/553–6699.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed sites; a Documentation Record for the sites describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 10 new sites to the NPL; all to the General Superfund Section of the NPL. The sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 10 sites to the NPL; resulting in an NPL of 1,236 final sites; 1,076 in the General

Superfund Section and 160 in the Federal Facilities Section. With this proposal of 10 new sites, there are now 67 sites proposed and awaiting final agency action, 61 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,303. (These numbers reflect the status of sites as of May 21, 2001. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is 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.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a 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.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. The RFA does not apply to NPL listings (See 65 FR 46135 (July 27, 2000)). The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule for which an agency must publish a notice of general rulemaking under the Administrative Procedure Act or any other statute. Under RFA section 601(2), however, the term ''rule'' means any rule for which the agency publishes a general notice of rulemaking but does not include a rule of ''particular applicability relating * * * to facilities * * *'' 5 U.S.C. 601(2). Here, each proposed listing is based on determinations unique to individual sites and each of the proposed listings applies only to one facility or site. Consequently, each proposed listing, if finalized will be a rule of particular applicability and thus, the RFA does not apply to the proposed listing of these individual sites on the NPL.

Moreover, the listing of these individual sites on the NPL will not impose any obligations on small entities or any other identifiable group. The proposed rule would establish no standards or a regulatory regime that any small entity must meet. The proposed listings will impose no liability or costs on any small entity (65 FR 46135 (July 27, 2000)). Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a).

Any such liability exists no matter whether the site is listed on the NPL.

VII. National Technology Transfer and Advancement Act

A. What Is the 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.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

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.

B. Does Executive Order 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

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.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

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 rules, 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).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XII. Executive Order 13175

What Is Executive Order 13175 and Is It Applicable to This Proposed Rule?

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this proposed rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. EPA will

analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

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.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 36, GENERAL SUPERFUND SECTION

State	Site name	City/county
CA	Casmalia Resources	Casmalia.
IL	Matthiessen and Hegeler Zinc Company	LaSalle.
MS	American Creosote Works, Inc	Louisville.
NY	MacKenzie Chemical Works, Inc	Central Islip.
PA	Valmont TCE	Hazle Township and West Hazleton.
PA	Watson Johnson Landfill	Richland Township.
TX	Patrick Bayou	Deer Park.
TX	R & H Oil Company	San Antonio.
UT	Eureka Mills	Eureka.
VT	Ely Copper Mine	Vershire.

Number of Sites Proposed to General Superfund Section: 10.

List of Subjects in 40 CFR Part 300

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 1, 2001.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 01–14617 Filed 6–13–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 64

RIN 3067–AD18

Changes to General Provisions and Communities Eligible for the Sale of Insurance That Include Future Conditions Flood Hazard Information on Flood Maps

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This Proposed Rule will revises the National Flood Insurance Program (NFIP) regulations to include definitions for future conditions hydrology and for the floodplains that may be shown on Flood Insurance Rate Maps (FIRMs), for informational purposes at the request of the community, to reflect future conditions hydrology; and establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs.

DATES: We invite comments on this Proposed Rule. Please submit written comments on or before August 13, 2001.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC; facsimile (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, 500 C Street SW., Washington, DC 20472; by telephone at (202) 646–3461, by facsimile at (202) 646–4596 (not toll-free calls), or by e-mail at *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

It was the expressed intent of the U.S. Congress, in enacting the Flood Insurance Act of 1968, to ''encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses, and guide the development of proposed future construction, where practicable, away from locations which are threatened by flood hazards * * *'' 42 U.S.C. 4001(e). These proposed revisions to the NFIP regulations are a result of the continuing reappraisal of the NFIP for the purpose of encouraging sound floodplain management to reflect that intent.

Historically, flood hazard information presented on NFIP flood maps has been based on the existing conditions of the floodplain and watershed. When the

mapping of flood hazards was initiated under the NFIP, the intent was to reassess each community's flood hazards periodically and, if needed, revise the flood map for that community. Flood hazards may change significantly in areas experiencing urban growth. For example, in *Flood Insurance Study Guidelines and Specifications for Study Contractors* (FEMA 37, January 1995) specifies that flood hazard determinations should be based on conditions that are planned to exist in the community within 12 months following completion of the draft Flood Insurance Study (FIS). Examples of future conditions to be considered in the context of FEMA 37 are public works projects in progress, including such as channel modifications, hydraulic control structures, storm-drainage systems, and various other flood protection projects. These are projects that will be completed in the near future for which completion can be predicted with a reasonable degree of certainty and their completion can be confirmed prior to the new or revised flood map becoming effective. By contrast, future land-use development, such as urban growth, is uncertain and difficult to predict, and is not considered in the context of the FEMA guidelines.

Communities experiencing urban growth and other changes have expressed a desire to use future conditions hydrology in regulating watershed development. While some communities do regulate based on future development, others are hesitant to enforce more restrictive standards without Federal support. From a floodplain management standpoint, future conditions floodplains can be used, and are being, used, by communities to enforce more stringent floodplain management policies than those required by FEMA. By displaying future conditions floodplains on the flood map, the community and FEMA are alerting the public that flood hazards may increase in the future due to urban development. Many communities throughout the United States develop future conditions hydrology and create their own maps to regulate floodplain development. This has resulted in two sets of maps being produced for a community: future conditions maps for local floodplain management and FIRMs for flood insurance determinations. As a result, these progressive communities have not had a sense ofhad a sense of ownership forfor the FIRMs, and their resources have been directed toward maintaining their own future conditions maps.

Recent Evaluation and Conclusions

To assist officials in such progressive communities, FEMA undertook an evaluation to determine whether future conditions flood hazard information could and should be placed on flood maps and in the accompanying study reports. The results of that extensive evaluation are documented in a FEMA report entitled ''Modernizing FEMA's Flood Hazard Mapping Program: Recommendations for Using Future Conditions Hydrology for the National Flood Insurance Program'' (see *www.fema.gov/mit/tsd/FT_hydro.htm*). The specific conclusions reached in the report are as follows:

- The local community should determine the future conditions land-use and hydrology.
- If the community chooses to adopt a regulatory floodway based on future conditions hydrology, the use of this floodway should be supported by local ordinances.
- If the community requests that FEMA do so, the future conditions 100-year (base flood) floodplain should be shown on the printed FIRM and be designated as Zone X with no Bbase Fflood Eelevations (BFEs) shown.
- When possible, all three floodplains—existing conditions 100-year floodplain, existing conditions 500-year floodplain, and future conditions 100-year floodplain—should be shown on the FIRM. However, when the future conditions 100-year floodplain and existing conditions 500-year floodplain are so close together as to be confusing if both are shown on the printed FIRM, the future conditions 100-year floodplain should be shown in lieu of the existing conditions 500-year floodplain. When this occurs, appropriate reference should be made to the existing conditions 500-year floodplain information being shown in the FIS report. For a Digital Flood Insurance Rate Map (DFIRM), appropriate reference also should be made to the existing conditions 500-year floodplain information being included in an associated database.
- BFEs should be shown on the FIRM only for the existing conditions 100-year floodplain. The future conditions BFEs should be included in the FIS report (on the Flood Profiles and in the Floodway Data Table), thus providing necessary information to the community to meet their local floodplain management needs. The existing conditions 500-year flood elevations also should be shown on the Flood Profiles in the FIS report to meet the requirements of Executive Order No. 11988 and to provide Federal agencies with information to evaluate the potential effects of any actions they may take in a floodplain.
- The community may choose to show the existing conditions 500-year floodplain on the FIRM and to include the future conditions 100-year elevations only on the Flood Profiles in the FIS report. Various other combinations to display the flood hazard data also are possible. FEMA and the community should work together to produce the most useful FIRM and FIS report for the community.
- From a floodplain management standpoint, FEMA should continue to require regulation of floodplain development based on the existing conditions data, while local floodplain managers can regulate development based on the future conditions data.
- From a flood insurance standpoint, FEMA must continue to require flood insurance for structures shown in the existing conditions 100-year floodplain, or Special Flood Hazard Area. Showing the future conditions floodplain as Zone X should avoid any confusion regarding the mandatory flood insurance requirement. It also will and allow insurance policies to be purchased at a reduced rate, as insurance is currently available for structures in the existing conditions 500-year floodplain.

As recommended in the previously referenced FEMA report, FEMA intends to show future conditions flood hazard information on flood FIRMs and in collateral FIS reports. This information will be for informational purposes only. There will be nNo change will be made in the use of existing conditions data for establishing flood insurance rates. Through community participation in the Community Rating System, however, reduced flood insurance rates are available for those communities that enforce more stringent regulatory standards than required by the NFIP.

Synergy With Other FEMA Programs

The inclusion of future conditions data in FIRMs and related products for communities that request that such data be included is part of a larger FEMA plan to modernize the flood hazard mapping program and thereby reducinge the burden on taxpayers for disaster relief and improving flood hazard mitigation. FEMA's plan is to facilitate ownership of the flood maps by State and local entities through greatly increased involvement in the flood mapping process through cooperative agreements. FEMA will provide flood mapping funds, technical assistance, and mentoring to partners—termed a ''Cooperating Technical Community Partners''—and those partners will then develop and maintain

all of the flood maps or components thereof. The proposed cooperative agreements recognize that hazard identification and mapping must go hand-in-hand with the responsibility of managing floodplains locally. By creating a strong local program that maintains the connection between mapping and managing flood hazard areas, the NFIP also is strengthened in its ability to reduce the loss of property and life.

FEMA recognition of future conditions data will be a key factor in the State and local communities assuming increased ownership in the process. By mapping locally pertinent information, local ownership of the NFIP flood maps will increase. Because flood conditions and hazards vary locally and regionally, inclusion of those unique local conditions on the flood maps may be warranted. For example, a community may find it useful to identify areas on the FIRM with floodplains based on developed/future hydrologic conditions in addition to the standard features already depicted. In effect, FEMA will maintain national standards while at the same time providing a useful tool to the community. These changes also will directly complement FEMA's mitigation activities. Communities will now be able to better implement proactive mitigation measures based on awareness of future conditions in their community by the public and by the development community.

In sum, the use of future conditions hydrology is consistent with modernizing the mapping program; with promoting better proactive mitigation measures; and with FEMA's desire to be flexible with, and supportive of, those communities that would like to implement stricter land-use regulations.

Planned Implementation

The FEMA plans for implementing the presentation of future conditions flood hazard information on NFIP flood maps are summarized below.

Map Specifications. The new DFIRM product specifications being developed by FEMA will include options that can be invoked depending on the available data. This new DFIRM product will include certain basic features and meet certain minimum mapping requirements. Additional options will be included, depending on the community needs and available funding. A review of needs and available data will lead to a time and cost estimate and a recommendation on which options to exercise. Procedures for displaying future conditions floodplains on the new DFIRM will be included in these new mapping specifications.

Cooperating Technical Partners Activities. As a part of the mapping activities undertaken by communities participating in the Cooperating Technical Partners initiative, an option could be for communities to show the 100-year future conditions floodplain on the FIRM in addition to the existing conditions floodplain. The communities would develop and map existing and future conditions and provide the new FIRM and supporting data to FEMA; in turn, the communities would receive a useful tool for risk assessment and flood hazard mitigation.

Revisions. Because mapping future conditions floodplains would be implemented on a community level, the flood maps will maintain consistency within community boundaries, regardless of how many map panels the community encompasses. When FEMA receives future conditions data from communities that wish to participate, the data could be incorporated easily at the time of the digital conversion to the DFIRM product. Alternatively, communities that require flood hazard updates can submit future conditions data to be incorporated with the existing conditions data updates for the DFIRM conversion. Displaying future conditions data will increase community involvement in the NFIP and help FEMA to build stronger partnerships with communities. If these communities are involved at the beginning of the digital conversion process, they will have a stronger sense of ownership of the flood maps, because they will have input on the kind of flood hazard information shown on the maps.

Once the future conditions floodplains have been included on a flood map, all FEMA- or community-initiated studies, restudies, and revisions will incorporate the future conditions hydrology that the community has determined. FEMA will perform a technical review of the locally developed data and will include the data in all map updates. Additionally, FEMA will continue to make determinations on whether structures and parcels of land are in or out of existing conditions floodplains shown on NFIP maps, and will issue Letters of Map Amendment and Letters of Map Revisions Based on Fill based on these determinations. This procedure can be expanded to determine whether these structures and parcels of land are in or out of the future conditions floodplain when those floodplains are shown on the NFIP maps.

National Environmental Policy Act

This Proposed Rule is categorically excluded from the requirements of 44 CFR part 10.8(d)(2)(ii), Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). When an agency is required by 5 U.S.C. 553 to publish a notice of proposed rulemaking, a regulatory flexibility analysis is required for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.'' The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This proposed rule revises the NFIP regulations to (1) include the definitions for future conditions hydrology and for the flood plains that may be shown on the FIRMs, for informational purposes at the request of the community, to reflect future conditions hydrology and (2) establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs.

Executive Order 13132, Federalism

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

We have reviewed this rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. As noted under Regulatory

Planning and Review, this proposed rule revises the NFIP regulations to (1) include the definitions for future conditions hydrology and for the flood plains that may be shown on the FIRMs, for informational purposes at the request of the community, to reflect future conditions hydrology and (2) establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs. We know of no substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

Executive Order 12778, Civil Justice Reform

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

Executive Order 12866, Regulatory Planning and Review

Promulgation of this rule is required by statute, 42 U.S.C 4014(f) which also specifies the regulatory approach to be taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this Proposed Rule adheres to the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This proposed rule revises the NFIP regulations to (1) include the definitions for future conditions hydrology and for the flood plains that may be shown on the FIRMs, for informational purposes at the request of the community, to reflect future conditions hydrology and (2) establish the zone symbol to be used to identify future conditions flood hazard areas on the FIRMs. We know of no conditions that would qualify the rule as a ''significant regulatory action'' within the definition of section 3(f) of the Executive Order. To the extent possible this rule adheres to the principles of regulation in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

List of Subjects in 44 CFR Parts 59 and 64

Administrative practice and procedure, Flood insurance, Floodplains, and Reporting and record keeping requirements.

Accordingly, 44 CFR parts 59 and 64 will be amended as follows:

PART 59—[AMENDED]

1. Section 59.1 is revised to include the following a definition for: *Area of future conditions flood hazard* means the land area that would be inundated by the 1-percent-annual-chance flood based on future conditions hydrology.

2. Section 59.1 is revised to include the following definition: *Future conditions flood hazard area*, or *future conditions floodplain*—see *Area of future conditions flood hazard*.

3. Section 59.1 is revised to include the following definition: *Future conditions hydrology* means the flood discharges associated with projected land-use conditions based on a community's zoning maps or comprehensive land-use plans.

PART 64—[AMENDED]

1. The initial text of Paragraph 64.3(a)(1) will be revised to read as follows:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. The FIRM indicates the risk premium rate zones applicable in the community and when those rates are effective. The FIRM also may indicate, at the request of the community, zones to identify areas of future conditions flood hazards. The symbols used to designate the risk premium rate zones and future conditions zones are as follows:

2. The entry for the zone symbol for Zones B, X that appears in Paragraph 64.3(a)(1) will be revised to read as follows:

B, X.....Areas of moderate flood hazards or *areas of future conditions flood hazard*

3. The closing text of Paragraph 64.3(a)(1) will be revised to read as follows:

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) or potential hazard (i.e., future conditions flooding) will be designated on the FIRM by use of the proper zone symbols in combination.

Dated: June 5, 2001.

Margaret E. Lawless,

Acting Executive Associate Director for Mitigation.

[FR Doc. 01–15055 Filed 6–13–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1337, MM Docket No. 01–116, RM–10069]

Digital Television Broadcast Service and Television Broadcast Service; Hibbing, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Duluth-Superior Area Educational Television Corporation, an applicant for a construction permit for a new noncommercial educational television station to operate on NTSC channel *18-at Hibbing. Duluth-Superior requests the replacement of DTV channel *31 for NTSC channel *18-at Hibbing. DTV Channel *31 can be allotted to Hibbing, Minnesota, in compliance with Sections 73.622(a) and 73.623(c) of the Commission's criteria as set forth in the Public Notice, released November 22, 1999, DA 99–2605. DTV channel *31 can be allotted at reference coordinates (47–22–53 N. and 92–57–15 W.) with a power of 500, a height above average terrain HAAT of 211 meters and with a DTV service population of thousand. However, since the community of Hibbing is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before July 30, 2001, and reply comments on or before August 14, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW.,

Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marcia Cranberg, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1202 (Counsel for Duluth-Superior Area Educational Television Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-116, adopted June 6, 2001, and released June 7, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting, Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Minnesota is amended by removing Channel *18- at Hibbing.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Minnesota, is amended by adding DTV channel *31-at Hibbing.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–14933 Filed 6–13–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AH79

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2001–02 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces the Service Migratory Bird Regulations Committee and Flyway Council meetings; and describes the proposed regulatory alternatives for the 2001–02 duck hunting seasons and other proposed changes from the 2000–01 hunting regulations.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 20 and 21, 2001, and for late-season migratory bird hunting on August 1 and 2, 2001. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed regulatory alternatives for the 2001–02 duck hunting seasons by July 6, 2001. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by July 30, 2001; and for proposed late-season frameworks by September 7, 2001.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2000

On April 30, 2001, we published in the **Federal Register** (66 FR 21298) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks and final regulatory alternatives for the 2001–02 duck hunting seasons in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 2001, and those for late seasons on or about September 21, 2001.

Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 20–21, 2001, to review information on the current status of migratory shore and upland game birds and develop 2001–02 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the August 1–2, 2001, meetings, the Committee will review information on the current status of waterfowl and

develop 2001–02 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Director on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July. Although agendas are not yet available, these meetings usually commence at 8:00 a.m. on the days indicated.

Atlantic Flyway Council: July 23–27, Loews Le Concorde Hotel, Quebec City, Quebec, Canada.

Mississippi Flyway Council: July 22–27, Drawbridge Inn, Fort Mitchell, Kentucky.

Central Flyway Council: July 23–27, Edmonton House Suite Hotel, 10205—100 Avenue, Edmonton, Alberta, Canada.

Pacific Flyway Council: July 23–27, Westmark Baranof Hotel, 127 N. Franklin St., Juneau, Alaska.

Review of Public Comments

This supplemental rulemaking contains the proposed regulatory alternatives for the 2001–02 duck hunting seasons. We have included and addressed all comments and recommendations received through May 18, 2001, relating to the development of these alternatives. This supplemental rulemaking also describes other recommended changes based on the preliminary proposals published in the April 30, 2001, **Federal Register** (66 FR 21298). We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals. This supplement does not include recommendations or comments that simply support or oppose preliminary proposals and provide no recommended alternatives. We will consider these comments later in the regulations-development process. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 30, 2001, proposed rule.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories for which we received public comment are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the Adaptive Harvest Management (AHM) Working Group and the Service consider the following actions when AHM regulations packages are reconsidered:

(1) Elimination of the ''very restrictive'' option.

(2) Replace open cells with the ''restrictive'' alternative to a population level of ≤4.5 million. Below this level, year-specific decisions on closed seasons would be based on both biological and sociological considerations.

(3) Evaluation of the influence of year-to-year constraints on regulations increments on AHM performance.

(4) Strong consideration of limiting increments of year-to-year change to single regulations ''steps.''

(5) The role of hunter satisfaction be formally considered in the revision of the harvest management objective or the regulation packages.

Service Response: We recognize that periodic changes to the protocols for adaptive harvest management (AHM) will be necessary to accommodate changing biological, social, and administrative needs. Revisions of the nature recommended by the Mississippi Flyway Council potentially have profound implications, however, as they involve specification of the set of regulatory alternatives, the harvest-management objective(s), and associated regulatory constraints (*e.g.,* minimizing year-to-year changes in regulations). The AHM Working Group, which is comprised of both Service and Flyway Council representatives, currently is exploring the implications of these recommendations. We will consider the changes suggested by the Mississippi Flyway Council once these investigations are complete, and the results communicated to all interested parties.

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council recommended that the regulations packages for 2001 be the same as those in 2000, except for an experimental framework opening date of the Saturday nearest September 24 and a framework closing date of the last Sunday in January with no offsets for the 2001–2003 duck seasons in the ''moderate'' and ''liberal'' alternatives. The Council further recommended that the framework dates be applicable either Statewide or in zones and that the Service use the evaluation of the framework-date extensions for the next three years as a basis for establishing future framework dates.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations alternatives from 2000 be used in 2001. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations packages for 2001 be the same as those in 2000, except that the framework opening and closing dates would be the Saturday nearest September 24 through the last Sunday in January, and there would be no offsets in season length or bag limit.

The Central Flyway Council recommended 2001–02 duck regulations packages and species/sex restrictions for the Central Flyway that are the same as those used in 2000–01, except for a framework opening date of the Saturday closest to September 24th in the ''liberal'' and ''moderate'' AHM regulations alternatives with no offset penalties (reduced or restricted bag limits or reduction in season length). The framework closing date in the Central Flyway would remain the Sunday nearest January 20th.

The Pacific Flyway Council preferred that regulatory alternatives remain as adopted in 1999 and 2000 but recommends that if season extensions are allowed (without offsets), that they be classified as an experiment for 3 years. At the end of the experimental period, the distribution of mallard harvest during the experimental period shall be compared to the harvest distribution during the period of stabilized regulations (1979–1984). If the distribution of mallard harvest has changed more than 5 percent between these two periods, AHM regulatory packages should be re-configured to realign mallard harvest distribution with the distribution that occurred in 1979–1984. The Council also recommended a framework opening date of the Saturday nearest September 24 and a framework closing date of the last Sunday in January with no offsets for the 2001–2003 duck seasons in the ''moderate'' and ''liberal'' alternatives.

The Council further recommended that the framework dates be applicable either Statewide or in zones. The Council requested that the Service use the evaluation of the framework-date extensions for the next three years as a basis for establishing future framework dates.

Service Response: On August 3, 2000, Regulations Consultants representing the four Flyway Councils requested that the Service conduct another assessment of the projected impacts of extended framework dates for duck hunting. A full report of that assessment can be found at http://migratorybirds.fws.gov/reports/reports.html, but the principal findings are summarized here.

Based on a survey conducted by the Flyway Councils, only 13 of the 48 contiguous States would not take advantage of extended opening dates, closing dates, or both in at least a portion of the State, assuming that there were no penalties in season length or bag limit. The predicted increase in annual harvest associated with extended framework dates in these States in the ''moderate'' and ''liberal'' regulatory alternatives was approximately 15 percent and 5 percent for midcontinent and eastern mallards, respectively. Assuming these projected increases in harvest are accurate, we would expect a significant reduction in the frequency of ''liberal'' regulations, with a concurrent increase in the frequency of ''moderate'' regulations, in the Pacific, Central, and Mississippi Flyways. There was no discernable change in the expected frequency of ''liberal'' regulations for mallards in the Atlantic Flyway. Despite repeated assessments of this nature, however, we remain profoundly uncertain about the impacts of widespread framework-date extensions on mallards and other species because experience with extended framework dates is so limited.

We acknowledge that AHM has proven to be an effective tool for coping with these type of management uncertainties, but only when there is broad-based agreement on management objectives (*i.e.,* how to value harvests, and how those values should be shared). In this light, a decision to use framework-date extensions continues to be problematic not because of any shortcoming of AHM, but because of tacit disagreement over desirable distributions of harvest or harvest opportunity. In the absence of such agreement, however, it is still possible to formulate an adaptive approach to the use of framework-date extensions, provided that the Flyway Councils are prepared to accept the changes in harvest distribution that might occur. The approach would involve embracing two or more alternative hypotheses about the change in mallard harvests that might be associated with widespread application of extended framework dates. Over time, the AHM process should identify which impact hypothesis is the most accurate among the alternatives, while ensuring that uncertainty as to harvest impacts is properly accounted for in each regulatory decision.

Essential to the successful application of this adaptive approach, however, is a reliable monitoring program for estimating realized harvest rates of mallards. Such a program does not exist at this time because of uncertainty about the rate at which hunters report band recoveries. This uncertainty resulted from the introduction in 1995 of a toll-free phone number for reporting band recoveries, which is a key feature of a campaign designed to increase band-reporting rates. We are currently developing plans and seeking funding to estimate band-reporting rates, but do not believe that the program can be implemented in time to modify framework dates for this year. Additionally, we reiterate that proposed changes to traditional framework dates must consider the potential for adverse biological impacts to species other than mallards, especially those currently at depressed population levels.

Finally, there continues to be some disagreement among Flyway Councils and States: (1) About the desirability of framework-date extensions; (2) about whether extensions should be applied to opening dates, closing dates, or both; and (3) about the inclusion of framework-date extensions in some or all of the regulatory alternatives. We will continue to cooperate with Flyway Councils and States in reviewing Flyway- and region-specific changes to framework dates, to address the biological and sociological implications of any changes.

For the 2001–02 hunting season, we are proposing no modifications to the four regulatory alternatives used last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''VERY RES'' for the very restrictive, ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives in early July following the early-season regulations meetings in late June. Public comments will be accepted until July 6, 2001, and should be sent to the address under the caption **ADDRESSES.**

C. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the State of Vermont be allowed to extend the New Hampshire Interior Zone boundary to the Vermont side of the Connecticut River without losing the ability to split their duck season.

D. Special Seasons/Species Management

iii. September Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Atlantic Flyway States that have participated in the recent experimental September teal seasons and met the required criteria (Delaware, Maryland, Virginia, and Georgia) be offered an operational September teal season, beginning in 2001. The recommended season would run for nine consecutive days during September 1–30, with a bag limit not to exceed four teal, whenever the breeding population of blue-winged teal exceeds 3.3 million. Delaware, Georgia, and Virginia would have shooting hours between one-half hour before sunrise to sunset, while shooting hours for Maryland would be between sunrise and sunset.

The Atlantic Flyway Council further recommended that Florida be offered an operational September teal season. The Council pointed out that Florida has requested and would prefer continuation of its current September wood duck and teal season, which the Council has supported with previous recommendations. If the Service carries through with its intent to discontinue the current September wood duck and teal seasons, this recommendation would allow Florida's current season to be replaced by an operational September teal season. Florida's teal season would begin in 2001 and be structured similar to teal seasons offered in other Atlantic Flyway states (9 consecutive days during September 1–30, with a bag limit of no more than 4 teal), with shooting hours of one-half hour before sunrise to sunset, whenever the breeding population of blue-winged teal exceeds 3.3 million.

The Central Flyway Council recommended continuation of the 16-day September teal season in 2001 contingent upon acceptable May breeding population survey estimates of blue-winged teal (>4.7 million).

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Kentucky and Tennessee's September duck seasons be continued on an experimental basis for

3 years with increased monitoring. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that Kentucky and Tennessee's September duck seasons be given operational status in their current format under the early season regulation frameworks. As a condition of operational status Kentucky and Tennessee would maintain wood duck population monitoring and banding efforts at levels consistent to that done during the period of the wood duck initiative (1991–96).

v. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow States to hold a youth waterfowl hunt on two consecutive hunting days.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the framework closing date for September Canada goose hunting seasons throughout upstate New York and Vermont be September 25, beginning in 2001, and that the September resident goose season framework dates in Rhode Island be extended from September 25 to September 30. The Council further recommended that the daily bag limit during September Canada goose seasons be increased to 8 with no possession limit beginning with the 2001–02 hunting season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council supported the development of comprehensive harvest management strategies for Canada geese throughout the Flyway that includes caution when expanding seasons impacting populations of concern as well as removing constraints when not warranted. The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Pacific Flyway Council recommended that the experimental portion (the period after September 15) of NW Oregon's September goose season related to the Pacific Population of Western Canada Geese, be made operational.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the 2001 regular goose season opening date be as early as September 16 throughout Michigan and Wisconsin and as early as September 15 in Missouri and Iowa.

The Pacific Flyway Council recommended that the flyway-wide prohibition of take of Aleutian Canada geese be removed upon publication of the Final Rule removing this goose from the list of endangered and threatened species. Existing special management areas in Alaska, Oregon and California will remain closed to take of Canada geese until a population objective and harvest strategy are established by the Council, as indicated in the Flyway Management Plan.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council made a number of recommendations pertaining to sandhill cranes. The Council recommended that the sandhill crane open hunting area boundary be changed in Texas and North Dakota for 3 years beginning in the fall of 2001 and population status, harvest and distribution be evaluated using existing population and harvest surveys. The new hunt area in Texas would include the Gulf Coast, south of Corpus Christi Bay and north of Lavaca Bay. In North Dakota, the hunt boundary would be extended eastward from US Highway 281 to the Minnesota border. Season length in these two new areas would be a maximum of 37 days and the daily bag limit would be 2 birds.

The Central Flyway Council also recommended a 95-day hunting season on Mid-Continent Population sandhill cranes and reinstatement of the option to split the season into no more than two segments for Texas and Oklahoma.

The Central and Pacific Flyway Councils recommended a change to the current New Mexico SW hunt boundary to include those portions of Grant and Hidalgo Counties south of Interstate 25. The Councils further recommended allowing New Mexico to conduct an experimental 3-year sandhill crane season in the Estancia Valley located in portions of Torrance, Santa Fe and Bernalillo Counties following the guidelines outlined in the Pacific and Central Flyways Management Plan for the Rocky Mountain Population of Greater Sandhill Cranes.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended that tundra swan frameworks in Alaska be modified to: (1) Replace current swan harvest caps with maximum permit allowances (Unit 18—300, Unit 22—200, Unit 23—200); (2) make the swan season in GMU 23 operational; and (3) establish a new experimental tundra swan season in Alaska Game Management Unit 17 (North Bristol Bay region). The new hunt would have a 61-day season from September 1–October 31; up to 200 registration permits could be issued; each permit to allow up to 3 swans per season; hunter activity and harvest reporting would be required. The Council also recommended that frameworks for duck limits in Alaska be modified to include harlequin and long-tailed ducks in the special sea duck limit, with appropriate adjustment to retain current species limits.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not

respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 2001–02 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) does the rule contain technical language or jargon that interferes with its clarity? (3) does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) would the rule be easier to understand if it were divided into more (but shorter) sections? (5) is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) what else could the Service do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned control number 1018–0015 (expires 09/30/2001).

This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the

States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2001–02 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: June 7, 2001.

Marshall P. Jones, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2001-02 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY (a)				CENTRAL FLYWAY (b)				PACIFIC FLYWAY (c)(d)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Begining Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length (in days)	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag/	3	3	6	6	3	3	6	6	3	3	6	6	4	4	7	7
Possession	6	6	12	12	6	6	12	12	6	6	12	12	8	8	14	14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	<----------ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY---------->															
Black Duck	1	1	1	1	1	1	1	1	-	-	-	-	-	-	-	-
Scaup (e)	<----------TO BE DETERMINED BASED ON CURRENT SCAUP STATUS INFORMATION---------->															
Canvasback	<----------0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY---------->															
Redhead	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	3	3	3	3	1	1	1	1	-	-	-	-

(a) In the States of Alabama, Mississippi, and Tennessee, the season length will be 51 days in the liberal alternative and 38 days in the moderate alternative with a framework closing date in both alternatives of January 31.

(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(c) In the Columbia Basin Mallard Mangement Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26

(e) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

[FR Doc. 01–15020 Filed 6–13–01; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 010522134–1134–01; I.D. 050201D]

RIN 0648–XA69

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to list Bocaccio (*Sebastes paucispinis*) as Threatened

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

ACTION: Notification of 90-day petition finding and request for comments.

SUMMARY: NMFS has received a petition to list the southern bocaccio (*Sebastes paucispinis*) as a threatened species and to designate critical habitat concurrent with the listing. NMFS finds that the petition presents substantial scientific and commercial information indicating that the request for listing may be warranted. Therefore, NMFS is conducting a status review to determine whether the petitioned action is warranted. To assure that the review is comprehensive, NMFS is soliciting information and data regarding this species and its habitat from any interested party. NMFS will use information received during the comment period and other information in its review of the status of the southern bocaccio.

DATES: Comments and information must be received by August 13, 2001.

ADDRESSES: Requests for copies of the petition and comments regarding the listing of bocaccio should be submitted to Jim Lecky, Assistant Regional Administrator for Protected Resources, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213. The petition and supporting data are available for public inspection by appointment, Monday through Friday, at the same address.

FOR FURTHER INFORMATION CONTACT: Jim Lecky, NMFS Southwest Region, 562/980–4000; or Marta Nammack, NMFS Office of Protected Resources, 301/713–1401, ext. 116.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act (ESA) contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. On January 30, 2001, NMFS received a petition from the Natural Resources Defense Council, Center for Biological Diversity, and Center for Marine Conservation (Petitioners) to list the central/southern distinct population segment of bocaccio, or, in the alternative, bocaccio throughout its entire range as threatened under the ESA and to designate critical habitat.

Petitioners contend that bocaccio have suffered precipitous population declines over the last several decades and that these population declines threaten bocaccio with extinction and compromise its ability to recover. The primary factor identified by Petitioners is overutilization, specifically overfishing by fisheries targeting bocaccio and as bycatch in other fisheries. Other factors identified by Petitioners as contributing to the status of bocaccio include inadequate regulatory mechanisms, habitat modification due to bottom trawl fishing gear, pollution of nearshore habitat used by juvenile bocaccio, and shifts in oceanographic conditions.

NMFS has recognized two separate West Coast bocaccio populations, divided at approximately 36° N. latitude. The southern population (south of 36° N. latitude), which ranges from Cape Mendocino to Baja California, Mexico, is the stock for which NMFS has received a petition and is synonymous with what Petitioners have called the central/southern population of bocaccio. In the 1999 stock assessment report for southern bocaccio, the spawning output of the southern bocaccio stock was estimated to be 2.1 percent of the estimated spawning output at its unfished level. This stock was designated as overfished under the Magnuson-Stevens Fishery Conservation and Management Act on March 3, 1999.

Initial stock rebuilding measures were implemented through the 2000 annual specifications and management measures for Pacific coast groundfish. These measures included the setting of a conservative allowable biological catch level and optimum yield level. These conservative levels precluded any directed targeting of bocaccio and reserved allowable catch to incidental catch in other fisheries. On September 5, 2000, NMFS announced formal approval of the rebuilding plan for southern bocaccio (65 FR 53646).

On December 29, 2000, NMFS published a final rule (65 FR 82947) approving Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan and disapproving three overfished stock rebuilding plans, including the plan previously approved for bocaccio. Amendment 12 provides framework procedures for developing overfished species rebuilding plans, for setting guidelines for rebuilding plan contents, and procedures for submitting rebuilding plans to NMFS for review and approval/disapproval. The three rebuilding plans that were disapproved in that action were disapproved because of inconsistencies with the new procedure and guidelines established by Amendment 12, not because the harvest limits were inadequate to provide for rebuilding of the stock. The Pacific Fishery Management Council (PFMC) will resubmit recommended rebuilding plans for review by NMFS, consistent with the requirements of Amendment 12, for the 2002 fishing year cycle.

In the presentation of their petition, Petitioners rely on the information produced by NMFS and the PFMC in their evaluation of southern bocaccio relative to overfishing criteria and a review of published literature on the status, distribution, and ecology of bocaccio.

Finding

NMFS finds that Petitioners present substantial scientific and commercial information indicating that a listing may be warranted, based on the criteria specified in 50 CFR 424.14(b)(2). Although a positive 90-day finding under section 4(b)(3)(A) of the ESA is not a decision to list a species, this finding requires that a review of the status of southern bocaccio be completed within 12 months of receiving the petition (by January 30, 2002) to determine whether the petitioned action is warranted.

Listing Factors and Basis For Determinations

Under section 4 (a) (1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued

existence. Listing determinations are based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by states or foreign nations to protect such species.

Information Solicited

To ensure that the southern population of bocaccio (*Sebastes paucispinis*) status review is complete and based on the best available scientific and commercial data, NMFS is soliciting information and comments on whether the southern population of bocaccio is threatened by any of the listing criteria described above. Specifically, NMFS is soliciting information in the following areas: Historical abundance, current abundance, factors contributing to population declines, sources of mortality other than commercial and recreational fishing, habitat use, habitat condition, factors affecting habitat condition, and distinctness of the southern population. NMFS is also soliciting information on efforts to conserve bocaccio and the adequacy of those efforts in achieving their intended purpose.

Critical Habitat

NMFS is also requesting information on areas that may qualify for critical habitat for the southern population of bocaccio. Areas that include the physical and biological features essential to the conservation of the species and which may require special management considerations of protection should be identified. Areas outside the current range of the species may be included if they are necessary for the conservation of the species. Essential features should include, but are not limited to: (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) the activities that affect the areas or could be affected by the designation; and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

Comments should include: (1) supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications, if applicable, and (2) the commenting party's name, address, and association, institution, or business.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; and 16 U.S.C. 1361 *et seq.*

Dated: June 7, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–15058 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 010522135–1135–01; I.D. 041601B]

RIN 0648–XA70

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition To List Eastern North Pacific Gray Whales as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notification of 90-day petition finding.

SUMMARY: NMFS received a petition to list Eastern North Pacific gray whales (*Eschrichtius robustus*) as threatened or endangered under the ESA. NMFS finds that the petition does not present substantial scientific or commercial information to warrant the petitioned action.

DATES: This petition finding was made on May 21, 2001.

ADDRESSES: Copies of the petition may be obtained by writing to Chief, Marine Mammal Conservation Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle at (301) 713–2322, ext. 105, e-mail *tom.eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4 (b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS' regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (see 50 CFR 424.14). Section 424.14(b)(2) of these regulations contains factors the Secretary considers in evaluating a petitioned action.

NMFS received a petition on March 28, 2001, from D.J. Schubert (Petitioner), on behalf of Australians for Animals, The Fund for Animals, and ''several other organizations,'' to list the Eastern North Pacific stock of gray whales as threatened or endangered under the ESA. Petitioner claims that listing the stock as threatened or endangered is necessary to protect the stock or its habitat from substantial threats. These suggested threats include an apparent decline in benthic amphipods (the gray whale's primary food supply) and a lack of adequate regulatory mechanisms to protect the gray whale and its habitat. Petitioner claims that threats to amphipods are caused by direct, indirect and cumulative impacts of global warming and El Niño-Southern Oscillation (ENSO) events, the destruction of benthic amphipods and their habitat by bottom trawling, and contaminant impacts to amphipod survival and production. In light of the suggested threats to its food supply and inadequacy of regulatory mechanisms, Petitioner also claims that gray whales are threatened by aboriginal harvests, documented and undocumented mortality, oil and gas exploration, and other impacts.

Gray Whales and the ESA

Prior to enactment of the ESA of 1973, the U.S. Fish and Wildlife Service (FWS) included gray whales (among several genera of baleen whales) on its 1970 list of endangered species (35 FR 8491, June 2, 1970). This list was compiled from information submitted by international conservation organizations, foreign fish and wildlife agencies, individual scientists, and trade sources. The endangered species list was appended to regulations that established conservation measures for endangered species through general restrictions on importation of listed species.

NMFS completed its first status review of gray whales in 1984 and concluded that the stock was not in danger of extinction. That status review recommended a change in the status of

the Eastern North Pacific stock from endangered to threatened (49 FR 44774, November 9, 1984).

NMFS began a status review of certain listed species, including gray whales, in 1990 and solicited information from the public (55 FR 164, January 3, 1990). While the results of the status review were being prepared as a report and recommendation, the Northwest Indian Fisheries Commission and others, on March 7, 1991, petitioned NMFS to remove the eastern stock of gray whales from the list of endangered species and, thus, from protections under the ESA. A formal report of the status review was completed and made available to the public on June 27, 1991 (56 FR 29471). NMFS completed and solicited comments on a proposed rule to delist the Eastern North Pacific stock of gray whales on November 22, 1991 (56 FR 58869).

On January 7, 1993 (58 FR 3121), NMFS announced its final determination that the Eastern North Pacific stock of gray whales was no longer in danger of extinction and that it was not likely to become endangered in the foreseeable future. NMFS concluded that the stock should be removed from the list of endangered species. NMFS forwarded that determination to FWS. As a result of NMFS' determination, FWS removed Eastern North Pacific gray whales from the list of endangered species on June 16, 1994 (59 FR 31094).

In its notice of determination that Eastern North Pacific gray whales were no longer endangered or threatened, NMFS noted that the stock was estimated to be between 60 and 90 percent of its carrying capacity. Furthermore, NMFS addressed the impact of human activities within the range of the gray whale and concluded ''...that individual and cumulative impacts, while they have the potential to affect adversely the Eastern North Pacific gray whale stock, are not likely to jeopardize its continued existence.''

As required by the ESA, NMFS conducted a status review 5 years after delisting Eastern North Pacific gray whales and convened a workshop on March 16–17, 1999, in Seattle, WA. The participants at the workshop reviewed the available information on the status of the gray whale stock and on factors that may affect the stock. The report of the workshop stated, ''The 28 invited participants determined that this stock was neither in danger of extinction, nor was it likely to become endangered within the foreseeable future, according to the determining factors in section 4(a)(1) of the ESA. Therefore, there was no apparent reason to reverse the decision to remove this stock from the [List of Endangered and Threatened Wildlife and Plants]''. The report added, ''There was a consensus among the workshop participants that the Eastern North Pacific stock of gray whales should be monitored for an additional 5–year period (1999–2004), especially as this stock may be approaching its carrying capacity.''

NMFS accepted the conclusions of the workshop participants and announced the availability of the workshop report on October 6, 1999 (64 FR 54275). NMFS has, as recommended by the workshop participants, continued to conduct assessments of the gray whale stock.

The Current Petition

Petitioner claims that the primary threats to the stock fall into three of the five listing factors found in section 4 (a) of the ESA. These are as follows:

(1) The inadequacy of existing regulatory mechanisms,

(2) The present or threatened destruction, modification, or curtailment of its habitat or range, and

(3) Other natural or manmade factors affecting its continued existence.

Existing Legal Protections

The petition suggests five principal legal requirements intended to protect the gray whale in the United States. These are:

(1) The ESA;

(2) The National Environmental Policy Act (NEPA);

(3) The Washington State Endangered Species Act;

(4) The Marine Mammal Protection Act (MMPA); and

(5) The International Convention on the Regulation of Whaling.

Three of the five are not directly applicable in this situation. The ESA does not apply because Eastern North Pacific gray whales are currently not listed under the ESA. NEPA does not directly apply because NEPA does not establish a regulatory program for wild living resources, such as the gray whale. NEPA does, however, provide indirect protections to gray whales because it requires Federal agencies to consider the direct, indirect, and cumulative impacts that major Federal actions have on the environment. The Washington State Endangered Species Act does not apply because NMFS, the Federal agency with trust responsibility for gray whales, uses Federal, rather than state, law in the conservation of Eastern North Pacific gray whales.

Marine Mammal Protection Act: The petition claims that the MMPA provides inadequate protection for the gray whale because there are no habitat protections in the MMPA, that the Potential Biological Removal (PBR) level is not sustainable, and that the government misinterpreted the MMPA moratorium on the killing of marine mammals. An evaluation of each of these claims follows.

The MMPA imposes a moratorium on the taking of marine mammals. The MMPA also contains a variety of exceptions to this moratorium, including the authorizations to take small numbers of marine mammals incidental to activities other than commercial fishing (16 U.S.C. 1371 (a)(5)). Petitioner correctly notes that this specific exception to the moratorium, which requires a finding of negligible impact on the affected stock of marine mammals, does not contain protection for marine mammal habitat. However, section 112 of the MMPA (16 U.S.C. 1382 (e)), contains such a regulatory mechanism. That section allows NMFS to develop and implement conservation or management measures to alleviate impacts to areas of ecological significance to strategic stocks of marine mammals. Strategic stocks of marine mammals are defined as those stocks for which human-caused mortality and serious injury exceeds PBR (an estimate of a sustainable mortality level) or stocks that are depleted, threatened, or endangered.

Thus, the MMPA contains an adequate regulatory mechanism to protect marine mammal habitat and to prevent the affected marine mammal stock from becoming threatened or endangered.

PBR is defined in section 3 (20) of the MMPA (16 U.S.C. 1362(20)) as the ''...maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population [OSP].'' A value for a marine mammal stock's PBR level is calculated, as specified in the MMPA, by the product of two population statistics (a minimum population estimate of the stock and one-half the maximum theoretical or estimated net productivity rate of the stock at small populations) and a recovery factor. The concept of PBR is based on well-founded theory in population ecology, and the concept and its implementation by NMFS is thoroughly described in the peer-reviewed literature (Wade, P. 1998. Calculating limits to the allowable human-caused mortality of cetaceans and pinnipeds. Marine Mammal Science 14:1-37).

The PBR levels of each stock of marine mammals in waters under U.S.

jurisdiction are included in regularly updated marine mammal stock assessment reports. The stock assessment report for Eastern North Pacific gray whales has been updated twice (in 1997 and 2000) since its initial completion in 1995. These reports are available in electronic form (see Electronic Access). The PBR for Eastern North Pacific gray whales was changed in each revision to incorporate the latest information available. In addition, NMFS continues to monitor the stock and will continue to update the stock assessment report as required by the MMPA.

Petitioner alleges that the PBR level is not sustainable and attempts to support this allegation by modeling the stock, using a constant removal rate of 649 whales per year. Under such a scenario the stock declined. The petitioner's approach, however, used a PBR value higher than those reported in the 1995, 1997, and 2000 stock assessment reports and failed to adjust the model parameters in the manner in which NMFS has updated PBR values as stock assessment reports were updated. Furthermore, NMFS notes that human-caused mortality has not exceeded PBR (or even approached it) in any of the stock assessment reports prepared to date.

Petitioner also claims that the MMPA offers inadequate protection to gray whales due to NMFS' misinterpretation of section 14 of Pub. L. 103–238, 108 Stat. 552, 559 (1994), which addresses treaty rights. Petitioner claims that NMFS incorrectly interpreted this law (the MMPA Amendments of 1994) to conclude that the MMPA does not abrogate treaty rights. However, NMFS' conclusion regarding wether or not the MMPA abrogates treaty rights was not based upon the wording identified in the petition. Rather, NMFS, working with the Department of Commerce and the Department of the Interior, concluded that the MMPA does not abrogate treaty rights to harvest marine mammals. This conclusion is based on the case, *United States* v. *Dion*, 476 U.S. 734, 739–740 (1986), under which an abrogation of treaty rights requires ''...clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty.'' The MMPA and its legislative history contain no indication that Congress made such a deliberate choice.

International Convention on the Regulation of Whaling: Petitioner states, ''The petitioners do not dispute that the gray whale population has increased since the cessation of whaling.'' Petitioner also states, however, that the regulatory process through this convention and the International Whaling Commission (IWC) provides inadequate protection for gray whales. The petition claims that NMFS misinterpreted the aboriginal subsistence policies of the IWC and that IWC has never recognized the aboriginal subsistence needs of the Makah Tribe; therefore, the quota did not authorize the United States to permit the Makah to whale.

The IWC granted a gray whale quota in 1997 based on a joint request from the United States and the Russian Federation. By granting this quota, the IWC recognized the needs of the Makah Tribe. Given Petitioner's observation that the gray whale stock has increased since commercial whaling was stopped and the petition's failure to refute this observation, NMFS concludes that Petitioner's claims of inadequate protection are not adequately supported.

Gray Whale Biology

The petition contains a discussion of the biology and ecology of gray whales. Most of this discussion reviews existing scientific literature and makes no substantive conclusions regarding the status of the stock or threats to it. Exceptions to this general rule include the discussion of reproduction, mortality, and population size.

Regarding reproduction, the petition reviews scientific literature, much of which was authored by NMFS scientists and included in the 1999 status review. Petitioner notes that the percentage of females with calves in 1999 was less than in previous years. Based solely on this information and the estimated numbers of calves in 1999 and 2000, the petition concludes, ''The decline in calf counts and gray whale observations in the lagoons is cause for serious concern and demonstrates that the gray whale population is declining.'' The petition does not, however, include scientific information supporting the assertion that the population is declining. This statement also neglects to acknowledge that fundamentals of population biology, for which there is a large body of supporting literature, predict that calving rates are expected to be reduced in populations that are within their OSP (compared to depleted populations). Substantial scientific information supports a conclusion that the Eastern North Pacific stock of gray whales is above its Maximum Net Productivity Level (MNPL) and, therefore, within its OSP limits. The 28 invited participants at the 1999 status review (each of whom is an expert in large-whale biology) suggested that the stock was nearing its environment's carrying capacity. Thus, decreased calf production is not necessarily cause for concern and does not necessarily indicate that the population is in danger of extinction or likely to become so in the foreseeable future.

In the discussion related to mortality, the petition reviews various reports on mortality or survival rates of gray whales. The petition notes that gray whale mortality rates were significantly increased in 1999 and 2000, as evidenced by stranding reports, and concludes, ''Because of ongoing and increasing threats to the gray whale prey base, it is expected that such high documented mortality rates will continue.'' No information was included to support such a conclusion.

From 1995–1998, strandings of gray whales along the west coast ranged from 21–54 whales per year. In 1999, 274 gray whales were reported stranded, and the initial estimate for 2000 was approximately 350. Preliminary records indicate that strandings in 2001 are comparable to stranding rates prior to 1999. Thus, the best available information related to stranding rates contradicts the alleged expectation that the high mortality rates of 1999 and 2000 would continue.

In discussing population size, Petitioner reviews results published by several NMFS scientists in the peer-reviewed literature. This brief review highlights the widely-recognized uncertainty that is inherent in estimating the abundance of marine mammals. To address this uncertainty, most scientists recommend a long-term data set so that the effects of annual fluctuations and variation will be minimized. For example, one recent study (Gerber, L, D. DeMaster, and P. Kareiva. 1999. Gray whales and the value of monitoring data in implementing the U.S. Endangered Species Act. Conservation Biology 13:1215–1219) reviewed data from 19 counts of gray whales off the coast of California over a 30–year period since 1967. The objectives of this study included an evaluation of the very data set reviewed in the petition to discern the minimum amount of data required to support the determination that Eastern North Pacific gray whales were no longer threatened or endangered. These scientists concluded that the decision to delist gray whales required 11 years of data to obtain statistically compelling support. These results were consistent with general acceptance of the principle that the statistical power of an analysis is diminished when

sample sizes are partitioned in small groups.

In contrast to recommendations found widely in the scientific literature regarding such data sets, Petitioner suggests that a more ''critical review'' of the gray whale data set could be obtained by breaking the data set down into three ''related subgroups,'' two of which were seven years in duration. Petitioner then claims that the stock was declining from 1967 through 1972 and was maintaining a statistically stable trend in the other two segments (1973–1980 and 1985–1996). Petitioner, however, fails to explain how these subgroups were related and failed to discuss the statistical significance and power of the analyses included in the petition. Thus, Petitioner's conclusions are not supported by scientific evidence and are inconsistent with accepted statistical procedures.

Habitat and Other Factors Affecting Gray Whales

Harvest Statistics: The petition cites published information that the proportion of females in the aboriginal subsistence harvest (almost entirely in the U.S.S.R./Russian Federation) was about 65 percent from 1948 through 1996. The petition also cited published information indicating that 1.4 to 2.3 year-old whales were about 90 percent of the harvest from 1994 through 1996. On the basis of this information, Petitioner suggests that there was a sex bias in the population and that the high proportion of immature animals in the harvest reduced population productivity. Petitioner then speculates that the population would decline as a result of increased mortality and decreased productivity. Petitioner further claims that the lack of consideration of these factors in developing management schemes avoids recognition of the adverse implication of the bias in the harvest, thereby threatening the long-term survival and viability of the population. Petitioner, however, includes no meaningful information to support these claims other than the harvest statistics summarized here. In particular, the petition does not contain any support for the idea that the population is actually declining. On the other hand, the peer-reviewed literature cited in the 1999 status review and in the petition demonstrate conclusively that the population has been increasing since at least 1967, and the scientists at the status review reported that it was near its carrying capacity.

Underestimated Mortality: The petition reviews publications related to mortality incidental to commercial fishing and strandings and undocumented mortality. From this review, Petitioner concludes that incidental mortality should be considered a minimum estimate, that ship strikes exceeded the 1 per year reported in the gray whale stock assessment report, and that counts of stranded gray whales underestimated mortality. In spite of the unquestionable increasing trend in the population from 1967 through 1996 and the general agreement among large-whale scientists (as included in the report of the 1999 status review) that the population is near its carrying capacity, Petitioner concludes that the government's failure to consider undocumented mortalities of gray whales constitutes a threat to the survival and viability of the gray whale population. Petitioner, however, does not cite or provide any substantive information to support this conclusion, which is inconsistent with the scientific literature.

Decline in Benthic Amphipods: The petition includes the results of a study that documented a 30–percent decrease in biomass of one species of benthic amphipod in the central Chirikov basin between 1986 and 1987; Petitioner speculates, without supporting evidence, that a decline has continued since the conclusion of that study. The petition also includes the results of another study that reported a declining trend in benthic biomass form 1990 to 1994, with a single site having a decline of about 50 percent.

Amphipods are typically distributed unevenly within their range, and large increases or decreases in local abundance may be normal. It is possible that local changes in amphipod abundance might have an adverse effect on gray whale populations; however, the petition does not provide information that such an impact would be great enough to warrant listing the stock as threatened or endangered.

Global Warming and ENSO: The petition suggests that climate change (global warming) and periodic fluctuations in sea surface temperature, such as during an ENSO event, alter benthic communities, including amphipods. The petition states that climate change at decadal time scales has significant effects on the marine ecosystem, and it further states that global warming, which, as the petition noted, occurs on a longer time scale, imposes even greater impacts on an ecosystem. Then, the petition states, ''The cumulative impact of global warming and other threats to benthic amphipods demonstrate the urgency with which gray whale habitat must be protected through a listing under the ESA.'' It is not clear from the information included in the petition how events that occur on decadal or longer time scales constitute an urgent need to protect the stock. Also, there is no information in the petition that suggests any correlation between global warming or ENSO events and endangerment or likelihood of extinction of the gray whale in the foreseeable future.

Among the effects of atmospheric warming included in the petition is a decrease in the frequency of storms. The petition states that a reduction in the number of storms decreases the frequency with which detritus, which the petition identified as a critical food source for benthic amphipods, is re-suspended in the marine environment. This section of the petition includes a discussion of mechanisms by which global warming could affect benthic amphipods, an important food source for gray whales. Those mechanisms are addressed in the following 3 paragraphs:

(1) Impact of Contaminants on Benthic Amphipods: The petition describes various mechanisms by which contaminants, particularly related to oil spills, could affect the habitat and food sources of gray whales. The petition, however, does not present information that such effects on gray whale habitat had actually occurred or to what extent they were likely to occur. Additionally, there is no assessment of the extent of such effects on gray whales.

(2) Trawling Impacts to Benthic Amphipods: Petitioner claims that bottom trawling for groundfish is a significant threat to the gray whale because this practice destroys and degrades benthic amphipod communities. The petition then discusses various mechanisms by which bottom trawling could affect gray whales and their habitat. These mechanisms include the resuspension of buried organic matter. The petition notes that such resuspension could contribute to the growth of anoxic areas, could increase turbidity (thus, reduce photosynthesis), and possibly could re-expose toxins that were previously sequestered in the sediment. This observation is inconsistent with the claim made earlier in the petition that such re-suspension was beneficial when caused by storms. Furthermore, the petition fails to include information to show a decline in benthic amphipods that could be attributed to trawling, and it fails to assess the extent of trawling within the range of Eastern North Pacific gray whales in waters off Alaska.

(3) Impacts of Predation on Benthic Amphipods: This section of the petition begins with a statement that scientists

have suggested that the prey base of gray whales is declining as the species approaches its carrying capacity. It continues with the statement that available evidence suggests that other natural and anthropogenic factors likely play a far more significant role in determining benthic amphipod abundance than does gray whale predation. The petition, however, contains no other reference to the impacts of predation on benthic amphipods nor does it contain any support for these assertions.

Oil and Gas Exploration and Extraction: The section fo the petition related to oil and gas activities cites several government documents that describe the extent of oil and gas production within the gray whale's range and documents that predict that such activity will expand in the future. The petition also notes government estimates of the probabilities of one or more oil spills (1,000 and 10,000 barrels or more) in certain areas. The petition then describes mechanisms by which oil spills could affect gray whales. This section of the petition contains no information on the impact or potential impact on gray whale populations and information related to the role that oil and gas activities may have in causing the gray whale stock to be in danger of extinction or likely to become so in the foreseeable future.

Noise Impacts: The petition describes several mechanisms by which noise could affect individual gray whales. Citing a series of reports, primarily by NMFS scientists, the petition contains evidence that gray whales respond to noise in their environment and may avoid the source of the noise. There is no information related to the extent to which noise has affected or may affect gray whale populations.

Contaminants: The petition describes several potential sources of contaminants in gray whale habitat and notes that the potential threat of contaminants is somewhat reduced for gray whales because gray whales consume prey of relative low trophic levels. The petition then describes observations of Russian Natives who had killed ten gray whales that had an ''extremely strong smell'' and ''unusual taste.'' This section of the petition concludes that scientists do not have an understanding of the full range of issues necessary to fully assess the impact of contaminants on gray whales and that additional research is needed. As noted in the report of the 1999 status review, however, much research has been conducted on contaminants in gray whales, and this work indicates that contaminant levels are such that they are not likely to endanger the population.

Other Impacts: The petition includes on-shore development and vessel traffic, including whale watching, as other potential sources of impact on gray whales. Regarding on-shore development, the petition notes the creation of a plan for a salt plant on the shore of Laguna San Ignacio and that the plan was subsequently withdrawn. The petition presents one study as reporting gray whales were absent from a calving lagoon in Laguna Guerro Negro from 1957 to 1967 when a salt evaporation facility was operational and had returned 6 years after the facility had closed.

Regarding vessel traffic, the petition cites several studies that found that gray whales demonstrate short-term flight reactions, particularly when boats move at high speed or erratically. The petition also notes that one study, published in 1984, found that whale watching activities in Laguna San Ignacio had not caused major disruptions. The petition also recognizes that regulations restricting whale watching activities in the United States have reduced, but not eliminated, adverse impacts associated with whale watching. The petition, however, presents no information indicating that impacts of these activities endangered the stock.

Petition Finding

As noted in the description of the 1999 status review, the best available scientific information overwhelmingly demonstrates that the Eastern North Pacific stock of gray whales increased during the period 1967 through 1996 and that the stock may be near its carrying capacity. The information supporting these conclusions regarding the abundance and status of the stock have been scrutinized by leading experts on large-whale population dynamics through the 1999 status review, through scientific meetings supporting the IWC, through the Alaska Scientific Review Group, and through established peer-review processes for publishing scientific results.

The petition presents arguments regarding uncertainties in abundance estimates. These arguments are purportedly supported by modeling efforts that have not been subjected to the scrutiny of peer review. In light of the substantial scientific information supporting the finding that the status of the gray whale stock is well above its MNPL, the arguments in this petition are not supported by substantial information that would lead a reasonable person to believe that the petitioned action may be warranted.

The best available scientific information clearly shows that Eastern North Pacific gray whales are within their OSP, and 28 experts in large-whale biology agreed in the 1999 status review that the stock was nearing its environmental carrying capacity. One of the fundamental tenets of population ecology is that reproductive rates in populations above their MNPL (and, under the MMPA, within OSP limits) are lower than when the population is depleted and recovering. Therefore, the reduced productivity rates observed in this gray whale population are, indeed, expected and predictable.

Another tenet of population ecology is that the carrying capacity of an environment for a particular species is a variable that can change over long time scales. Furthermore, around this long-term capacity, there are year-to-year fluctuations in the numbers of organisms that the particular habitat will support. In the case of gray whales and many other species in the North Pacific Ocean, these fluctuations can be caused by such things as ENSO events and extent of sea ice. These fluctuations may have a large effect on annual primary production in the affected environment, which, in turn, will affect higher trophic levels. Thus, it is expected that environmental fluctuation would result in large numbers of whales dying in certain years, particularly because gray whales may be near their environment's carrying capacity.

The information presented in the petition accurately reflects high levels of mortality in 1999 and 2000; however, the only available data for 2001 suggest that mortality levels are returning to those seen prior to the unusual levels seen in 1999 and 2000.

The petition does not accurately characterize (e.g., PBR, abrogation of treaty rights) or ignores (e.g., habitat protection) provisions of the MMPA. It also does not accurately characterize conservation actions, and the results of these actions, under the IWC. The assertion in the petition that there is an inadequate regulatory mechanism is based upon these inaccuracies.

The petition includes a discussion of a variety of factors that could affect gray whales and characterizes these factors as significant threats to the gray whale. Indeed, the information in the petition indicates that the gray whale population may have been adversely affected by at least some of these factors.

As NMFS pointed out in its determination that the Eastern North Pacific stock of gray whales should be removed from protections under the ESA (58 FR 3121, January 7, 1993), individual and cumulative impacts of

various factors may have had adverse impacts on the gray whale stock; however, these factors were not likely to jeopardize the continued existence of the stock. Similarly there is not substantial information in this petition, in light of the evidence to the contrary, indicating that the Eastern North Pacific stock of gray whales is in danger of extinction throughout all or a significant portion of its range or likely to become endangered in the foreseeable future. Therefore, NMFS finds that the petition does not present substantial scientific or commercial information indicating that the petitioned action (listing Eastern North Pacific gray whales as threatened or endangered) may be warranted.

Electronic Access

Updated versions of the stock assessment reports for the Eastern North Pacific stock of gray whales are available at the following Internet address: *http://www.nmfs.noaa.gov/prot—res/PR2/Stock—Assessment—Program/individual—sars.html*

Authority: 16 U.S.C. 1531, *et seq.*

Dated: June 8, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–15059 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010607147–1147–01; I.D. 052101A]

RIN 0648–AP26

Pacific Halibut Fisheries; Primary Sablefish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to provide a regulatory framework that would implement an Area 2A Pacific halibut Catch Sharing Plan (CSP) allocation to the Pacific Coast, limited entry primary sablefish fishery. This rule would allow halibut taken incidentally in the primary sablefish fishery to be retained and landed and would provide a framework that would allow the Pacific Fishery Management Council (Council) to recommend halibut catch limits for the sablefish fishery when a halibut quota is available to that fishery.

DATES: Comments must be submitted in writing by July 16, 2001.

ADDRESSES: ADDRESSES: Send comments to Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115. Copies of the environmental assessment/regulatory impact review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention), signed at Ottawa, Ontario, Canada, on March 2, 1953, and amended by a Protocol Amending the Convention, signed at Washington, D.C., United States of America, on March 29, 1979, authorizes the International Pacific Halibut Commission (Commission) to promulgate regulations for the conservation and management of the Pacific halibut fishery. Before these regulations have any effect on U.S. fishermen, they must be approved by the Secretary of State of the United States pursuant to section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k) that executes the above Convention. Section 5 of the Halibut Act gives the Secretary of Commerce (Secretary) the responsibility to carry out the Convention between the United States and Canada and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA. Section 5 of the Halibut Act also provides that the regional fishery management council, having authority for the geographical area concerned, may recommend to NMFS management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the Commission.

The Commission describes the waters off the coasts of Washington, Oregon, and California as ''Area 2A.'' The Council recommends management policies affecting Area 2A through the annually updated CSP, and NMFS and the Commission adopt them for implementation.

This CSP has been in place since 1995, when the Council re-considered its management of non-tribal fisheries in order to accommodate a court-ordered increase to the tribal halibut allocation. The tribal fisheries for halibut occur north of Pt. Chehalis, Washington. Under the CSP, non-tribal fisheries are divided into three shares, with the Washington sport fishery receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The non-tribal commercial fisheries included a directed commercial fishery south of Pt. Chehalis and a coastwide incidental halibut retention opportunity for the salmon troll fishery. This CSP ended non-treaty directed commercial fishing north of Pt. Chehalis.

In 1998, Washington State and the Council decided to allow non-tribal commercial longliners who had traditionally taken halibut off the Washington coast to have access to some commercial halibut in years of greater halibut abundance. Amendments to the CSP in 1998 included a halibut allocation for longline vessels participating in the Pacific coast, limited entry primary sablefish fishery north of Pt. Chehalis. Longliner participants in the primary sablefish fishery were generally the same fishermen who had lost a directed commercial fishing opportunity in 1995. Under 1998 changes to the CSP, this halibut allocation would be available only to the sablefish fishery when the overall total allowable catch (TAC) for Area 2A was above 900,000 lb (408.2 mt). Implementing regulations for this portion of the CSP were not promulgated in 1998 because there were no fish available for this fishery. For the first time since 1998, the Area 2A TAC is above 900,000 lb (408.2 mt); therefore, NMFS is now proposing implementing regulations. Because most of the non-tribal halibut quota for waters off Washington State is allocated to the sport fisheries, the CSP takes the commercial sablefish fishery allocation from the percentage previously set aside for the Washington recreational fishery allocation.

At its January 22–25 meeting, the Commission set an Area 2A TAC of 1,140,000 lb (517 mt). According to the CSP, the primary sablefish fishery would receive an allocation of the amount of halibut from the portion of the Washington sport fishery allocation (36.6 percent of the Area 2A TAC) that is in excess of 214,110 lb (97.1 mt), provided that a minimum of 10,000 lb

(4.5 mt) is available to the sablefish fishery. Under the 2001 Area 2A TAC of 1,140,000 lb (517 mt), the primary sablefish fishery allocation would be 47,946 lb (21.7 mt).

While the CSP provides the formula for calculating the primary sablefish fishery's halibut allocation, it does not specify a regulatory framework for the retention of halibut taken incidentally during the sablefish fishery. Similarly, the CSP specifies a formula for determining the amount of halibut available for incidental retention in the salmon troll fishery without setting a regulatory framework managing per-vessel retention levels. To implement the CSP for the salmon troll fishery, Federal halibut regulations at 50 CFR 300.63(a)(2) state: ''A portion of the commercial [halibut] TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council (Council) at its spring meetings and will be published in the **Federal Register** along with the annual salmon management measures.'' The Council has recommended revising the Federal halibut regulations to provide a similar framework for allowable incidental halibut retention for the limited entry, primary sablefish fishery.

At the March and April 2001 Council meetings, following the Commission's adoption of a 1,140,000 lb (517 mt) TAC for Area 2A, the Council discussed how to best manage incidental halibut retention in the primary sablefish fishery. According to the CSP, only longline vessels fishing for sablefish in the limited entry, primary sablefish fishery north of Pt. Chehalis, WA (46°53′18″ N. lat.) are eligible to retain halibut taken in a sablefish fishery. Commission regulations, which govern fisheries off both Canada and the United States, do not allow fishermen to retain, possess, or land halibut taken with gear other than hook-and-line gear. Commission regulations also require that all non-tribal commercial vessels in Area 2A carry a commercial license issued by the Commission, which is free to an applicant. In Area 2A, commercial hook-and-line vessels south of Pt. Chehalis participate in a directed halibut fishery managed with per vessel cumulative limits. Longliners fishing for sablefish north of Pt. Chehalis may only retain and land halibut taken incidentally during the primary sablefish fishery. Participation in the primary sablefish fishery is restricted by Federal groundfish regulations to limited entry permit holders with sablefish endorsements.

Under the combined constraints of the CSP, Commission regulations, and groundfish regulations, only limited entry longline vessels with sablefish endorsements fishing for sablefish north of Pt. Chehalis during the primary sablefish fishery are eligible to retain incidentally caught halibut. Approximately 55 longline vessels with sablefish endorsements commonly fish in waters north of Pt. Chehalis. For 2001 and beyond, the Council had to design a regulatory structure that would allow these vessels access to their halibut quota without exceeding that quota. Council priorities were to (1) ensure that halibut could only be retained and landed if they were taken incidentally to sablefish fishing rather than targeted, and (2) provide a regulatory framework similar to the salmon troll framework that could be used each year.

At its April 2001 meeting, the Council recommended amending Federal halibut regulations to add a framework for the primary sablefish fishery that would be similar to the existing regulatory framework for halibut retention limits in the salmon troll fishery. This framework would allow the Council to annually determine limits for halibut retention in the primary sablefish fishery based on the halibut quota for this fishery, number of vessels licensed to participate, and the expected sablefish harvest by the participating vessels. Each year, NMFS would publish the Council's recommended halibut retention limit in the **Federal Register**.

The Commission's commercial licensing process requires that applicants submit their license requests by April 30. Thus, the Council will not know the exact number of vessels expected to land halibut during the primary sablefish fishery until its June meeting. At its June meeting, the Council will set a ratio of allowable landed halibut to landed sablefish. For example, with the 2001 quota of 47,946 lb (21.7 mt) and the estimated 55 participating vessels, the halibut landing limit would be one halibut for every 480 lb (0.22 mt) of sablefish landed and up to two additional halibut in excess of the one fish per 480 lb (0.22 mt) ratio per landing. Ratios would be set to ensure, as much as possible, that halibut would be available to sablefish fishery participants throughout the sablefish season. Higher halibut limits might encourage vessels to either target halibut or to race each other for access to the halibut, possibly allowing the fleet to exceed the halibut quota before the sablefish season closes. The program under which vessels participating in the sablefish fishery fish under vessel-specific cumulative sablefish limits simplifies managers' efforts to calculate the ratio between available halibut and expected sablefish landings.

There are no other expected biological effects of this proposed action beyond those contemplated by the Commission when it set the Area 2A TAC. The only expected socio-economic effects of this proposed action are positive, in that fishermen operating north of Pt. Chehalis who have not been permitted to land commercially harvested halibut in past years because there was no allocation of halibut will be able to do so in 2001.

Classification

The Council has prepared an EA/RIR for this proposed rule that describes the management background, the purpose and need for action, the managment action alternatives, and the environmental and socio-economic impacts of the alternatives. Copies of the EA/RIR are available from the Council (see **ADDRESSES**).

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

The Chief Council for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities as follows:

A fish-harvesting business is considered a ''small'' business by the SBA if it has annual receipts not in excess of $3.0 million. The approximately 55 businesses that would be affected by this rule are all small businesses, and all are expected to benefit from this proposed rule. In years when the Area 2A Pacific halibut TAC is high enough to allow halibut retention in the primary, fixed gear sablefish fishery, these businesses will be able to supplement their income by landing incidentally caught halibut. Participating vessels would be allowed to land halibut that they would normally discard during the course of fishing, thus these vessels will incur no extra expenses in harvesting this quota. Depending on the halibut quota available to this fishery, the proposed action could result in about $1,500 to $15,000 additional annual income per vessel. Thus, the effect of this action on small businesses would be modest but positive. Because this quota is taken off the top of the Washington State recreational fishery quota only in years of an overall Area 2A TAC above 900,000 lb (408.2 mt) and because the TAC has not been this high in many years, it does not leave Washington recreational anglers and charter businesses with less halibut than they have had in recent years. A catch-sharing plan governs the allocation of halibut in Area 2A. That plan was amended in 1998 to establish this quota. The Commission has already set

aside this quota for this year. This proposed rule merely establishes the framework to annually distribute that quota among the affected fishers.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 11, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k

2. In § 300.63, paragraphs (a) (3) and (a) (4) are redesignated as (a) (4) and (a) (5), respectively, and a new paragraph (a) (3) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(a) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the primary directed longline sablefish fishery north of 46°53′18″ N. lat., (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.323(a)(2). This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt), provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the directed sablefish fishery north of 46°53′18″ N. lat. is allowed, it is allowed only for vessels using longline gear that are registered under groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess or land halibut south of 46°53′18″ N. lat. that were taken and retained north of 46°53′18″ N. lat. as incidental catch in the directed sablefish fishery authorized by this section.

* * * * *

[FR Doc. 01–15065 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 010601143–1143–01; I.D. 050201B]

RIN 0648–AO62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic States; Recreational-for-hire Fisheries in the Gulf; Control Date

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

ACTION: Advance notice of proposed rulemaking; establishment of a revised control date.

SUMMARY: This document announces that the Gulf of Mexico Fishery Management Council (Council) has adopted an amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that would, if approved and implemented by NMFS, establish a moratorium on the issuance of additional charter vessel and headboat (recreational-for-hire) permits for these fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico. The Council has not yet submitted the final amendment or its proposed implementing regulations to NMFS for approval and implementation. The Council has established March 29, 2001, as a revised control date for determining eligibility for charter vessel/headboat permits under the permit moratorium contained in the amendment. Therefore, consistent with the Council's intent, this notice announces March 29, 2001, as the revised control date for these recreational-for-hire fisheries in the Gulf of Mexico EEZ, thereby superseding the Council's prior control date of November 18, 1998. This control date is intended to discourage new entry into these recreational-for-hire fisheries prior to review by NMFS of the amendment and its regulatory implementation.

DATES: Comments on the revised control date must be submitted no later than 5 p.m., eastern daylight savings time, July 16, 2001.

ADDRESSES: Comments on the revised control date should be directed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Phil Steele, Southeast Region, NMFS, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The recreational-for-hire fisheries for reef fish and coastal migratory pelagic fish in the EEZ of the Gulf of Mexico are managed under the Reef Fish FMP and the Coastal Migratory Pelagic Resources of the Gulf and South Atlantic (Coastal Migratory Pelagics FMP)), respectively. The Reef Fish FMP was prepared by the Council; the Coastal Migratory Pelagics FMP was prepared jointly by the Council and the South Atlantic Fishery Management Council (South Atlantic Council). Both FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act) by regulations at 50 CFR part 622. The FMPs regulate these two recreational-for-hire fisheries and require permits for charter and headboat vessels participating in them. Landings of these vessels are regulated through fish bag, possession, and size limits. There also is an annual recreational quota for red snapper under the Reef Fish FMP.

The recreational sector of both the red snapper and king mackerel fisheries, including recreational-for-hire vessels, has frequently exceeded the annual allocation set for that sector when total allowable catch (TAC) for the whole fishery (recreational and commercial catch) is established annually. To prevent the recreational sector of these fisheries from exceeding its annual allocation, the Council must either reduce the bag limit or take some other action to reduce the fishing effort and/or landings (e.g., seasonal closures and/

or increased fish size limits). Reduction of the bag limit is the most effective way to control annual landings, but such reductions could have adverse economic impacts on the recreational-for-hire vessels. Reductions in the bag limit could cause some of the clientele of these vessels to cease fishing and pay for fishing trips. The Council is, therefore, addressing the need for effort limitation for recreational-for-hire vessels for these fisheries in the Gulf of Mexico EEZ through an alternative approach.

On March 29, 2001, the Council adopted an amendment to the Reef Fish FMP and the Coastal Migratory Pelagics FMP that would, if approved and implemented by NMFS, establish a moratorium on the issuance of charter vessel/headboat permits for the reef fish and coastal migratory pelagic fisheries in the Gulf EEZ. Under the permit moratorium contained in the amendment, eligibility for participation in these for-hire fisheries would be based upon the following: (1) Obtaining or applying for a charter vessel or headboat permit prior to March 29, 2001; (2) demonstrating that a charter/headboat vessel was under construction prior to March 29, 2001; or (3) demonstrating compliance with the criteria for ''historical captain'' that are based, in part, on the March 29, 2001, control date.

Once the Council and the South Atlantic Council submit the amendment to NMFS for Secretarial review under procedures of the Magnuson-Stevens Act, NMFS will publish a notice of availability of the amendment and proposed implementing regulations for public review and comment. After considering the public comment, if NMFS approves the amendment, it would implement the amendment through final regulations. During this process, some fishermen who do not currently participate in the subject recreational-for-hire fisheries, and have never done so, may decide to enter these fisheries for the sole purpose of establishing a record of landings. This kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The existing fishery problems in the red snapper and king mackerel fisheries, such as overcapitalization or overfishing, would likely be exacerbated by the entry of new participants.

In an effort to avoid this problem and to discourage capital investment in these fisheries by such new entrants who would not qualify for a permit under the proposed moratorium, the Council has established March 29, 2001, as the control date. After that date, anyone entering these recreational-for-hire fisheries would not be eligible for a charter vessel or headboat permit under the proposed permit moratorium, assuming it is approved and implemented.

The Council previously established a control date of October 16, 1995 (60 FR 53576, October 16, 1995), for the recreational-for-hire fishery for Gulf king mackerel. That control date was subsequently superseded by a November 18, 1998, control date for the recreational-for-hire fisheries for reef fish and coastal migratory pelagic species, including Gulf king mackerel, in the Gulf EEZ (63 FR 64031, November 18, 1998). It is the Council's intent that the November 18, 1998, control date be superseded by the March 29, 2001, control date announced by this notice. The Council selected this revised control date because it established eligibility criteria for participation under its proposed moratorium on issuance of charter vessel/headboat permits for the Gulf EEZ that are related, in one manner or another, to participation in these fisheries prior to March 29, 2001. The Council took this action after deciding that use of the previous November 18, 1998, control date would not accurately cap fishing effort in the for-hire sectors of these fisheries at their actual current level.

A control date does not commit the Council or NMFS to any particular management regime or criteria for future entry into the recreational-for-hire fisheries. Fishermen are not guaranteed future participation in these fisheries regardless of their entry date or intensity of participation in the fisheries before or after the control date. The Council subsequently may choose a different control date or they may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council also may choose to take no further action to control entry or access to the fisheries.

This advanced notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

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

Dated: June 11, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–15066 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 115
Thursday, June 14, 2001

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

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Rapid City, South Dakota, June 14–16, 2001. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held June 14–16, 2001. A tour of local projects will be held on June 14 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hotel Alex Johnson, 523 Sixth Street, Rapid City, South Dakota. Individuals, who wish to speak at the meeting or to propose agenda items, must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, California 95370. Individuals may fax their names and proposed agenda items to (209) 536–9089.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The Challenge Cost-Share Grant categories, identified by the Council, are advertised annually to solicit proposals for projects to advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8:30 a.m. to 10:30 a.m. on June 16, in order for the Council to determine the categories for the 2002 Challenge Cost-Share grant program. Otherwise, the meeting is open to the public.

Council discussion is limited to Forest Service staff and Council members, however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided. This notice is being provided less than 15 days prior to the meeting because of administrative delays in authorizing closure of a portion of the meeting.

Dated: June 11, 2001.

Ann M. Veneman,

Secretary, Department of Agriculture.

[FR Doc. 01–15162 Filed 6–12–01; 2:26 pm]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Province Advisory Committee (PAC); Notice of Meeting

AGENCY: Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Province Advisory Committee will meet on June 14, 2001. The meeting starts at 9:30 a.m. in the BLM Conference Room, 355 Hemsted Drive, Redding, CA. The Advisory Committee was appointed by the Secretary of Agriculture to provide recommendations on implementation of the Northwest Plan Record of Decision (''President's Forest Plan'').

Agenda items to be covered include: (1) FERC relicensing; (2) Survey and Manage Final SEIS; (3) Red Legged Frog Critical Habitat issue; (4) Update on proposed Resource Advisory Committees (RAC's); (5) Using Clear Creek full ecosystem landscape management demonstration project; (6) Open agenda time; (7) NPS presentation plan; (8) Fire/Fuels Initiative update. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sharon Heywood, Designated Federal Official for Northwest Sacramento Province Advisory Committee, USDA Forest Service, 2400 Washington Ave., Redding CA 96001 (503) 242–2200 or Duane Lyon, Coordinator, Northwest Sacramento Province Advisory Committee, USDA Forest Service, 2400 Washington, Ave., Redding, CA 96001 (530) 242–2207.

Dated: May 7, 2001.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 01–14945 Filed 6–13–01; 8:45 am]

BILLING CODE 3401–FR–M

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Special Public Business Meeting in Newark, NJ.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On June 26, 2001, the Council will hold a Business Meeting 8:30 a.m.–9:30 a.m. during which time the Council members will discuss general Council business. Following the Business Meeting, the Council will hold a formal Hearing inviting states and commuter agencies to testify before the Council on the Council's proposal of ''appropriate separation'' of the NEC infrastructure from Amtrak national train operations. The Hearing will be held from 9:30 a.m. to 5:30 p.m.

DATES: The Business Meeting will be held on Tuesday, June 26, 2001, from 8:30 a.m. to 9:30 a.m., followed by a Hearing from 9:30 a.m. to 5:30 p.m. Both events are open to the public.

ADDRESSES: Both the Business Meeting and Hearing will take place in the Ballroom at the Hilton Newark Gateway in the Gateway Center on Raymond Boulevard, Newark, New Jersey 07102 (across from Newark Penn Station.) The Ballroom is located on the first floor to the left of the bellhop desk. The nearest New Jersey Transit stop is Newark Penn Station which is across the street. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's Second Annual Report, information about ARC Council Members and staff, and much more, you

can also visit the Council's website at www.amtrakreformcouncil.gov.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC—June 8, 2001.

Thomas A. Till,

Executive Director.

[FR Doc. 01–15025 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 010412092–1149–02]

Public Hearings on Section 232 National Security Investigation of Imports of Iron Ore and Semi-Finished Steel

AGENCY: Bureau of Export Administration, Office of Strategic Industries and Economic Security, Strategic Analysis Division, Department of Commerce.

ACTION: Notice of public hearings on section 232 national security investigation of imports of iron ore and semi-finished steel.

SUMMARY: The Bureau of Export Administration (BXA) is holding public hearings on the investigation that the Department of Commerce initiated, on February 1, 2001, to determine the effects on the national security of imports of iron ore and semi-finished steel. This investigation is being conducted under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). This notice identifies the issues on which the Department is interested in obtaining the public s views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held on Thursday, July 5, 2001 at the Virginia High School, Goodman Auditorium, 411 5th Avenue, South, Virginia, MN 55792; on Sunday, July 15, 2001 at the Northern Michigan University, University Center, Michigan Room, 1401 Presque Isle, Marquette, MI 49855; and on Thursday, July 19, 2001 at the Newport Gateway, 19900 MacArthur Boulevard, Suite 300 (Food and Drug Administration Office), Irvine, CA 92612. All hearings will begin at 12 noon local time and conclude at 7 PM local time.

ADDRESSES: Send requests to speak and written summaries of the oral presentations to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, by June 25, 2001. Any person, whether presenting or not, may submit a written statement through August 17, 2001; 30 days after the last hearing date.

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4060, *bbotwin@bxa.doc.gov* or Michael Vaccaro, Trade and Industry Analyst, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–8232, *mvaccaro@bxa.doc.gov.* For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.doc-bxa.bmpcoe.org* under ''Programs.''

SUPPLEMENTARY INFORMATION:

Background and Specific Comments Requested

On February 1, 2001, the Department of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of iron ore and semi-finished steel. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President no later than October 29, 2001. For further details on this investigation, see the **Federal Register** notices of February 6, 2001 (66 FR 9067) and April 18, 2001 (66 FR 19917).

The iron ore and semi-finished steel products subject to this investigation include:

1. Iron Ore
   —Briquettes
   —Pellets
   —Sinter
2. Semi-finished Steel
   —Ingots
   —Billets
   —Blooms
   —Slab

Consistent with the interest of the U.S. Department of Commerce in soliciting public comments on issues affecting U.S. industry and national security, BXA is holding public hearings as part of the investigation. The hearings will assist the Department in determining whether imports of iron ore and semi-finished steel threaten to impair the national security and in recommending remedies if such a threat is found to exist.

The Department is particularly interested in comments and information directed to the criteria listed in 15 CFR part 705.4, Effect of Imported Articles on the National Security (''the regulations''), including the following: (a) Quantity of the articles subject to the investigation and other circumstances related to the importation of such articles; (b) Domestic production capacity needed for these articles to meet projected national defense requirements; (c) The capacity of domestic industries to meet projected national defense requirements; (d) Existing and anticipated availability of human resources, products, raw materials, production equipment, facilities, and other supplies and services essential to the national defense; (e) Growth requirements of domestic industries needed to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth; (f) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security; (g) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; (h) Relevant factors that are causing or will cause a weakening of our national economy; and (i) Any other relevant factors.

Notice of Public Hearings

The hearings will be held on Thursday, July 5, 2001 at the Virginia

High School, Goodman Auditorium, 411 5th Avenue, South, Virginia, MN 55792; on Sunday, July 15, 2001 at the Northern Michigan University's University Center, Michigan Room, 1401 Presque Isle, Marquette, MI 49855; and on Thursday, July 19, 2001 at the Newport Gateway, 19900 MacArthur Boulevard, Suite 300 (Food and Drug Administration Office), Irvine, CA 92612. All hearings will begin at 12 noon local time and conclude at 7 PM local time.

Procedure for Requesting Participation

The Department encourages interested public participants to present their views orally at the hearings. Any person wishing to make an oral presentation at the hearings must submit a written request to the Department of Commerce at the address indicated in the **ADDRESSES** section of this notice. The request to participate in the hearings must be accompanied by 3 copies of a summary of the oral presentation. The written request and summary must be received by the Department no later than Monday, June 25, 2001. In addition, the request to speak should contain (1) the name and address of the person requesting to make a presentation; (2) a daytime phone number where the person who would be making the oral presentation may be contacted before the hearing; (3) the organization or company they represent; (4) an e-mail address, if available, and (5) the location you will attend to make your presentation.

Please note that the submission of comments for presentation at the public hearings is separate from the request for written comments contained in the February 6, 2001 and April 18, 2001 **Federal Register** notices. Since it may be necessary to limit the number of persons making presentations, the written request to participate in the public hearing should describe the individual's interest in the hearings and, where appropriate, explain why the individual is a proper representative of a group or class of persons that has such an interest. If all interested parties cannot be accommodated at the hearings, the summaries of the oral presentations will be used to allocate speaking time and to ensure that a full range of comments is heard.

Each person selected to make a presentation will be notified by the Department of Commerce no later than 8 PM EDT on Friday, June 29, 2001. The Department will arrange the presentation times for the speakers. Attendees will be seated on a first-come, first-served basis. Persons selected to be heard are requested to bring 100 copies of their oral presentation and of all exhibits to the hearing site on the day of the hearing. All such material must be of a size consistent with ease of handling, transportation and filing. While large exhibits may be used during a hearing, copies of such exhibits in reduced size must be provided to the panel. Written submissions by persons not selected to make presentations will be made part of the public record of the proceeding. Any person, whether presenting or not, may submit a written statement through August 17, 2001; 30 days after the last hearing date. Confidential business information may not be submitted at a public hearing. In the event confidential business information is submitted it will be handled according to the same procedures applicable to such information provided in the course of an investigation. See 15 CFR 705.6. Each hearing will be stenographically reported. Transcripts of the hearings may be purchased after the hearings have been completed from the Department for actual cost of duplication.

Copies of the requests to participate in the public hearings, and the transcripts of the hearings will be maintained on the Bureau of Export Administration's web page, which can be found at *http://www.bxa.doc.gov* (see Freedom of Information Act (FOIA) heading). If the requesters cannot access the web site, they may call (202) 482–2165 for assistance. The records related to this assessment are made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*)

Conduct of the Hearing

The Department reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each speaker will be limited to 10 minutes, and comments must be directly related to the criteria listed in 15 CFR part 705.4 of the regulations.

A Commerce Department official will be designated to preside at the hearings. The presiding officer shall determine all procedural matters during the hearings. Representatives from the Commerce Department and other U.S. Government agencies will make up the hearing panel. This will be a fact-finding proceeding; it will not be a judicial or evidentiary-type hearing. Only members of the hearing panel may ask questions, and there will be no cross-examination of persons presenting statements. However, questions submitted to the presiding officer in writing may, at the discretion of the presiding officer, be posed to the presenter. No formal rules of evidence will apply to the hearings.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be received by the Department of Commerce no later than Friday, June 29, 2001 at the address indicated in the **ADDRESSES** section of this notice.

Dated: June 8, 2001.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 01–15024 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–DT–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061101B]

Pacific Albacore Logbook

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Al Coan, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, CA 92038–0271 (phone 858–546–7079).

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishermen participating on the Pacific albacore tuna fishery are asked to voluntarily complete and submit logbooks documenting their catch and effort on fishing trips. Persons possessing High Seas Fishing Compliance Act permits are required to submit such logbooks. The information obtained is used by the agency to assess the status of albacore stocks and to monitor the fishery.

II. Method of Collection

A logbook form is used.

III. Data

OMB Number: 0648–0223.

Form Number: NOAA Form 88–197.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 1 hour for a trip logbook.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost to Public: $128.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–15056 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061101C]

Cooperative Tagging Center; Fish Tagging Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 16, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Eric D. Prince, F/SEC2, Room 320A, 75 Virginia Beach Drive, Miami, FL 33149–1003 (phone 305–361–4248).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Cooperative Tagging Center attempts to determine the migratory patterns and other biological information about billfish, tunas, and other game fish. Volunteer anglers are asked to tag and release their catch. Anglers provide information about the fish tagged and the location of tagging.

II. Method of Collection

Respondents fill out and mail in a Fish Tagging Report card when they tag a fish.

III. Data

OMB Number: 0648–0247.

Form Number: NOAA Form 88–162.

Type of Review:

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,000.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 360.

Estimated Total Annual Cost to Public: $0.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–15057 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[061101G]

Individual Fishing Quotas Program for Pacific Halibut and Sablefish in the Alaska Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086,

14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AKR2, P.O. Box 21668, Juneau, AK 99802-1668 (telephone 907-586-7008).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Individual Fishery Quota (IFQ) program, established by Amendment 15 to the Bering Sea and Aleutian Islands Fishery Management Plan and Amendment 20 to the Gulf of Alaska Fishery Management Plan, and implemented by regulations at 50 CFR part 679, commenced in March 1995. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ. This statement supports the renewal of certain ≥collection of information≥ requirements necessary for the continued management of the IFQ program. The specific types of reporting required are identified below in the section for ''Estimated Time Per Response''.

II. Method of Collection

The methods used include paper forms, facsimile transmission of paper forms, telephone notifications, and electronic reporting.

III. Data

OMB Number: 0648-0272.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, business and other for-profit organizations.
Estimated Number of Respondents: 6,700.
Estimated Time Per Response: IFQ prior notice of landing (12 minutes); IFQ landing report (12 minutes); IFQ departure report (6 minutes); IFQ dockside sale (6 minutes); administrative waiver (6 minutes); request for QS application (30 minutes for an individual, 1 hour for an existing corporation, 2 hours for a dissolved corporation, and 2 hours for a vessel); IFQ vessel clearance report (12 minutes); IFQ shipment report (18 minutes); IFQ transshipment authorization request (12 minutes); QS Designated Beneficiary Form (1 hour); QS/IFQ Transfer Application (2 hours); letter of appeal (4 hours); applications for additional IFQ cards (30 minutes); application for crew member eligibility (2 hours); application for replacement cards (30 minutes); Register Buyer Permit Application (30 minutes); request for a transaction terminal (30 minutes); and identification of ownership interest by corporations and partnerships (2 hours for initial submission and 30 minutes for an annual update).
Estimated Total Annual Burden Hours: 22,775.
Estimated Total Annual Cost to Public: $126,000.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: Dated: June 8, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–15061 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[061101F]

Emergency Beacon Registrations

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Ajay Mehta, SARSAT Program Manager, E/SP3, Rm 3320, FB-4 NOAA, 5200 Auth Road, Suitland, MD 20746-4304 (phone 301-457-5678).

SUPPLEMENTARY INFORMATION:

I. Abstract

An international system exists to use satellites to detect and locate ships, aircraft, or individuals in distress if they are equipped with an emergency radio beacon. Persons purchasing such a beacon must register it with NOAA. The data provided by registration can assist in identifying who is in trouble and in suppressing false alarms.

II. Method of Collection

Respondents complete a paper form (also available off of a Web site) and mail or fax the form to NOAA.

III. Data

OMB Number: 0648-0295.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal government.
Estimated Number of Respondents: 10,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 2,500.
Estimated Total Annual Cost to Public: $3,000.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: Dated: June 8, 2001

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–15062 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–HR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061101E]

Recovery and Implantation of Archival Tags

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument (s) and instructions should be directed to Christopher Rogers, F/SF1, Room 13563, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2347, ext. 109).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) authorizes programs to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). Archival tags are miniature data loggers that acquire information about the movements and behavior of the fish. Persons catching tagged fish are exempted from other normally applicable regulations, such as immediate release of the fish, but must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture. The information obtained is used by NOAA in the formation of international and domestic fisheries policy and regulations.

Persons who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs the information to evaluate the effectiveness of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce undue mortality.

II. Method of Collection

Catch notifications are provided to a toll-free telephone number. Tags and associated information are mailed in (a reward is given for tag recoveries). Notifications and reports of archival tagging efforts are provided in written form, meeting requirements set forth in regulations.

III. Data

OMB Number: 0648–0338.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 30 minutes for reporting on an archival tag recovery, 30 minutes for notification of planned archival tagging activity, and one hour for reports of archival tagging activity.

Estimated Total Annual Burden Hours: 15.

Estimated Total Annual Cost to Public: $0.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–15063 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061101D]

Pacific Billfish Angler Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 13, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument (s) and instructions should be directed to David Holts, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, CA 92038–0271 (phone 858–546–7186).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administrations's Southwest Fishery Science Center operates a billfish resource and assessment program. As part of this program, billfish anglers in the Pacific and Indian Oceans are asked to respond

to a voluntary annual post card survey to list the number of days spent fishing for billfish, where they fished, and what they caught. This information is used to help determine changes in areas of local abundance of Pacific billfish and is useful in the management of billfish resources.

II. Method of Collection

A paper form the size of a postcard is used.

III. Data

OMB Number: 0648–0020.
Form Number: NOAA Form 88–10.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 1,500.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 125.
Estimated Total Annual Cost to Public: $0.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–15064 Filed 6–13–01; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Distribute Digital Electronic Navigational Charts on the Internet

AGENCY: Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: NOAA's National Ocean Service (NOS) is announcing its intention to distribute digital Electronic Navigational Charts (ENC) of U.S. waters on the Internet.

This notice announces that NOS intends to distribute digital ENC's of U.S. waters via the Internet beginning on or about July 16, 2001. NOS plans to post its ENC's and associated updates on the World Wide Web with the data accessible to all users.

The purpose of distributing ENC's in this manner is to promote maximum availability of these valuable data, which have primary application in navigation and in a broad range of Geographic Information System (GIS) activities. For users interested in navigational applications, the data will be posted at NOAA's Office of Coast Survey Web Site, www.chartmaker.nos.noaa.gov.

Initially digital ENC's will be provided as prototype products. At the outset, the data will not be supported by regular updates. Therefore, these ENC's should jot be used for navigation. Rather, during this initial period, the intent is for users to familiarize themselves with downloading procedures and for NOS to evaluate the products and to determine the level of support necessary to maintain the distribution service. Once NOS develops and implements an update process and assuming that no problems are identified during the initial phase and that such problems are resolved, NOS intends to make the ENC's available for use in navigation. The NOS ENC products are designed in compliance with the International Hydrographic Organization's S–57 ENC Product Specification.

Initially, ENC's will be available for the nation's 40 major ports. However, NOS plans to expand coverage as resources become available. The ENC data posted on the Web will not be encrypted, but may have some type of authentication built in, such as a digital watermark, so that end users can verify that data issued by NOS has not been corrupted.

NOS does not intend to limit access to or restrict use of ENC's available on the Internet. However, NOS does plan to develop specific procedures for users who wish to incorporate these ENC's in products designed to satisfy chart carriage requirements mandated by the International Safety Of Life At Sea Convention (SOLAS) and the U.S. Code of Federal Regulations. This means that users planning to provide value added navigation products must establish a certifiable process by which NOS ENC data are incorporated in the products without compromise to the data quality or data lineage.

NOS intends to issue guidelines governing the certification process for derived navigational products. Among the guidelines under consideration are: (1) The operation of a quality assurance system that is in essential compliance with a recognized quality standard, such as ISO 9000 series or equivalent and (2) the certification by a United States Coast Guard-approved quality standards organization that results in products being consistently manufactured to the same specification.

Once NOS makes its ENC's available on the Web, it anticipates that industry will develop services in support of derived products. For example, a portfolio management service or an ENC distributor may provide NOS ENC's ''as-is'' and ''push'' the appropriate updates to a segment of users who choose not to download the data directly. Likewise, a system manufacturer may bundle or re-sell the ENC's by converting the data to a proprietary ''System ENC'' (SENC) before distributing it to customers. In the latter case, the SENC product and supporting updates must be based on a certifiable process by which there is no compromise to NOS-provided data. Further, since ENC's will be provided in the open, non-proprietary S–57 format, NOS anticipates that most users will be well versed in the format and its feature attribution. With this in mind, it is expected that S–57 technical support will be provided by expertise available in the private sector.

The coastal management community, a major NOAA constituency, will also benefit from this distribution policy in that ENC data will be widely available for use as base map information in a variety of GIS applications. Coastal managers, emergency planners, and others will have easy access to ENC data. To assist these users, NOAA will investigate means to convert the data to a format that is more suitable for GIS applications and to post it in a manner similar to the navigational data. However, the level of specialized technical support by NOS is expected to be limited.

NOS intends to conduct several workshops in order to familiarize the public with the distribution policy, to entertain comments from interested parties on its implementation, to consider complaints with the distribution of prototype products and to answer questions pertaining to the use of ENC's for production of derived

navigational products and for GIS related applications. The workshops will be announced in the NOS Web sites, www.nos.noaa.gov, and the Office of Coast Survey, noted above, and by mail to NOS constituents.

NOS plans to conduct an initial briefing that will be open to the general public concerning its plan to release ENC's on the Internet. The briefing will be held at 9 AM, July 11, 2001, Room 4527, 1315 East-West Highway, Silver Spring, Maryland. Members of the public who plan on attending this briefing should contact Mike Brown at (301)–713–2712 x153 or e-mail Mike.Brown@noaa.gov.

NOS has been in contact with the U.S. Coast Guard concerning 33 CFR 164.33, Nautical Charts and Publications, as it pertains to this announced policy. Questions concerning those regulations should be addressed to the Director of Waterways Management, United States Coast Guard, Washington, DC 20593–0001.

NOS is publishing this notice consistent with section 8a(6)(j) of the Office of Management and Budget Circular A–130. Anyone with comments or questions regarding this subject should address them to Captain Nicholas Perugini, NOAA, Chief, Marine Chart Division, Office of Coast Survey, NOS/NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910–3282.

FOR FURTHER INFORMATION CONTACT: Captain Nicholas E. Perugini, NOAA, Chief, Marine Chart Division, Office of Coast Survey, NOS/NOAA 1315 East-West Highway, Silver Spring, Maryland 20910–3282, 301–713–2724, Extension 101, FAX: 301–713–4516.

Dated: June 7, 2001.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–14974 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052401B]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in the Beaufort Sea

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

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

SUMMARY: NMFS has received a request from WesternGeco, LLC (formerly Western Geophysical) for an authorization to take small numbers of marine mammals by harassment incidental to conducting ocean bottom cable (OBC) seismic surveys in the Alaskan Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize WesternGeco to incidentally take, by harassment, small numbers of bowhead whales and other marine mammals in the above mentioned area during the open water period of 2001.

DATES: Comments and information must be received no later than July 16, 2001.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, the Technical Monitoring Plan, the Environmental Assessment (EA), and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona Perry Roberts, Office of Protected Resources (301) 713–2322, ext. 106, or Brad Smith, Alaska Region (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

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

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101 (a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On April 16, 2001, NMFS received an application from WesternGeco requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting OBC seismic surveys during the open water season in the south central Beaufort Sea off Alaska between western Camden Bay and Harrison Bay. The primary area of seismic activity is expected to be an area approximately 16 by 7 kilometers (km) (10 miles (mi) by 4 mi) in and near Simpson Lagoon, west of Prudhoe Bay and offshore of Oliktok Point. Weather permitting, the survey is expected to take place between approximately July 15 and late October, 2001. WesternGeco anticipates completing six survey patches during the 2001 open water season. A detailed description of the work proposed for 2001 is contained in the application (WesternGeco, 2001) which is available upon request (see **ADDRESSES**).

Description of the Activity

Seismic surveys are used to obtain data about geological formations several thousands of feet deep. The proposed seismic operation is an OBC survey. WesternGeco's OBC survey involves dropping cables from a ship to the ocean bottom, forming a patch consisting of 4 parallel cables 8.9 km (5.5 mi) long, separated by approximately 600 meters (m) (1,968 feet (ft)) from each other. Hydrophones and geophones, attached to the cables, are used to detect seismic energy reflected back from rock strata below the ocean bottom. The source of this energy is a submerged acoustic source, called a seismic airgun array, that releases compressed air into the water, creating an acoustical energy pulse that is directed downward toward the seabed. WesternGeco will use two source vessels for the open-water 2001 seismic surveys, one for deep water and one for shallow water, primarily shoreward of the barrier islands. The deep water vessel, the R/V *Arctic Star*, will utilize an airgun array with an air discharge volume of 1,210 cubic inches

(in^3) (19.8 liters, L). The maximum source levels for the *Arctic Star* will be at 249 dB re 1 micro Pascal per minute (Pa-m) (when the acoustic pressure is 29.4 bar-meters (zero to peak)), or 253 dB re 1 micro Pa-m (when the acoustic pressure is 45.9 bar-meters (peak-to-peak)). Most operations utilizing the 1,210 in^3 array are expected to operate at a gun depth of 2.3 m (7.5 ft) and water depth of <10 m (<32.8 ft). The shallow water source vessel, the R/V *Peregrine*, will utilize an airgun array with an air discharge volume of 640 in^3 (10.48 L). The source level maximums for the *Peregrine* will be at 237 dB re 1 micro Pa-m (when the acoustic pressure is 6.7 bar-meters (zero to peak)), or 242 dB re 1 micro Pa-m (when the acoustic pressure is 12.2 bar-meters (peak to peak)). These airgun arrays are smaller and less powerful than the arrays used in some other seismic programs in the Beaufort Sea prior to 1999 and are expected to operate at a gun depth of 1 m (3.3 ft) in very shallow water.

The seismic vessels will sail along pre-plotted source lines arranged orthogonally to the OBCs. Each source line will be 5 km (3.1 mi) long and adjacent source lines will be approximately 500 m (1,640 ft) apart. There will be 34 source lines for each seismic patch. The overall grid of source lines for a given patch will be 4.7 km by 16.5 km (2.9 mi by 10.2 mi) and the source line for one patch will overlap with those from adjacent patches.

After sufficient data have been recorded to allow accurate mapping of the rock strata, the cables are lifted onto the deck of one of the two self-powered cable vessels (R/V *Western Endeavor* and R/V *Western Frontier*), moved to a new location (ranging from several hundred to a few thousand feet away), and placed onto the seabed again. A small utility vessel (*Ski Barge*) may also be used to transfer seismic crew and/or marine mammal observers, as well as supplies and refuse, between the seismic vessels and Prudhoe Bay. Air support will be limited to infrequent (if any) helicopter flights and, starting in early September, aerial surveys at altitudes from 900 to 1500 ft (274 to 457 m). For a more detailed description of the seismic operation, please refer to WesternGeco (2001).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996) and is not repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales(*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in NMFS (1999), Western Geophysical (2000), WesternGeco (2001), the annual monitoring reports for seismic surveys in the Beaufort Sea (LGL Ltd. and Greeneridge Sciences Inc, 1997, 1998, 1999, 2000) and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Ferrero *et al.*, 2000). Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft may provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues.

Underwater pulsed sounds generated by open water seismic operations may be detectable a substantial distance away from the activity. The effect of these pulsed sounds on living marine resources, particularly marine mammals in the area, will be dependent on the hearing sensitivity of the species, the behavior of the animal at the time the sound is detected, as well as the distance and level of the sound relative to ambient conditions. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance or avoidance reaction by some marine mammals or of masking signals of comparable frequency that are generated by marine mammals (e.g., whale calls) (WesternGeco, 2001). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source, the seismic vessel, other vessels, or aircraft show a disturbance or avoidance reaction to the generated sounds or to visual cues.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in the surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening. Seismic pulses have been observed to cause strong avoidance reactions by many of the bowhead whales occurring within a distance of several kilometers, including changes in surfacing, respiration and dive cycles, and to sometimes cause avoidance or other changes in bowhead behavior at considerably greater distances (Richardson *et al.*, 1995; Rexford, 1996; MMS, 1997; Miller *et al.*, 1999). Airgun pulses may also disturb some other marine mammal species occurring in the area. Ringed seals within a few hundred meters of an airgun array showed variable behavior to the noise, with some moving somewhat farther away and other seals not moving far at all (Harris *et al.*, 1997, 1998, in press; Lawson and Moulton, 1999; Moulton and Lawson, 2000).

Although some masking of low-frequency sounds (e.g., bowhead and gray whale calls) is a possibility for this activity, the intermittent nature of seismic survey pulses used by WesternGeco (1 second in duration every 16 to 24 seconds), as well as the fact that airgun operations are expected to occur no more than 50 percent of the time, will limit the extent of any masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Greene *et al.*, 1997, 1999; Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of beluga whales, given that sounds utilized by them are at much higher frequencies (in the 2 to 6 kilohertz (kHz) range) (Sjare and Smith, 1986) than are airgun sounds from WesternGeco's seismic surveys (highest frequency of 188 hertz(Hz)) (WesternGeco, 2001).

Permanent hearing damage is not expected to occur during the project. There is no direct evidence that the hearing systems of marine mammals close to an airgun array would be at risk of temporary or permanent hearing impairment; however, depending on the species, the equipment being used, and the number of pulses to which the animal is exposed, temporary threshold shift (TTS) is a theoretical possibility for

animals within a few hundred meters of the source (Richardson *et al.*, 1995; Finneran *et al.*,2000). Planned monitoring and mitigation measures, proposed by WesternGeco and described later in this document, are designed to avoid sudden onsets of seismic pulses at full power, to detect marine mammals occurring near the array, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment.

Bowhead Whales

Studies conducted prior to 1996 (Reeves *et al.*, 1984, Fraker *et al.*, 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. In three studies of bowhead whales and one of gray whales during this period, surfacing-dive cycles were unusually rapid in the presence of seismic noise, with fewer breaths per surfacing and longer intervals between breaths (Richardson *et al.*, 1986; Koski and Johnson, 1987; Ljungblad *et al.*, 1988; Malme *et al.*, 1988). This pattern of subtle effects was evident among bowhead whales 6 km to at least 73 km (3.7 to 45.3 mi) from seismic vessels. One visibly apparent avoidance response reported from pre-1996 studies involved observations of bowhead whales swimming away from a seismic vessel 24 km (15 mi) away (Koski and Johnson, 1987). It is likely that some migrating bowhead whales show avoidance at distances exceeding those at which Ljungblad *et al.*(1988) and Richardson *et al.* (1986) observed responses. However, at distances greater than around 24 km (15 mi), only subtle changes in the surfacing, respiration, dive cycles were detectable (Richardson *et al.*, 1986).

Results from the 1996–1998 BP, Inc. and Western Geophysical seismic monitoring program indicate that most migrating bowhead whales deflected seaward to avoid an area within about 20 km (12.4 mi) of an active nearshore seismic operation when there were no barrier islands or very shallow water between the seismic operation and the whales (Miller *et al.*, 1998, 1999). The available data do not provide an unequivocal estimate of the distance at which approaching bowhead whales began to deflect, but this may be on the order of 35 km (21.7 mi). It is also uncertain how far beyond (west of) the seismic operation the seaward deflection persisted (Miller *et al.*, 1999). Although very few bowhead whales approached within 20 km (12.4 mi) of the operating seismic vessel, the number of bowhead whales sighted within that area returned to normal within 12–24 hours after the airgun operations ended (Miller *et al.*, 1999).

Inupiat whalers believe that migrating bowhead whales are sometimes displaced at distances considerably greater than suggested by the pre–1996 scientific studies (Rexford, 1996). Also, whalers believe that avoidance effects can extend out to distances on the order of 30 miles, and that bowhead whales exposed to seismic pulses are also skittish and difficult to approach. The ''skittish'' behavior may be related to the observed subtle changes in the behavior of bowhead whales exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those documented for bowhead whales during the 1980s. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.*(1983, 1984, 1988) concluded that approximately 50 percent of the migrating gray whales showed avoidance when the average received pulse level was 170 dB (re 1 micro-Pa). By some behavioral measures, clear effects were evident at average pulse levels of 160+ dB, and less consistent results were suspected at levels of 140–160 dB, farther away. Recent research on migrating gray whales showed responses similar to those observed in the earlier research when the source was moored in the migration corridor 2 km (1.2 mi) from shore. However, when the source was placed offshore (4 km (2.5 mi)) of the migration corridor, the avoidance response was not evident on track plots (Tyack and Clark, 1998).

Beluga Whale

The beluga whale is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Beluga whales have poor hearing thresholds at frequencies below 200 Hz, where most of the energy from airgun arrays is concentrated. Their thresholds at these frequencies (as measured in a captive situation), are 125 dB re 1 micro-Pa or more depending upon frequency (Johnson *et al.*, 1989). Although not expected to be significantly affected by the noise, given the high source levels of seismic pulses, airgun sounds may sometimes be audible to beluga whales at distances of 100 km (62.1 mi)(Richardson and Wursig, 1997), and perhaps further if actual low-frequency hearing thresholds in the open sea are better than those measured in captivity (WesternGeco, 2001). The reaction distance for beluga whales, although presently unknown, is expected to be less than that for bowhead whales, given the presumed poorer sensitivity of beluga whales to low-frequency sounds (WesternGeco, 2001).

Ringed, Spotted, and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (LGL and Greeneridge, 1997, 1998, 1999a; J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). Also, the results from the 1996–2000 BP and Western Geophysical monitoring studies provide a substantial amount of directly relevant information (Harris et al., 1997, 1998, in press; Lawson and Moulton, 1999; Moulton and Lawson, 2000). During these monitoring studies, the operation of the airgun array had minor and variable effects on the behavior of seals within a few hundred meters of the array and (to a limited extent) the distribution of seals around the source vessel (Moulton and Lawson, 2000). Nonetheless, seals were observed throughout each season in the general area where seismic operations were occurring. Seals were sometimes observed within the 190 dB re 1 micro-Pa designated safety radii, and at these times the airguns were shut down.

Underwater audiograms have been obtained for three species of phocinid seals - the ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson et al. (1995) and Kastak and Schusterman (1998). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat, down to at least 1 kHz, and ranges between 60 and 85 dB re 1 micro-Pa. There are few published data on hearing sensitivity of phocid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70-85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB re 1 micro-Pa at 100 Hz (Kastak and Schusterman, 1998).

Based on published references (see LGL and Greeneridge, 1997, 1998, 1999a; Thompson *et al.* 1998), it is unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless

they were within relatively close proximity of the seismic array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while seals may be capable of hearing sounds from seismic arrays, they appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Beaufort Sea waters, pinnipeds have been previously exposed to seismic noise and may not react to it after initial exposure.

For a discussion on the anticipated effects of ships, boats, and aircraft on marine mammals and their food sources, please refer to the application (WesternGeco, 2001). Information on these effects is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Taken

WesternGeco estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	*Population Size*	*Takes by Harassment in 2001*	
		Maximum Number[1]	*Probable*[2]
Bowhead whale	8,200		
160 dB criterion	-	1,000	<500
20 km criterion	-	2,630	1,300
Gray whale	26,000	<10	0
Beluga whale	39,258	250	<150
Ringed seal[3]	1–1.5 million	400	<200
Spotted seal[3]	>200,000	10	<2
Bearded seal[3]	>300,000	50	<15

[1] The maximum number that might be taken if seismic surveys are operable during the September/October period and the bowhead migration passes unusually close to shore as in 1997.
[2] The number that could be taken under the most likely operating conditions.
[3] Some individual seals may be harassed more than once.

Estimates of Marine Mammal Takes

Estimates of takes by harassment will be made through vessel and/or aerial surveys. Preliminarily, WesternGeco will estimate the number of (1) marine mammals observed within the area strongly ensonified by the OBC seismic vessel (see Mitigation section below for area description); (2) marine mammals observed showing apparent avoidance or disturbance reactions to seismic pulses (e.g., heading away from the seismic vessel in an atypical direction); (3) marine mammals estimated to be subject to take by type (1) or (2) when no monitoring observations were possible; and (4) bowhead whales whose migration routes came within 20 km or greater (actual distance dependent on a combination of 1996–1998 and 2001 data) of the operating OBC seismic vessel, or would have if they had not been displaced farther offshore.

Effects of Seismic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowhead whales become more ''skittish'' when exposed to seismic noise.

Nuiqsut is the community closest to the area of the proposed activity. The communities of Barrow and Kaktovik also harvest resources that pass through the general area, but do not regularly hunt in the planned seismic exploration area. Subsistence hunters from all three communities conduct an annual hunt for migrating bowhead whales during the autumn months. In recent years, Nuiqsut whalers typically take two to four whales each year (WesternGeco, 2001). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft).

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 72 km (45 mi) east of the easternmost end of WesternGeco's planned 2001 seismic exploration area.

Whalers from the village of Barrow search for bowhead whales much farther from the planned seismic area, > 200 km (>125 mi) to the west (WesternGeco, 2001).

The location of the proposed seismic activity is south of the center of the westward migration route of bowhead whales, but there is some limited overlap with the southern limit of the migration. Seismic monitoring results from 1996-1998 indicate that most bowhead whales avoid the area within about 20 km (12.4 mi) around the airgun array when it is operating, and some avoid the area within 30 km (18.6 mi). In addition, bowhead whales may be able to hear the sounds emitted by the seismic array out to a distance of 50 km (31.1 mi) or more, depending on the ambient noise level and the efficiency of sound propagation along the path between the seismic vessel and the whale (Miller *et al.*, 1997).

Cross Island, the principle field camp location for Nuiqsut whalers, is located within the general area of the proposed 2001 seismic area. Thus, the possibility and timing of potential seismic operations in the Cross Island area requires WesternGeco to provide NMFS with either (1) a Plan of Cooperation with the Alaska Eskimo Whaling Commission (AEWC) and the North Slope whaling communities, or (2) measures that have been or will be taken to avoid any unmitigable adverse impact on the availability of these animals for subsistence needs. WesternGeco's application has preliminarily identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of seismic operations will be addressed in a Conflict Avoidance Agreement (CAA)

with the Nuiqsut whalers and the AEWC (WesternGeco, 2001). Also, the monitoring plan proposed by WesternGeco (2001) is expected to provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowhead whales to hunters.

Nuiqsut hunters also hunt seals for subsistence purposes. Most seal hunting has been during the early summer in open water. Boat crews hunt ringed, spotted, and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville Delta, extending as far west as Fish Creek and as far east as Pingok Island. The planned seismic exploration during the summer has some potential to influence seal hunting activities by residents of Nuiqsut. During BP and Western Geophysical's 1996-2000 seismic programs, an operating airgun array apparently did not displace seals by more than a few hundred meters (and usually much less). Therefore, because WesternGeco is proposing similar mitigation and consultation procedures this year, it is unlikely that seismic activities would have more than a negligible impact on Nuiqsut seal hunting.

Anticipated Impact on Habitat

The proposed seismic activity is not expected to cause significant and permanent impacts on habitats used by marine mammals, or to the food sources they utilize. The main impact associated with the proposed activity will be temporarily elevated noise levels.

Prey fish often react to sounds, especially strong and/or intermittent sounds of low frequency (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). Fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish. Fish near the airgun arrays are likely to dive to the bottom or exhibit some other kind of behavioral response (WesternGeco, 2001). This would likely have little or no impact on seal or beluga whale feeding in the shallow areas where seismic work is planned.

Many crustaceans can make sounds and some Crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton and benthic animals, the primary prey species of bowhead and gray whales, to sound are not known. Zooplankton may react to the shock wave from an airgun array when they occur very close to the source. However, little or no mortality is expected. A reaction by zooplankton to a seismic impulse would only be relevant to bowhead whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible and this would translate into negligible impacts on feeding bowhead whales.

Physical contact with the ocean bottom by cables and ancillary equipment will be temporary and in a very small fraction of the potential survey area. The use of OBCs could result in some short-term disturbance to sediments and benthic organisms in the immediate area of the cable. Recovery of disturbed soft-bottom areas will occur in a manner similar to that occurring after natural disturbances by ice scour.

The 2001 OBC survey area may overlap with areas identified as ''Boulder Patch'' habitat. If such overlap occurs, WesternGeco will adhere to any applicable requirements identified by the responsible governmental agencies.

Mitigation

For the 2001 seismic operations, WesternGeco will reduce its primary airgun array from the 1,500 in^3 used in 1998 to 1,210 in^3. This reduction in volume will lower the source levels and result in lower received levels at each distance compared to Western Geophysical's 1998 project. The smaller volume 640 in^3 airgun array consists of sixteen 40 in^3 airguns in four 4-gun clusters. The airguns comprising this small volume array will be spread out horizontally, such that the energy from the array, like that from the 1,210 in^3 array, will be directed downward as far as possible. The distances within which received levels (see the proposed safety radii below) can exceed 190 dB and 180 dB re 1 micro-Pa have been measured at two airgun depths (2.3 and 5 m or 7.5 and 16.4 ft) and in two water depths (8 and 23 m or 26.2 and 75.5 ft) (Greene and McLennan, 2000), and are reduced relative to those around the 1998 array. The shallower depth at which the 640 in^3 array will operate will tend to reduce the source level (and hence the 190 and 180 dB safety radii) even farther; however, as a precautionary approach, the 190 and 180 dB radii for the 1,210 in^3 airgun operating at 2.3 m (7.5 ft) depth will be assumed to apply to the 640 in^3 array operating at 1 m (3.3 ft) gun depth.

Proposed safety radii for OBC seismic operations in 2001 are based on comprehensive measurements of the sounds recorded in the water near the OBC array in 1999 and analyzed by Greene and McLennan (2000).

Vessel-based observers will monitor marine mammal presence in the vicinity of the seismic arrays throughout the seismic program. To avoid the potential for injury, WesternGeco proposes to immediately shut down the seismic source if seals and/or whales are sighted within the proposed safety radii. The proposed safety radii are as follows:

SOURCE (in^3)	AIRGUN DEPTH (m/ft)	WATER DEPTH (m/ft)	SAFETY RADII(m/ft)	
			190 dB (Seals)	180 dB (Whales)
1210	2.3/7.5	<10/<32.8	100	150
1210	2.3/7.5	>10/>32.8	160	550
1210	5/16.4	<10/<32.8	160	350
1210	5/16.4	>10/>32.8	260	900
640	1/3.3	<10/<32.8	100	150
640	1/3.3	>10/>32.8	160	550

In addition, WesternGeco proposes to ramp-up the 1,210 in^3 and 640 in^3 seismic sources to operating levels at a rate no greater than 6 dB per minute. Under normal operational conditions (source vessel speed at least 4 knots), a ramp-up would be required after the array has been inactive for a period lasting 1 minute or longer. If the towing speed is reduced to 3 knots or less, it is proposed that a ramp-up would be required after the array has been inactive for a period lasting 2 minutes or longer. Ramp-up will begin with an air volume discharge not exceeding 80

in^3 for the 1,210 in^3, and 40 in^3 for the 640 in^3 array. Additional guns will be added at appropriate intervals so as to limit the rate of increase in source level to 6 dB per minute.

Monitoring

As part of its application, WesternGeco provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea. This monitoring plan is described in WesternGeco (2001) and in LGL, Ltd. and Greeneridge Sciences Inc. (2001). As required by the MMPA, this monitoring plan will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

WesternGeco plans to conduct the following monitoring:

Vessel-based Visual Monitoring

It is proposed that one or two marine mammal observers aboard the seismic source vessel will search for and observe marine mammals whenever seismic operations are in progress and for at least 30 minutes before the planned start of seismic transmissions. These observers will scan the area immediately around the vessels with reticle binoculars during the daytime. Laser rangefinding binoculars will be available to assist with distance estimation. If operations continue after mid-August, when the duration of darkness increases, image intensifiers and additional light sources will be used to illuminate the safety zone (see application for more detail).

A total of four observers (three trained biologists and one Inupiat observer/communicator) will be based aboard the seismic source vessel *Arctic Star*. They will work in teams of two, with individual watches limited to no more than 4 consecutive hours.

A total of two observers will be based aboard the seismic source vessel *Peregrine*. Individual watches will be limited to no more than 4 consecutive hours. In addition, wheelhouse staff aboard the *Peregrine* will assist in maintaining a watch for marine mammals. If operations continue for substantially more than 12 hours per day, 1 or 2 additional observers will be required on a rotating basis.

When marine mammals are detected within or about to enter the safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified and the airgun(s) will be shut down immediately.

Aerial Surveys

If OBC seismic work continues after August 31, 2001, aerial surveys by WesternGeco's marine mammal contractor, LGL Ltd., would occur from the date on which OBC seismic operations commence until 1 day after the OBC seismic operations end. If OBC seismic work is suspended during the bowhead subsistence hunting season, but resumes later in the autumn, aerial surveys will commence (or resume) when OBC seismic work resumes. WesternGeco proposes to continue aerial surveys until 1 day after OBC seismic work ends.

The primary objective of the aerial surveys will be to document the occurrence, distribution, and movements of bowhead whales, and (secondarily) beluga and gray whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen, although survey altitude will be too high for systematic surveys of seals. Sonobuoys will be dropped to document seismic and ambient noise at offshore locations, including locations near whales.

WesternGeco proposes to fly at 300 m (1,000 ft) in areas where no whaling is underway, but it may reduce that altitude to no less than 275 m (900 ft) under low cloud conditions. In addition, and subject to the terms of the 2001 CAA with subsistence communities, surveys may be flown at 457 m (1500 ft) altitude over areas where whaling is occurring on that date and should avoid direct overflights of whaleboats and Cross Island, where whalers from Nuiqsut are based during their autumn whale hunt.

The daily aerial surveys are proposed to cover a grid of 18 north-south lines spaced 8 km (5 mi) apart and extending seaward to about the 100 m (328 ft) depth contour (typically about 65 km (40.4 mi) offshore). This grid will extend from about 65 km (40.3 mi) east to 65 km (40.3 mi) west of the area in which seismic operations are underway on that date. This survey design will provide extended coverage to determine the eastward and westward extent of the offshore displacement of whales by seismic operations. In 2001, no ''intensive'' grid surveys are planned to be conducted because very few whales occur within 20 km (12.4 mi) of the seismic operation.

Detailed information on the aerial survey program can be found in WesternGeco(2001) and in LGL Ltd. and Greeneridge Sciences Inc. (2001), which are incorporated in this document by citation.

Acoustical Measurements

The acoustic measurement program proposed for 2001 is designed to provide, in conjunction with existing results from previous years (see LGL and Greeneridge Sciences Inc., 1997, 1998, 1999), the specific acoustic data needed to document the seismic sounds to which marine mammals will be exposed in 2001. Proposed emphasis is on situations and locations not studied in detail during previous operations.

WesternGeco has two basic objectives for collecting acoustic measurements, one physical and one biological. The physical acoustics objective is to determine the characteristics of airgun array pulses as received in the bowhead migration corridor at varying distances offshore and to the east of the area of seismic exploration in 2001 and in 1996–98 plus 2001 combined. Pulse characteristics to be determined are received levels and pulse durations versus range offshore and to the east, spectral properties, and signal-to-ambient ratios. These measurements will only be made if seismic operations continue into September/October. The biological objective is to determine whether there are differences in the pattern of bowhead call detection rates near, offshore of, and east of the seismic exploration area at times with and without active seismic operations based on 2001 data and combined 1996-98 and 2001 data. If there are differences, then WesternGeco proposes to use the combined acoustic and aerial survey data to evaluate whether the noise-related differences in call detection rate are attributable to differences in calling behavior, whale distribution, or a combination of the two.

In 2001, the acoustic measurement program is planned to include (1) deployment in late August/September of autonomous seafloor acoustic recorders (ASARs) to provide continuous acoustic data for extended periods, and (2) use of air-dropped sonobuoys in September/October. WesternGeco proposes to use these methods only if OBC surveys occur in September/October.

(1) The ASARs would be placed on the sea bottom at three locations in late August or September if OBC seismic work extends into the September/October 2001 period. This method provides a large number of measurements of received characteristics of seismic pulses in the whale migration corridor well offshore and east of the area of OBC seismic exploration. ASARs would also provide continuous data on whale calling

patterns at times with and times without airgun operations. These recorders would also collect data on ambient noise levels.

(2) Sonobuoys would be dropped and monitored from survey aircraft during September/October (if the seismic operations are continuing at that time) at an average rate of about two sonobuoys per day of aerial surveys on days when bowhead whales are seen. This method provides data on received levels and other characteristics of seismic pulses received in the bowhead whale migration corridor, including some of the specific locations where bowhead whales are observed. Sonobuoys would also provide the ambient noise data needed to estimate signal-to-noise ratios for seismic pulses received by whales.

For a more detailed description of planned monitoring activities, please refer to the application and the Technical Monitoring Plan (WesternGeco, 2001; LGL Ltd. and Greeneridge Sciences Inc., 2001).

Reporting

WesternGeco will provide an initial report on 2001 activities to NMFS within 90 days after the end of the seismic program. This report will summarize dates and locations of seismic operations, marine mammal sightings (dates, times, locations, behaviors, associated seismic survey activities), estimates of the amount and nature of all takes by harassment or in other ways, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by WesternGeco no later than April 30, 2002. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS completed an informal consultation on the issuance of an IHA for similar activities on July 26, 1999. If an authorization to incidentally harass listed marine mammals is issued under the MMPA for this activity, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act (NEPA)

In 1999, NMFS conducted an environmental assessment (EA) on the impacts of conducting seismic surveys during the open water season in the U.S. Beaufort Sea. In that analysis NMFS determined that neither the authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys nor the alternatives to that action would significantly affect the quality of the human environment. Since this proposed action by WesternGeco, LLC does not differ from actions previously analyzed by NMFS under the 1999 EA, this action is categorically excluded from further NEPA review (NOAA NAO 216–6). A copy of the 1999 EA is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the Alaskan Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and possibly by pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the annual variability in distribution and abundance of marine mammals within the area of seismic operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be minimized through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, year-round areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After August 31, 2001, until 1 day after the OBC seismic operations end, aerial survey flights for bowhead whale assessments are proposed to be undertaken by WesternGeco. If OBC seismic work is suspended during the bowhead subsistence hunting season, but resumes later in the autumn, aerial surveys will commence (or resume) when OBC seismic work resumes. The proposed duration for aerial surveys will be a reduction from previous years. WesternGeco believes this reduction is appropriate because some of the main questions about disturbance to bowhead whales from a nearshore seismic operation were answered by the 1996-1998 monitoring projects. In addition, the MMS expects to conduct its broad-scale aerial survey work from approximately August 31 until the end of the bowhead migration in October. WesternGeco believes that this combined aerial survey data will provide sufficient information to estimate the numbers of bowhead whales taken by harassment.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between WesternGeco and subsistence users.

Open-water seismic exploration in the Alaskan Beaufort Sea does have some potential to influence seal hunting activities by residents of Nuiqsut. However, because the main summer sealing by the village of Nuiqsut is conducted off the Colville Delta, west of the proposed survey area, and the zone of influence by seismic sources on seals is expected to be fairly small (less than a few hundred meters), NMFS believes that WesternGeco's OBC seismic survey will not have an unmitigable adverse impact on the availability of seals for subsistence uses.

Proposed Authorization

Provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated, NMFS proposes to issue an IHA to WesternGeco for an OBC seismic survey during the 2001 Alaskan Beaufort Sea open water season. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and possibly spotted seals and gray whales; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see **ADDRESSES**).

Dated: June 7, 2001.

Wanda L. Cain,

Acting Deputy Director, Office of Protected Resources.

[FR Doc. 01–15060 Filed 6–13–01; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C0008]

Fisher-Price, Inc., a Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Fisher-Price, Inc., a corporation containing a civil penalty of $1,100,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 29, 2001.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 01–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Roald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1351.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 7, 2001.

Todd A. Stevenson,

Acting Secretary.

Settlement Agreement and Order

1. This Settlement Agreement, made by and between the staff (''the staff'') of the U.S. Consumer Product Safety Commission (the ''Commission'') and Fisher-Price, Inc. (''Fisher-Price'' or ''Respondent''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), is a settlement of the staff allegations set forth below.

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Respondent is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located in East Aurora, N.Y. Fisher-Price designs and distributes toys and juvenile products. In May 1994, the parent corporation of Fisher-Price acquired Kransco, the manufacturer of ''Power Wheels'' ride-on cars and trucks. Subsequently, Fisher-Price designed, marketed and distributed ''Power Wheels'' ride on cars and trucks.

Staff Allegations

4. Between 1994 and October 1998, Fisher-Price distributed nationwide, and prior to that time, Kransco manufactured and sold nationwide, a total of approximately 10 million battery-powered Super 6 and 12-volt ''Power Wheels'' ride-on toy cars and trucks (the ''vehicle(s)'') in nearly 100 different models. These vehicles are intended for children two to seven years old.

5. The vehicles are ''consumer product(s)'' and Respondent is a ''distributor'' of ''consumer product(s),'' which were ''distributed in commerce'' as those terms are defined in sections 3(a)(1), (5), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (5), (11) and (12).

6. The vehicles are defective because their electrical components can overheat, melt, short circuit, or otherwise fail and thereby cause fires. If this should occur, children and other consumers could suffer serious injuries or death. Additionally, wiring problems can prevent the vehicles from stopping, thereby creating the potential for collisions that could cause serious injury or death.

7. Between early 1995 and July 1998, Respondent received reports of more than 116 fires involving the vehicles and reports of more than 1,800 incidents of the vehicles' electrical components overheating, short-circuiting, melting or failing. This resulted in at least nine minor burn injuries to children, and up to $300,000 in property damage to 22 houses and garages. Moreover, Fisher-Price was aware of at least 71 incidents involving the products' failure to stop, resulting in six minor injuries when the vehicles hit a car, truck, pole, window or fence.

8. Despite being aware of the information set forth in paragraphs 6 and 7 above, Fisher-Price did not provide a written report to the Commission until March 1997, when it partially responded to the Commission staff's February 1997 request for a Full Report. However, Respondent did not fully comply with the staff's investigational requests until July 1998.

9. Although Respondent had obtained sufficient information to reasonably support the conclusion that these vehicles contained defects which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission as required by section 15(b) of the CPSA. By failing to report, Fisher-Price violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

10. Respondent committed this failure to report to the Commission ''knowingly'', as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), and Respondent is subject to civil penalties under section 20 of the CPSA.

Response of Fisher-Price

11. Respondent denies that the vehicles contain defects which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a).

12. Respondent denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

13. Respondent denies that the information available to it reasonably supported the conclusion that the vehicles contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and, therefore, no report was required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

14. Notwithstanding its denial that the vehicles contain a defect which could create a substantial product hazard, and notwithstanding its denial that the vehicles create an unreasonable risk of serious injury or death, Respondent, nevertheless, cooperated with the staff in recalling the products.

15. Respondent agrees to this Settlement Agreement and Order solely to avoid incurring additional legal costs and it does not constitute nor is it evidence of an admission of any fault, any liability, any violation of any law, or any wrongdoing by Respondent.

16. Respondent enters into this Agreement solely to settle the allegations of the staff that a civil penalty is appropriate.

Agreement of the Parties

17. The Commission has jurisdiction over this matter and over Fisher-Price under the CPSA, 15 U.S.C. 2051–2084.

18. Respondent agrees to pay to the order of the U.S. Treasury a civil penalty in the amount of one million, one hundred thousand dollars ($1,100,000), in settlement of this matter. The first payment in the amount of $366,666.66 shall be made within twenty (20) calendar days of receiving service of the final Settlement Agreement and Order. The second payment in the amount of $366,666.67 shall be made within six months of the date the first payment is due. A final payment in the amount of $366,666.68 shall be made within one calendar year of the date the first payment is due. If Fisher-Price fails to make a payment on schedule, the unpaid balance of the entire civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b) from the date payment was due.

19. This Settlement Agreement and Order is entered into for settlement purposes only and does not constitute findings by the Commission or an admission of any fault, any liability, any violation of any law, or any wrongdoing by Respondent.

20. Fisher-Price knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter; (ii) to an administrative or judicial hearing with respect to the staff's allegations cited herein; (iii) to judicial review or other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, has occurred; (v) to a statement of findings of fact and conclusions of law with regard to the staff's allegations; and (vi) to any claims under the Equal Access to Justice Act.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Settlement Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written requests not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

22. This Settlement Agreement and Order becomes effective after its final acceptance by the Commission and service upon Respondent.

23. Upon final acceptance of this Settlement Agreement by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

24. Respondent agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

25. This Settlement Agreement and Order is being upon Fisher-Price, its parent, its parent's subsidiaries and each of their successors or assigns with respect to Power Wheels.

26. This Settlement Agreement and Order releases Fisher-Price, its parent and its parent's subsidiaries and each of their successors and assigns, from any liability to the Commission under section 20 of the CPSA for a civil penalty arising from the allegations in paragraphs 4 through 10.

27. Nothing in this Settlement Agreement and Order shall be construed to preclude the Commission from pursuing corrective action or other relief not described above.

28. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement agreement and Order shall remain in full effect, unless the Commission and Fisher-Price determine that severing the provision materially impacts the purpose of the Settlement Agreement and Order.

29. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approved by the Commission.

30. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: May 29, 2001.

Fisher-Price, Inc.

Neil Friedman,
President & Chief Executive Officer.

The Consumer Product Safety Commission

Alan H. Schoem,
Assistant Executive Director, Office of Compliance.
Eric L. Stone,
Legal Division, Office of Compliance.
Dated: May 30, 3001.

Ronald G. Yelenk,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Fisher-Price, Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Fisher-Price, Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered, that Fisher-Price, Inc. shall pay to the order of the U.S. Treasury a civil penalty in the amount of one million, one hundred thousand dollars ($1,100,000), payable as follows: $366,666.66 within twenty (20) calendar days after service of this Final Order upon Fisher-Price, Inc.; $366.66.67 within six months of the date the first payment is due; and $366,666.68 within one calendar year of the date the first payment is due.

Upon failing to make a payment on schedule, the unpaid balance of the entire civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b) from the date payment was due.

Provisionally accepted and Provisional Order issued on the 7th day of June, 2001.

By Order of the Commission.

Todd A. Stevenson,
Consumer Product Safety Commission.

[FR Doc. 01–14927 Filed 6–13–01; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Military Critical Technical Data Agreement; DD Form 2345; OMB Number 0704–0207.

Type of Request: Extension.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 20 Minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The information collection requirement is necessary as a basis for certifying individuals or businesses to have access to DoD export-controlled military critical technical data subject to the provisions of 32 CFR 250. Individuals and enterprises that need access to unclassified DoD-controlled militarily critical technical data must certify on DD Form 2345 that data will be used only in ways that will inhibit unauthorized access and maintain the projection afforded by U.S. export control laws. Use of the form permits U.S. and Canada defense contractors to certify their eligibility to obtain certain unclassified technical data with military and space applications. Nonavailability of this information prevents defense contractors from accessing certain restricted databases and obstructs conference attendance where restricted data will be discussed.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. David M. Pritzker.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 5, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–14944 Filed 6–13–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–10 with attached transmittal and policy justification.

Dated: June 5, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 May 2001

In reply refer to:
I-01/004325

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-10 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to France for defense articles and service estimated to cost $190 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

Tome H Walters Jr

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Separate Cover:
Classified Annex
Offset certificate

Transmittal No. 01-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** France

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 190 million
TOTAL	$ 190 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** The manufacture and integration of USAF/NATO Radar System Improvement Program (RSIP) modification kits for installation in the French E-3F AWACS aircraft fleet; program will include four RSIP modification kits, modification kit installation, system integration and ground/flight testing of the RSIP hardware, an RSIP modification kit for installation in a ground based support facility, system software development and installation, spare and repair parts, publications and technical documentation, support equipment, personnel training and training equipment, U.S. Government and contractor engineering and technical services and other related program elements to ensure desired radar system performance.

(iv) **Military Department:** Air Force (QAB)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex under separate cover

(viii) **Date Report Delivered to Congress:** 24 May 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France - E-3F Radar System Improvement Program

The Government of France has requested a possible sale of the manufacture and integration of USAF/NATO Radar System Improvement Program (RSIP) modification kits for installation in the French E-3F AWACS aircraft fleet; program will include four RSIP modification kits, modification kit installation, system integration and ground/flight testing of the RSIP hardware, an RSIP modification kit for installation in a ground based support facility, system software development and installation, spare and repair parts, publications and technical documentation, support equipment, personnel training and training equipment, U.S. Government and contractor engineering and technical services and other related program elements to ensure desired radar system performance. The estimated cost is $190 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of France while enhancing weapon system standardization and interoperability with U.S. forces.

France will use this radar modification program to enhance the capability of its E-3F AWACS aircraft by providing increased air defense and command and control through significant improvements in radar sensitivity and Electronic Counter-Counter Measures performance, radar performance monitoring and control, and reliability/maintainability. France will have no difficulty absorbing the radar changes to its AWACS aircraft program.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Boeing Defense and Space Group in Seattle, Washington and Northrop-Grumman in Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of 15 contractor representatives for two years to France.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 01–14981 Filed 6–13–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–11 with attached transmittal and policy justification.

Dated: June 5, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 May 2001

In reply refer to:
I-01/004326

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-11, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $64 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Same ltr to: **House Committee on International Relations**
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

POLICY JUSTIFICATION

Australia - Joint Tactical Information Distribution Systems Class 2H Airborne Terminals

The Government of Australia has requested a possible sale for 16 Joint Tactical Information Distribution Systems (JTIDS) Class 2H Airborne Terminals, personnel training and training equipment, support of electronic support measures, broadcast intelligence, electronic counter measures, tactical data link testing, software development/integration, support and test equipment, communications software and software support, publications and technical data, spare and repair parts, U.S. Government and contractor technical and logistics assistance and other related elements of logistics and program support. The estimated cost is $64 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Asia Pacific region.

This notification is transmitted in conjunction with a 36(c) notification of a commercial sale for 737 Airborne Early Warning and Control (AEW&C) aircraft and radar. The JTIDS will be installed on the proposed commercial aircraft, software integration lab, and the remaining will be used for replacement. The AEW&C capability will enhance surveillance, reconnaissance, air defense and theater stability.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Boeing Company in Seattle, Washington and the Northrop-Grumman Company in Baltimore, Maryland. There are no offset agreements proposed in connection with this potential sale.

There will be four U.S. Government representatives for one-week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 01–14982 Filed 6–13–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, June 28, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the ara of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review ill include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5. U.S.C. App. 10(d)(1994), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

June 5, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–14979 Filed 6–13–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, June 26, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: June 5, 2001.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–14980 Filed 6–13–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for BRAC 95 Disposal and Reuse of Recreation Center #2, Fayetteville, NC

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Recreation Center #2.

The Final EA evaluates the environmental impacts of the disposal and subsequent reuse of the 4.35-acre installation. Alternatives examined in this EA include no action, unencumbered disposal of the property and encumbered disposal of the property. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property, but would maintain it in a caretaker status for an indefinite period.

DATES: July 16, 2001.

ADDRESSES: Copies of the Final EA and FNSI may be obtained by writing to Mr. Don Conlon, U.S. Army Corps of Engineers—Mobile District, environmental Resources Branch, 109 St. Joseph St., Mobile, Alabama, 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Conlon via phone at (334) 690–2609 or by fax at (334) 690–2605.

SUPPLEMENTARY INFORMATION: While closure of Recreation Center #2 is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary impact by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of the Recreation Center #2 is encumbered disposal, with encumbrances pertaining to easements, threatened and endangered species habitat, lead-based paint and asbestos-containing material.

A Notice of Intent declaring the Army's intent to prepare an EA for the closure of Recreation Center #2 was published in the **Federal Register** (60 FR 49264, September 22, 1995).

The Final EA and FNSI are available for review at the Corps of Engineers, Mobile District; Cumberland County Library, 300 Maiden Lane, Fayetteville; and the John L. Throckmorton Library, Building #1–3346, Randolph Street, fort Bragg.

Dated: June 7, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 01–14948 Filed 6–13–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 16, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 8, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0015–34 ARPC

SYSTEM NAME:

Army Civilian/Military Service Review Board (February 1, 1996, 61 FR 3680).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Civilians or contractual personnel (or their survivors) who were members of a group certified to have performed active military service with the Armed Forces of the United States.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Application of individuals for recognition of service, evidence that supports claim of membership in an approved group, name, address, date of birth, social security number, action of the Army Civilian/Military Service Review Board, Certificate of Release or Discharge from Active Duty, Honorable Discharge Certificate, General Discharge Certificate, and/or Report of Casualty as appropriate, and similar relevant documents.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 38 U.S.C. 106, Certain service deemed to be active service; Pub. L. 105–368, Veterans Benefits Enhancement Act of 1998; Pub. L. 105–368, Veterans Benefits Enhancement Act of 1998; Pub. L. 95–202, GI Bill Improvement Act; DoD Directive 1000.20, Active Duty Service Determinations for Civilian or Contractual Groups; Army Regulation 15–34 Department of the Army Individual Service Review Board; and E.O. 9397 (SSN).'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amend second paragraph to read 'Copy of Certificate of Release or Discharge from Active Duty is furnished to the Department of Veterans Affairs for benefit entitlements.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Control cards are permanent; maintain in current file area for 20 years then offer to National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408. Approved requests result in the creation of an Official Military Personnel File, containing Certificate of Release or Discharge from Active Duty, Honorable Discharge Certificate, General Discharge Certificate, and/or Report of Casualty as appropriate, which is retired permanently, to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. Documentation relating to disapproved requests are maintained for 2 years, then destroyed.'

* * * * *

A0015–34 ARPC

SYSTEM NAME:

Army Civilian/Military Service Review Board.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilians or contractual personnel (or their survivors) who were members of a group certified to have performed active military service with the Armed Forces of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application of individuals for recognition of service, evidence that supports claim of membership in an approved group, name, address, date of birth, social security number, action of the Army CivilianMilitary Service Review Board, Certificate of Release or Discharge from Active Duty, Honorable Discharge Certificate, General Discharge Certificate, and/or Report of Casualty as appropriate, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 38 U.S.C. 106, Certain service deemed to be active service; Pub. L. 105–368, Veterans Benefits Enhancement Act of 1998; Pub. L. 95–202, GI Bill Improvement Act; DoD Directive 1000.20, Active Duty Service Determinations for Civilian or Contractual Groups; Army Regulation 15–34 Department of the Army Individual Service Review Board; and E.O. 9397 (SSN).

PURPOSE(S):

To determine whether individual applicants were members of civilian or contractual groups approved as having rendered service to the Army and whose service constitutes active military service, and to issue appropriate discharge or casualty documents, including applicable pay and equivalent rank or grade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Copy of Certificate of Release or Discharge from Active Duty is furnished to the Department of Veterans Affairs for benefit entitlements.

The DOD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers stored in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefore in the performance of their duties. During non-duty hours, guards assure that records areas are secured.

RETENTION AND DISPOSAL:

Control cards are permanent; maintain in current file area for 20 years then offer to National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Washington, DC 20408. Approved requests result in the creation of an Official Military Personnel File, containing Certificate of Release or Discharge from Active Duty, Honorable Discharge Certificate, General Discharge Certificate, and/or Report of Casualty as appropriate, which is retired permanently, to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. Documentation relating to disapproved requests are maintained for 2 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–14983 Filed 6–13–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will meet to conduct the midterm briefing of the High Impact Environmental Issues Task Force to the Chief of Naval Operations. This meeting will consist of discussions of findings regarding security implications, training impact and readiness effects, and will also include preliminary recommendations for Navy environmental strategy and evaluations of alternative training means. This meeting will be closed to the public.

DATES: The meeting will be held on Friday, June 22, 2001, from 1:30 p.m. to 2:00 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Room 4E630, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Christopher Agan, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, telephone (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: June 5, 2001.

J.L. Roth,

Lieutenant Commander, U.S. Navy, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 01–15021 Filed 6–13–01; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 July 16, 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 Acting 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: June 8, 2001.

Bill Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New Collection.

Title: National Study of Title I Schools (JM).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 3280; Burden Hours: 11920.

Abstract: This National Study of Title I Schools will be the main source of nationally-representative school-level information on the implementation of Title I provisions and standards-based reform generally, over a three-year period from the 2001–02 through 2003–04 school years. The study will examine and describe how Title I schools are using standards-based reforms to assist in improving learning, with a particular focus on implementation of provisions in the Title I program that are designed to support such improvements. The study will also examine more specifically the quality of instruction and instructional support in Title I schools, with a focus on implementation of Title I provisions designed to support more effective instruction and instructional support.

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 MONTAGUE at (202) 708–5359. 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. 01–14952 Filed 6–13–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Starbuck Power Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with the State of Washington Energy Facility Site Evaluation Council (EFSEC) for an electrical interconnection including a new 16-mile 500-kilovolt (kV) transmission line and other facilities associated with a proposed power plant. BPA is the lead Federal agency under NEPA and EFSEC is the lead Washington State agency under SEPA. The Starbuck Power Project is a 1,200-megawatt (MW) generating station proposed by Starbuck Power Company, L.L.C. (SPC) that would be located near the town of Starbuck in Columbia County, Washington. SPC has requested an interconnection and upgrade to BPA's transmission system that would allow firm power delivery to the wholesale power market. BPA proposes to execute an agreement with SPC to provide the interconnection and firm power transmission.

ADDRESSES: To be placed on the project mailing list, including notification of proposed meetings, call toll-free 1–800–622–4520, name this project, and leave your complete name and address. To comment, call toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov;* or send a letter to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION CONTACT: Lou Driessen, Project Manager, Bonneville Power Administration—TNP–3, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–5525; or e-mail *lcdriessen@bpa.gov.* You may also contact Phil Smith, Environmental Coordinator, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3294; or e-mail *pwsmith@bpa.gov.* Additional information can be found at BPA's web site: *www.efw.bpa.gov.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the proposed project, including:

- Interconnection agreement that BPA proposes with SPC;
- Construction and operation of the power plant;
- Construction and operation of an approximately 200-foot, 20-inch-diameter gas line to tie into Pacific Gas & Electric (PG&E) Gas Transmission Northwest's (GTN) pipeline;
- Construction and operation of an on-site well, or in the alternative, an approximately 6-mile long, 4-inch diameter water supply line from the town of Starbuck to the power plant site;
- Construction and operation of a rail spur near the power plant site for use during power plant construction; and
- Construction and operation of an interconnection consisting of a substation and approximately 16 miles of 500-kV transmission line from the substation to Lower Monumental Substation.

The power plant and the gas and power interconnections would be located within Columbia County, Washington. Approximately 1 mile of the new 500-kV transmission line would be located in Columbia County with the remaining 15 miles in Walla Walla County, Washington.

Responsibility for construction and operation of the new facilities is principally with SPC who would build and operate the power plant. However, the interconnection and the new 500-kV transmission line would be constructed under BPA's management, and BPA would be responsible for the operation and maintenance of these facilities. GTN would build and operate the proposed approximately 200-foot gas pipeline that would supply fuel to the power plant.

Proposed Action

The Starbuck Power Project would be a natural-gas-fired combined-cycle combustion turbine power plant with a nominal generating capacity of approximately 1,200 MW. The plant site would be located on approximately 50 acres of a 100-acre site that is zoned for industrial use and which is located approximately 6 miles northwest of Starbuck, Washington, on property under option and owned by the BAR–Z Ranch, a Washington Corporation.

Natural gas would be burned in a gas turbine engine, in which the expanding gases from combustion would turn the turbine's rotor, driving a generator to produce electrical energy. Hot exhaust from the gas turbine would be used to boil water, using a heat recovery steam generator (HRSG). Steam produced by the HRSG turns a steam turbine, which would connect to another generator, producing additional electrical energy.

The Starbuck Power Project would consist of two complete and separate combined cycle power blocks (or ''islands'') and associated support facilities. In summary, each block would consist of two gas combustion turbine generators, two HRSGs, one steam turbine generator, and one air-cooled condenser.

Water would be required to generate steam, as well as for sanitary uses. The proposed power plant would require an average water consumption rate of less than 500,000 gallons per day (gpd). SPC proposes to use an on-site well. As an alternative, the project has secured an option to purchase 100 gallons per minute (gpm), or up to 144,000 gpd, of water from the town of Starbuck's existing water right. With this alternative, an approximately 5-mile water pipeline would be constructed from the town of Starbuck to the project site. SPC proposes to locate this line within an abandoned railroad right-of-way that parallels SR–261 from Starbuck to just south of the project site.

SPC proposes that project wastewater and storm water be collected in retention and infiltration ponds located at the south end of the property.

The proposed Starbuck Power Project would deliver electricity to the regional power grid through an interconnection and a new 500-kV transmission line paralleling the existing Lower Monumental-Little Goose No. 1 and No. 2 transmission lines. BPA would also modify the existing Lower Monumental Substation.

Process to Date

BPA is the lead Federal agency for the joint NEPA/SEPA EIS, and EFSEC is the lead Washington State agency. EFSEC has already held open houses introducing the Starbuck Power Project to interested parties in Columbia County and the surrounding area. Subsequent to these meetings, BPA determined that a new 500-kV transmission line was necessary for firm power delivery on the existing transmission system. SPC will prepare an Application for Site Certification and submit it to EFSEC in July 2001. This initial application will address the Starbuck Power Project in detail. BPA and EFSEC will conduct joint scoping meetings after receipt and preliminary review of the initial submission.

Alternatives Proposed for Consideration

Alternatives thus far identified for evaluation in the EIS are (1) the proposed actions, (2) use of the town's well and a proposed water pipeline as an alternative to the on-site well, and (3) no action. Other alternatives may be identified through the scoping process.

Identification of Environmental Issues

EFSEC will prepare an EIS consistent with its responsibilities under Chapter 80.50 of the Revised Code of Washington and Chapter 197–11 of the Washington Administrative Code. BPA has determined in a System Impact Study requested by SPC that, for firm transmission service, the construction of 16 miles of 500-kV transmission line may be required. Such an action triggers a need for BPA to prepare an EIS. Therefore, BPA and EFSEC intend to prepare a joint NEPA/SEPA EIS addressing both the power plant and the associated electric power interconnection and transmission facilities. The principal issues identified thus far for consideration in the Draft EIS are (1) air quality impacts, (2) aesthetic and visual impacts, (3) socio-economic impacts including transportation impacts, (4) wetlands and wildlife habitat impacts, (5) cultural resource impacts, (6) water supply and quality impacts, (7) health and safety impacts, and (8) noise impacts from plant operation. These issues, together with any additional significant issues identified through the scoping process, will be addressed in the EIS. BPA will also use the EIS and NEPA process to address historic preservation and cultural resource issues under Section 106 of the National Historic Preservation Act.

Public Participation

After July 2001, one or more EIS scoping meetings will be held, and a 45-day comment period will be announced, during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. A 30-day notice of the meeting(s), including time and location, will be provided to interested persons. At the meeting(s), BPA and EFSEC will answer questions and accept oral and written comments.

Receiving comments from interested parties will assure that BPA and EFSEC address in the EIS the full range of issues and potentially significant impacts related to the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA and EFSEC will hold at least one public comment meeting on the Draft EIS. BPA and EFSEC will consider and respond in the Final EIS to comments received on the Draft EIS.

Issued in Portland, Oregon, on June 4, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–14989 Filed 6–13–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–377–000]

Dominion Transmission, Inc.; Notice of Application

June 8, 2001.

Take notice that on May 30, 2001, Dominion Transmission, Inc (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application seeking authorization to continue operation of a storage well and related facilities pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 Commission's Rules and Regulations. DTI states that the purpose of the application is to obtain authorization to continue the operation of the UW–124 storage well and related facilities located in the North Summit Storage Pool at DTI's North Summit Storage Field, all as more fully set forth in the amendment which is open to the public for inspection.

DTI states that the issuance of a certificate of public convenience and necessity for the UW–124 well will allow more efficient and reliable operations by DTI and will avoid additional costs to DTI's customers. DTI also requests that intermediate decision procedures be omitted, pursuant to Rules 801 and 802 of the Commission's Rules of Practice and Procedure. This application may be viewed on the web at: *www.rimswebl.ferc.us/rims.q~rp2~ilnto* (call 202–208–222 for assistance).

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301, at (304) 627–3462.

There are two to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 29, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filing made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission order in the proceeding.

However, a person does not have a intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings

associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Interventions, 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: *www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–14994 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–379–000]

Dominion Transmission, Inc.; Notice of Application

June 8, 2001.

Take notice that on May 30, 2001, Dominion Transmission, Inc (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application for authorization to abandon facilities pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 Commission's Rules and Regulations. The purpose of the application is to obtain authorization for the retroactive abandonment of 13 storage wells and related facilities located in DTI's Oakford, Bridgeport, Fink-Kennedy-Lost Creek, Racket Newberne, and South Bend Storage Pools, all as more fully set forth in the amendment which is open to the public for inspection. DTI states that the abandonment costs were not passed through to DTI's customers. DTI also requests that intermediate decision procedures be omitted, pursuant to Rules 801 and 802 of the Commission's Rules of Practice and Procedure. This application may be viewed on the web at: *www.rimsweb1.ferc.fed.us/rims.q?rp2~intro* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301, phone number (304) 627–3462.

There are two to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 29, 2001, file with the Federal Energy Regulator Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Interventions, 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: *www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–14997 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–378–000]

Dominion Transmission, Inc.; Notice of Application

June 8, 2001.

Take notice that on May 30, 2001, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application seeking authorization to continue operation of a storage well and related facilities pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 Commission's Rules and Regulations. DTI states that the purpose of the application is to obtain authorization to continue the operation of the JW–287 storage well and related facilities located in the Murryville reservoir of DTI's Oakford Storage Complex, all as more fully set forth in the amendment which is open to the public for inspection.

DTI states that the issuance of a certificate of public convenience and necessity for the JW–287 well will allow more efficient and reliable operations by DTI and will avoid additional costs to DTI's customers. DTI also requests that intermediate decision procedures be omitted, pursuant to Rules 801 and 802 of the Commission's Rules of Practice and Procedure. This application may be viewed on the web at: *www.rimsweb1.ferc.fed.us/rims.q?rp2~intro* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301, at (304) 627–3462.

There are two to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 29, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its preview of the environmental aspects of the project. This preliminary determination typically considers such issues such as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Interventions, 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: *www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–15007 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–336–000, RP00–336–001 and RP00–336–002]

El Paso Natural Gas Company; Notice of Technical Conference

June 8, 2001.

On June 15, 2000, and August 15, 2000,[1] El Paso Natural Gas Company (El Paso) submitted filings to comply with Order No. 637. Several parties have protested various aspects of El Paso's filing. In addition, on March 28, 2001, El Paso filed, in accordance with the Commission's February 26, 2001 order in Docket No. RP00–336–004,[2] a proposal addressing system-wide capacity allocation issues. Numerous parties filed comments on this proposal.

Take notice that a technical conference to discuss the various issues raised by El Paso's filings will be held on Wednesday, July 18, 2001, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will continue through Thursday, July 19, 2001, if necessary. Parties protesting aspects of El Paso's filings should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–15008 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–381–000]

Kern River Gas Transmission Company; Notice on Petition for Declaratory Order

June 8, 2001.

On June 1, 2001, Kern River Gas Transmission Company (Kern River) filed a petition for a declaratory order by the Commission addressing capacity commitments made by Kern River in connection with facilities authorized by the Commission in Docket No. CP01–106–000. This issue arises in light of assertions by Southern California Gas Company (SoCalGas) that Kern River has not satisfied its obligations to

[1] El Paso's August 15, 2000 filing contains its segmentation plan.

[2] 94 FERC ¶ 61,225 (2001).

SoCalGas under a June 15, 1989 Settlement Agreement. Kern River's filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

On April 6, 2001, the Commission authorized Kern River to construct the California Action Project, which will increase Kern River's design-day mainline capacity by 135,000 Mcf. This additional capacity was alloca5ted as a result of an open season Kern River conducted in march 2001; Kern River ultimately entered into transportation service agreements with 43 shippers as a result of the open season. Kern River intends to commence service using the California Action Project in July 2001.

SoCalGas asserts that, pursuant to a June 15, 1989 Settlement Agreement, Kern River has certain obligations to SoCalGas in the event Kern River intends to add incremental capacity to its system in excess of 700 Mcf. SoCalGas asserts that Kern River must provide it with written notice of intent to add capacity, and must notify SoCalGas of the amount of capacity available after it has awarded any capacity to Enhanced Oil Recovery and congeneration shippers who were granted prior rights under the Settlement Agreement. After such notice is provided, SoCalGas asserts that it must be given 30 days to evaluate whether it wants to contract for such capacity pursuant to Kern River's standard tariff terms and conditions. SoCalGas states that if it had been given this opportunity it would have elected all of the available capacity in the California Action Plan and potentially some or all of the capacity offered in other open seasons Kern River has conducted with regard to proposed future expansions. SoCalGas has inquired how Kern River intends to comply with its obligations under the Settlement Agreement. Kern River requests that the Commission declare that Kern River has no obligation under the 1989 Settlement Agreement to provide SoCalGas any preferential notice of, or opportunity to elect, any of the capacity on Kern River's pending expansions.

There are two ways to become involved in the Commission's review of this petition. First, any person wishing to obtain legal status by becoming a party to the proceeding should on or before June 15, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties, A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicants and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, by June 15, 2001, an original and two copies of the comments in support of or in opposition to matters raised in the petition. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment will not serve to make the filer a party to the proceeding. The Commission's rules require that person filing comments in opposition provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 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. 01–14996 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–87–000]

South Eastern Energy Corporation and Morgan Stanley Capital Group Inc., Complainants, v. City of Dalton, GA, Georgia Transmission Corporation, Georgia Power Company, Municipal Electric Authority of Georgia, Respondents; Notice of Complaint

June 8, 2001.

Take notice that on June 6, 2001, South Eastern Electric Corporation (SEEC) and Morgan Stanley Capital Group Inc. (MSCG) (collectively Complainants), tendered for filing a complaint pursuant to Section 206 of the Federal Power Act against the City of Dalton, Georgia (Dalton), the Georgia Transmission Corporation (GTC), Georgia Power Company (Georgia Power), and the Municipal Electric Authority of Georgia (MEAG) (collectively the Georgia Interstate Transmission System (ITS) Members). Complainants contend that the ITS Members have treated Complainants' request to interconnect a new generation facility to the ITS in an unjust, unreasonable, and potentially unduly discriminatory and preferential manner in violation of the Federal Power Act.

Copies of the filing were served upon the City of Dalton, GTC, Georgia Power, and MEAG.

Any person desiring to be heard or to protest this 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 must be filed on or before June 18, 2001. 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 this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before June 18, 2001. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–15009 Filed 6–13–01 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–387–000]

Texas Eastern Transmission Corporation; Notice of Technical Conference

June 8, 2001.

In the Commission's order issued on May 25, 2001,[1] the Commission directed

[1] Texas Eastern Transmission Corporation, 95 FERC ¶ 61,267 (2001).

that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, July 12, 2001, at 9 a.m., in a room to be designated, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–14995 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–70–000]

Wisvest-Connecticut, LLC and Bridgepower Harbor Power, LLC, New Haven Harbor Power, LLC, and NRG Connecticut Power Assets, LLC; Notice of Filing

June 8, 2001.

Take notice that on June 4, 2001, Wisvest-Connecticut, LLC (Wisvest) and NRG Connecticut Power Assets LLC (NRG Connecticut) [together Applicants] filed with the Federal Energy Regulatory Commission a request for a protective order in the above-captioned proceeding.

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 and protests should be filed on or before June 14, 2001. 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, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–14954 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2440–002, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Regulation Filings

June 7, 2001.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER98–2440–002]

Take notice that on June 4, 2001, Central Illinois Light Company (CILCO), tendered for filing a triennial market power study for sales under its Market Rate Power Sales Tariff.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy Mohave, LLC

[Docket No. ER01–1619–001]

Take notice that on June 4, 2001, Duke Energy Mohave, LLC (Duke Energy) tendered for filing the following tariff revised sheets as part of its FERC Electric Tariff, Original Volume No. 1, proposed to be effective on May 22, 2001.

First Revised Sheet No. 1
First Revised Sheet No. 2
Original Sheet No. 3

Duke Mohave states that the purpose of this filing is to comply with Duke Energy Mohave, LLC, 95 FERC 61,256 (2001). The revised sheets incorporate the changes directed by Ordering Paragraph (B) of the cited order.

Duke Mohave states that copies of its filing have been mailed to all affected customers and interested state commissions.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. American Electric Power Service Corporation

[Docket No. ER01–2215–000]

Take notice that on June 4, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an unexecuted Interconnection and Operation Agreement between Indiana Michigan Power Company and Duke Energy Vigo, LLC. The agreement is 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, 2001.

AEP requests an effective date of August 2, 2001.

A copy of the filing was served upon the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Automated Power Exchange, Inc.

[Docket No. ER01–2216–000]

Take notice that on June 4, 2001, Automated Power Exchange, Inc. tendered for filing a new rate schedule under which APX will offer power exchange services in the APX West Wide Market.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Sunrise Power Company, LLC

[Docket No. ER01–2217–000]

Take notice that on June 4, 2001, Sunrise Power Company, LLC (Seller), a limited liability company organized under the laws of the State of Delaware, tendered for filing an order: (1) Accepting Seller's proposed market-based rate tariff; (2) granting waiver of certain Commission regulations under the Federal Power Act; and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is constructing, and intends to own and operate a 560 MW electric generating facility in Kern County, California.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No. ER01–2218–000]

Take notice that on June 4, 2001, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Carolina Power & Light Company for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 7, 2001.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Energy Corporation

[Docket No. ER01–2219–000]

Take notice that on June 4, 2001, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Carolina Power & Light Company for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 7, 2001.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Xcel Energy Operating Companies, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER01–2220–000]

Take notice that on June 4, 2001, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP Companies), wholly owned utility operating company subsidiaries of Xcel Energy, Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement (Agreement) between the NSP Companies and NSP Energy Marketing. The NSP Companies propose the Agreement be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, Original Volume No. 1, as Service Agreement No. 188-NSP, pursuant to Order No. 614. The NSP Companies also submit Ninth Revised Sheet No. 1 (Table of Contents of Transmission Service Agreements) to the Joint OATT, Original Volume 1, to reflect inclusion of the Agreement.

The NSP Companies request that the Commission accept the Agreement and Ninth Revised Sheet No. 1 effective May 1, 2001, and request waiver of the Commission's notice requirements as may be necessary for the Agreement to be accepted for filing on the date requested.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER01–2223–000]

Take notice that on June 4, 2001, the New England Power Pool (NEPOOL) tendered for filing the Seventy-Fifth Agreement Amending New England Power Pool Agreement (the Seventy-Fifth Agreement), which proposes changes to the NEPOOL arrangements that would adopt for New England a standard market design (SMD) for a congestion management system (CMS) and multi-settlement system (MSS). SMD would replace elements of the existing Commission-approved CMS/MSS arrangements for New England. The SMD would be modeled largely after the market design of PJM Interconnection, L.L.C. The NEPOOL Participants Committee requests that the Commission act to accept the Seventy-Fifth Agreement by July 31, 2001 to become effective on August 1, 2001 for transactions on and after the CMS/MSS Effective Date.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons on the services list in these proceedings, the NEPOOL Participants, and the New England state governors and regulatory commissions.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Nordic Energy Barge #1, L.L.C., Nordic Energy Barge #2, L.L.C.

[Docket No. ER01–2224–000]

Take notice that on May 30, 2001, Nordic Energy Barge #1, L.L.C. (Nordic-EB1), and Nordic Energy Barge #2, L.L.C. (collectively, the Nordic Energy Barge LLCs), tendered for filing to: (1) Accept for filing its Rate Schedule FERC No. 1, which will permit each of the filing parties to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; and (2) grant such other waivers and blanket authorizations as have been granted to other power marketers.

The Nordic Energy Barge LLCs intend to engage in wholesale electric power and energy sales as a marketer. Neither of the Nordic Energy Barge LLCs nor any of their affiliates owns or controls any transmission or currently operating or operable generation facilities, or has a franchised service area for the sale of electricity to captive customers. Each of the Nordic Energy Barge LLCs intends to own and operate a newly sited 100 MW barge-mounted generating unit, to be docked on the Columbia River in the vicinity of Longview, Washington, and to sell the output of that unit exclusively at wholesale. One of the units will be located in Washington waters, and the other in Oregon waters.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. New York Independent System Operator, Inc.]

[Docket No. ER01–2230–000]

Take notice that on June 1, 2001, the New York Independent System Operator, Inc. (NYISO) tendered for filing an Informational Filing describing the operation of the Transmission Service Charge set forth in Attachment H to its Open-Access Transmission Tariff.

The NYISO has served a copy of this filing upon all parties on the service list in the above-referenced proceedings.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–479–001]

Take notice that on June 4, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revisions to its Open Access Transmission Tariff and Agreement of the Transmission Facilities Owners to Organize the Midwest ISO with respect to expanding the Midwest ISO Advisory Committee to include certain members of the Mid-Continent Area Power Pool (MAPP) and provide certain MAPP Transmission Owners with the option of electing Network Transmission Service on behalf of their bundled retail customers.

Copies of this filing were served upon all parties listed on the official service list compiled by the Secretary of the Commission in this proceeding.

Comment date: June 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Connecticut Yankee Atomic Power Company

[Docket No. ER01–813–001]

Take notice that on May 18, 2001, Connecticut Yankee Atomic Power Company, tendered for filing a notice in compliance with the Commission's April 30, 2001 order conditionally approving Connecticut Yankee proposal for compliance with the Commission's policy regarding post-employment benefits other than pensions (PBOP), Connecticut Yankee Atomic Power Company, 95 FERC ¶ 61,164 (2001). In light of the conditions imposed in that order, Connecticut Yankee states that it has decided not to implement the authority granted by the Commission in that order. Instead, it will continue to treat PBOP revenues as specified in the settlement approved by the Commission in a letter order dated July 18, 1996, and in accordance with applicable Commission requirements.

Comment date: June 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER99–4415–007]

Take notice that on May 29, 2001, Illinois Power Company, tendered for filing a revised Refund Report incorporating the revisions contemplated in the February Order.

Comment date: June 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 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 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

FR Doc. 01–14953 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11969–000.

c. *Date filed:* April 18, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Briones Dam Project.

f. *Location:* On Bear Creek, in Contra Costa County, California. The project would not utilize any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8360.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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*. Please include the project number (P–11917–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 2,100-foot-long, 273-foot-high earthfill dam; (2) an existing impoundment having a surface area of 3,200 acres with a storage capacity of 67,520 acre-feet and normal water elevation of 735 feet msl; (3) a proposed 400-foot-long, 240-inch-diameter steel penstock; (4) a proposed powerhouse containing two generating units with a total installed capacity of 7.8 MW; (5) a proposed 11-mile-long, 15 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 34.45 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14993 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12014–000.

c. *Date filed:* April 30, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Dake Dam Project.

f. *Location:* On the Thousand Springs Creek, in Elko County, Nevada. The project would not utilize any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments, motions to intervene, and protests may be electronically filed via the internet in lieu of paper. See 18 CFR 385.2001(a)(I)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doobell.htm.* Please include the project number (P–12014–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of; (1) an existing 2,510-foot-long, 34-foot-high earthfill dam, (2) an existing impoundment with a storage capacity of 100 acres having a storage capacity of 3,300 acre-feet, and normal water surface elevation of 4,700 feet msl, (3) a proposed intake structure, (4) a proposed 400-foot-long, 60-inch-diameter steel penstocks, (5) a proposed powerhouse containing one generating unit having an installed capacity of 1.17 MW, (6) a proposed 2-mile-long, 15-kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 7.69 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide

whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14998 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motion To Intervene

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

Type of Application: Preliminary Permit.

Project No.: 12013–000.

Date filed: April 26, 2001.

Applicant: Symbiotics, LLC.

e. *Name and Location of Project:* The Causey Project would be located on the South Fork Ogden River in Weber County, Utah. The project would be located on a federally owned dam administered by the U.S. Bureau of Reclamation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r)

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Motions to intervene, protests, and comments 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.*

Please include the project number (P–12013–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Causey Reservoir which has a surface area of 175 acres and a storage capacity of 7,870 acre-feet at 5,692 feet msl and include: (1) a proposed powerhouse with a total installed capacity of 1.5 megawatts; (2) a proposed 100-foot-long, 2.5-foot-diameter penstock; (3) a proposed 11-mile-long, 15 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 11.8 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no less than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18CFR 4.30(b) and 4.36.

n. Notice of Intent—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motion to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requriements of Rules of Practice and Procedure, 18 CFR 385.210, 211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14999 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11997–000.

c. *Date filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Livingston Project.

f. *Location:* On the Trinity River, in San Jacinto County, Texas. The project would not utilize any federal facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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*. Please include the project number (P–11997–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 13,480-foot-long, 100-foot-high dam, (2) an existing impoundment with a storage capacity of 82,600 acres having a storage capacity of 1,788,000-acre-feet, and normal water surface elevation of 137 feet msl, (3) a proposed intake structure, (4) five proposed 100-foot-long, 144-inch-diameter steel penstocks, (5) a proposed powerhouse containing five generating units having a total installed capacity of 45.9 MW, (6) a proposed 10-mile-long, 67-kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 160.2 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–15000 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11980–000.

c. *Date filed:* April 20, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Belton Lake Project.

f. *Location:* On the Leon River, in Bell County, Texas. The project would utilize the U.S. Army Corps of Engineers' Belton Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* August 13, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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.* Please include the project number (P–11980–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Belton Lake Dam and would consist of: (1) A proposed intake structure, (2) a proposed 100-foot-long, 120-inch-diameter steel penstock, (3) a proposed powerhouse containing two generating units having a total installed capacity of 12.6 MW, (4) a proposed 3-mile-long, 25-kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 24.3 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business

address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application my be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–15001 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11970–000.

c. *Date filed:* April 18, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Prado Dam Project.

f. *Location:* On the Santa Ana River, in San Bernardino County, California. The project would utilize the existing U.S. Army Corps of Engineers Prado Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* August 13, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Comments, motions to intervene, and protests may be electronically filed 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.* Please include the project number (P–11917–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 2,280-foot-long, 106-foot-high earthfill dam; (2) an existing impoundment having a surface area of 768 acres with a storage capacity of 4,689 acre-feet and normal water surface elevation of 560 feet msl; (3) a proposed 650-foot-long, 60-inch-diameter steel penstock; (4) a proposed powerhouse containing one generating unit with an installed capacity of 2.5 MW; (5) a proposed 5-mile-long, 25 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 20.8 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no late than 120 days after the specified

comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.6.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–15002 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11963–000.

c. *Date filed:* April 18, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* San Pablo Dam Project.

f. *Location:* On San Pablo Creek, in Contra Costa County, California. The project would not utilize any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8360.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* August 13, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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*. Please include the project number (P–11917–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 1,250-foot-long, 170-foot-high earthfill dam; (2) an existing impoundment having a surface area of 854 acres with a storage capacity of 57,103-acre-feet and normal water surface elevation of 710 feet msl; (3) a proposed 500-foot-long, 60-inch-diameter steel penstock; (4) a proposed powerhouse containing two generating units with a total installed capacity of 3 MW; (5) a proposed 1-mile-long, 15 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 22.81 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an

application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–15003 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11956–000.

c. *Date filed:* April 16, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Palo Verde Dam Project.

f. *Location:* On the Colorado River, in Riverside County, California and Maricopa County Arizona. The project would utilize the existing Bureau of Reclamation's Palo Verde Division Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P. O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* August 13, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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.* Please include the project number (P–11956–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the Bureau of Reclamation's Palo Verde Diversion Dam and impoundment would consist of: (1) A proposed intake structure; (2) a proposed 200-foot-long, 120-inch-diameter steel penstock: (3) a proposed powerhouse containing two generating units having a total installed capacity of 20 MW; (4) a proposed 5-mile-long, 15–kV transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 105 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filing must bear in all capital letter the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Davis P. Boergers,

Secretary.

[FR Doc. 01–15004 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11935–000.

c. *Date filed:* March 30, 2001.

d. *Applicant:* Inlet Hydropower, Inc.

e. *Name of Project:* Inlet Project.

f. *Location:* On the Jim Byrns Slough, in Lincoln County, Idaho. The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Silvio Coletti, Inlet Hydropower, Inc., 2727 South Merimac Place, Boise, ID 83709, (208) 333–9447.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* August 13, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency

k. *Description of Project:* The proposed project would consist of: (1) A proposed 30-foot-long, 8-foot-high concrete retention dam with a negligible impoundment, (2) a proposed intake structure, (3) a proposed 5000-foot-long, 72-inch-diameter steel penstock; (4) a proposed powerhouse containing two generating units having a total installed capacity of 1.162 MW, (5) a proposed 1.5-mile-long, 600 V transmission line, and (6) appurtenant facilities.

The project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular

application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) name din this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–15005 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

June 8, 2001.

Take notice that the followig hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11898–000.

c. *Date filed:* March 2, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Ririe Dam Project.

f. *Location:* On the Willow Creek, in Bonneville County, Idaho. Would utilize the existing the Bureau of Reclamation's Ririe Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* July 30, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments recommendation, interventions, and protests, may be electronically filed 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.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the Bureau of Reclamation's Ririe dam and impoundment would consist of: (1) A proposed intake structure; (2) a proposed 1,150-foot-long, 8-foot-diameter steel penstock; (3) a proposed powerhouse containing one generating unit having an installed capacity of 2.2 MW; (4) a proposed 1.5-mile-long, 15 kV transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 112 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Pubic Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent to allow an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing developing application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–15006 Filed 6–13–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 11, 2001.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 18, 2001, 1 p.m.

Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Docket No. EL00–95–031, San Diego Gas Electric Company V. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator and the California Power Exchange.

Docket No. EL00–98–030, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange.

Docket No. RT01–85–001, California Independent System Operator Corporation.

Docket Nos. EL01–68–000 and 001, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400.

David P. Boregers,

Secretary.

[FR Doc. 01–15132 Filed 6–12–01; 11:38 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 5, 2001.

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 July 16, 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 Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0813.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, federal government, state, local or tribal government.

Number of Respondents: 42,031.

Estimated Time Per Response: 1–5 hours.

Frequency of Response: On occasion and annual reporting requirements, third party disclosure requirement.

Total Annual Burden: 195,100 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission revised this information in response to petitions for reconsideration filed in response to the Report and Order in CC Docket No. 94–102. The Commission adopted a Memorandum Opinion and Order in the wireless Enhanced 911 (E911) rulemaking proceeding, reaffirming its commitment to the rapid implementation of technologies needed to bring emergency assistance to wireless callers throughout the United States. The limited revisions made in this decision to the Commission's rules are intended to remedy technical problems raised in the record.

OMB Control No.: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 13,049.

Estimated Time Per Response: .5–18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.1590 requires licensees of AM, FM and TV stations to make audio and video equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedure used in making the measurements must be kept on file at the transmitter for two years. In addition, this information must be made available to the FCC upon request. The data is used by FCC staff in field investigations to identify sources of interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–14935 Filed 6–13–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–1264]

Network Practices

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communication Commission seeks comment on a Petition for Inquiry into Network Practices filed in behalf of Network Affiliated Stations Alliance.

DATES: Comments must be filed on or before July 23, 2001; reply comments must be filed on or before August 22, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mania K. Baghdadi, Policy and Rules Division, Mass Media Bureau, at 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Public Notice (''*Notice*''), DA 01–1264, released May 22, 2001. The *Petition* and all subsequently filed documents are available for public inspection and copying during normal business hours in the Commission's Reference Information Center located at Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554 and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), 202–857–3800, 445 12th Street, S.W., Room CY–B402, Washington, D.C.

Synopsis of Public Notice

1. On March 8, 2001, Network Affiliated Stations Alliance (''NASA'') filed a Petition for Inquiry into Network Practices (''Petition''). NASA's Petition asked the FCC to institute an inquiry as to whether certain alleged practices of the top four television networks with respect to their affiliates are consistent with the Commission's network rules, CFR 73.658; the Communications Act; and the public interest. In addition, NASA asked that the Commission examine, in the inquiry, what additional steps it should take to ''limit or prevent other improper network conduct not deemed to violate existing rules.'' In a letter, dated May 2, 2001, submitted to the Commission, counsel for NASA urged that the Commission treat its Petition as a petition for declaratory relief (Letter to Michael Powell, Chairman, from Wade H. Hargrove and Jonathan D. Blake, Counsel for the Network Affiliated Stations Alliance, May 2, 2001). In response to this letter, the four major networks raised procedural concerns about the NASA Petition and denied that they had violated the Commission's rules (Letter to Michael K. Powell, Chairman, from Maureen O'Connell, Fox Broadcasting Company; Anne Lucey, Viacom, Inc.; Diane Zipursky, National Broadcasting Company, Inc.; and Susan Fox, The Walt Disney Company, May 14, 2001. The foregoing networks have also submitted letters with respect to the ex parte status of the NASA Petition). As indicated in the Petition and subsequent letters from NASA and the top four networks, the parties disagree as to whether the Commission should take action with respect to the Petition, and, if so, as to the procedural context of any such Commission response. No decision has been reached as to this issue and none is expressed or implied by our action here.

2. By this *Notice,* comment is sought on the Petition and the responses to the Petition. Interested parties may submit comments. Comments and replies should specifically reference this Notice (DA 01–1264). Commenters must file an original and four copies of all comments and reply comments with the Commission's Secretary: Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Room TW–A325, Washington, D.C. 20554.

3. *Ex parte status:* In order to permit a full exchange of views on the multiple issues raised in the *Petition,* and given NASA's clarification that it is seeking a declaratory ruling rather than specific enforcement action, we have concluded that the public interest would be served by classifying this proceeding as permit-but-disclose under the ex parte rules. Accordingly, by this *Notice,* and pursuant to § 1.1200(a) of the Commission's rules, we announce that this proceeding will be governed by permit-but-disclose ex parte procedures that are applicable to nonrestricted proceedings under § 1.1206 of the Commission's rules.

4. Permit-but-disclose ex parte procedures permit interested parties to make ex parte presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written ex parte presentation to the Commissioners or Commission employees must file the written presentation with the Commission, as set forth, no later than the next business day after the presentation. Section 1.1206(b)(1). Persons making oral ex parte presentations must file a summary of the presentation, and deliver copies to the Commissioners or Commission employees involved with the presentation no later than the next business day after the presentation. Section 1.1206(b)(2). All ex parte filings must be clearly labeled as such and must reference this *Notice,* as well as

any other applicable docket or file numbers.

5. An original and one copy of all memoranda must be filed with the Commission's Secretary, Magalie Roman Salas, in accordance with § 1.1206(b)(1) of the Commission's Rules. In addition, one copy of each ex parte memorandum should be delivered to each of the following locations: (1) The Commission's duplicating contractor ITS, and (2) Mania K. Baghdadi, Policy and Rules Division, Mass Media Bureau, 445 Twelfth Street, S.W., Room 2–C267, Washington, D.C. 20554.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 01–14934 Filed 6–13–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Proposed Policy Change

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on proposed policy change on allocating funds under the Labor-Management Cooperation Program.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the Proposed Policy Change on Allocating Funds Under the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATES: Comments must be submitted on or before July 16, 2001.

ADDRESSES: Send Comments to: Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Vella M. Traynham, 202–606–8181.

Labor-Management Cooperation Program Proposed Guideline Change

D. Allocations

Any funds returned to FMCS from a competitive grant can be awarded on a noncompetitive basis, provided the award is made during the period in which the grant period is effective.

C. Richard Barnes,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 01–15026 Filed 6–13–01; 8:45 am]

BILLING CODE 6732–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Centers for Disease Control and Prevention, Technology Transfer Office, Department of Health and Human Services

ACTION: Notice.

The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (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 U.S. 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 Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Rd., Atlanta, GA 30333, telephone (404) 639–6270; facsimile (404) 639–6266; or email tto@cdc.gov. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

Gripping Assembly for Impact Hammer

The Gripping Assembly for an Impact Hammer easily attaches to an existing hydraulic impact hammer and performs three functions: First, the assembly allows an impact hammer operator to manipulate and hold objects that are to be broken with the hammer. Second, the assembly allows the operator to grasp and move objects (such as the debris that may clog a grizzly in an underground mine). Finally, an operator can use the assembly to ''sweep'' debris from the work area (such as the fines that may accumulate and clog a grizzly in an underground mine).

Inventors: Bill M. Stewart et al., U.S. Patent Application SN: To be assigned, filed 4.16.2001 (CDC Ref. #: I–029–00)

Method and Apparatus for Laser Safety in Hazardous Locations

Laser-based technology is used in several diverse industries to monitor flammable material processes. This invention monitors temperatures within these processes when heated by a laser and compares these temperatures with a preset temperature threshold. If the temperature threshold is exceeded, the invention shuts down the laser, thus preventing ignition of flammable material.

Inventors: William D. Monaghan, et al., U.S. Patent Application SN: To be assigned, filed 2.9.2001 (CDC Ref. #: I–030–00)

Lighted Rescue Team Lifeline

The Lighted Rescue Team Lifeline is a flexible illuminated safety line used to keep rescue and exploration team members together in low-light areas. The lighted lifeline helps to prevent tripping and falling problems, and it eases the task of locating the lifeline if it becomes entangled around obstacles.

Inventors: Ronald S. Conti et al., U.S. Patent Application SN: To be assigned, filed 3.7.2001, (CDC Ref. #: I–034–00)

A 12-volt Battery Charging Apparatus Using Mine Shaft Guide Roller Wheels

Elevators and mine shaft conveyances often require local instrumentation to monitor conveyance speed, location, cable tension, etc. Power for these instruments is generally provided through a trailing cable. In deep mines, or high buildings, trailing cables can be impractical for many reasons. This invention describes a self-contained unit that contains a battery used to power the local instrumentation, and a charging system that uses the motion of the elevator or shaft conveyance to charge the battery.

Inventors: Michael J. Beus et al., U.S. Patent Application SN: Application yet to be filed (CDC Ref. #: I–038–00)

Dated: June 6, 2001.

Kathleen M. Rest,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 01–14939 Filed 6–13–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the University of Hawaii

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the University of Hawaii to develop a virtual Data Center for Children and Families that contains the most comprehensive collection of data and information on Hawaii's children and families. As a Congressional setaside, this one-year project is being funded noncompetitively. The cost of this one-year project is $100,000.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–205–4829.

Dated: June 7, 2001.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 01–15032 Filed 6–13–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

A Conversation About Cancer Drug Development With Cancer Patient Advocates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: A Conversation About Cancer Drug Development With Cancer Patient Advocates. The topics to be discussed are: Fast track, compassionate use, quality of life, the Patient Consultant Program, and other issues as they arise.

Date and Time: The meeting will be held on June 29, 2001, 2 p.m. to 4 p.m.

Location: The meeting will be held at the Westin Fairfax Hotel, Whitehall Room, 2100 Massachusetts Ave. NW., Washington, DC 20008, 202–293–2100.

Contacts: Patricia C. Delaney and JoAnn M. Minor, Office of Special Health Issues, Cancer Liaison Program, Office of International and Constituent Relations, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460, FAX: 301–443–4555, or e-mail: pdelaney@oc.fda.gov and jminor@oc.fda.gov.

Registration: Send registration information (including name, title, firm name, address, telephone, fax number and/or e-mail address) to either contact person by June 22, 2001.

If you need special accommodations due to a disability, please contact Patricia C. Delaney or JoAnn M. Minor at least 7 days in advance.

Dated: June 8, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–14930 Filed 6–13–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 19, 2001, from 8:30 a.m. to 5:30 p.m. and July 20, 2001, from 8:30 a.m. to 3 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact: Nancy Chamberlin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1076), Rockville, MD 20857, 301–827–7001, or e-mail: CHAMBERLINN@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 19, 2001, the committee will: (1) Discuss specific recommendations of the Orally Inhaled and Nasal Drug Products Subcommittee regarding dose response of locally acting nasal sprays and nasal aerosols, with particular application to bioequivalence studies; (2) hear reports and provide direction to the Nonclinical Studies Subcommittee; (3) provide comments and advice to the Risk-Based Chemistry, Manufacturing, and Controls Review Working Group for establishment of a list of low risk drugs; (4) discuss and provide direction on optimal applications of inline process controls in pharmaceutical production; and (5) discuss problems and provide comments to form a scientific basis for establishment of acceptance limits for microbiological tests that use newly developed technologies that do not rely on colony counts, and their application as process controls and product release criteria. On July 20, 2001, the committee will: (1) Provide comments and advice on methods to determine drug transfer into breast milk and interpretation of data; and (2) discuss and provide comments on the feasibility, scientific challenges, and approaches for establishment of pharmaceutical equivalence, bioavailability, and bioequivalence of liposome drug products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 2001. Oral presentations from the public will be scheduled between approximately 1:15 p.m. to 2:15 p.m. on July 19, 2001, and between approximately 10:15 a.m. to 11:15 a.m. on July 20, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 6, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–14928 Filed 6–13–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orally Inhaled and Nasal Drug Products Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Orally Inhaled and Nasal Drug Products Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 17, 2001, from 8:30 a.m. to 5:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room 1066, 5630 Fishers Lane, Rockville, MD.

Contact: Nancy Chamberlin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: CHAMBERLINN@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee meeting will discuss the issue of dose-response of locally acting nasal sprays and nasal aerosols, with particular application to bioequivalence studies.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 10, 2001. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 10, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 6, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–14929 Filed 6–13–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–10043]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the BadgerCare Medicaid Demonstration; *Form No.:* HCFA–10043 (OMB #0938–NEW); *Use:* The subject surveys are components of the HCFA evaluation of the Wisconsin BadgerCare Section 1115 Medicaid demonstration and Title XXI (SCHIP) program. The goals of the evaluation are to assess the effectiveness of BadgerCare in reducing the number of Wisconsin residents who lack health insurance, increasing participation of eligible children in the SCHIP program, and supporting families making transitions from welfare to work. Other specific features of BadgerCare will be examined as well, including the State's outreach efforts and policy of charging premiums to selected families. Findings from the study will help to inform HCFA policy regarding Medicaid demonstrations and SCHIP, and will help states in designing similar health insurance programs.; *Frequency:* Other: One time; *Affected Public:* Individuals or Households; *Number of Respondents:* 5,680; *Total Annual Responses:* 5,680; *Total Annual Hours:* 1,914.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–10043, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 5, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–14946 Filed 6–13–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2746]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Form No.:* HCFA–2746 (OMB# 0938–0448); *Use:* This form is completed by all Medicare approved ESRD facilities upon death of an ESRD patient. The forms primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; Federal Gov't., Not-for-profit institutions; *Number of Respondents:* 4,000; *Total Annual Responses:* 56,258; *Total Annual Hours:* 9,564.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 5, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–14947 Filed 6–13–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Request for Clearance To Evaluate the National Institutes of Health (NIH) Small Business Innovation Research (SBIR) Program

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The National Survey to Evaluate the NIH SBIR Program. Type of Information Collection Request: NEW. Need and Use of the Information Collection: The NIH, Office of Extramural Research, Office of Extramural Programs seeks to obtain OMB's approval to conduct a survey to evaluate the Small Business Innovation Research (SBIR) Program. The SBIR Program, established by Congress in 1982 (Public Law 97–219) and recently reauthorized through September 30, 2008 (P.L. 106–554), provides research support to small businesses for innovative technology. Primary objectives are to assess the extent to which SBIR program goals are being met, particularly those dealing with the commercialization of research products, processes or services and the uncovering of new knowledge that will lead to better health for everyone. With survey information, NIH is enabled to accurately assess the results of its large financial investment in funding innovative research conducted by small business concerns. Findings will help to (1) understand if innovative projects supported through the NIH SBIR Program are being commercialized, and if so, to classify the types of products, processes or services that are derived through SBIR funding; (2) determine if other measures of success defined within the NIH mission are being achieved; and (3) enhance NIH's administration of the SBIR Program and the support that it provides to small business concerns. Overall, the NIH will use the survey results to assess the outcomes from NIH-supported SBIR awards. OD will collect information from SBIR awardees using an Internet survey. The online survey will be implemented using Secure Socket Layer (SSL) encryption technology and password access. OD will use first-class mail and email messages to advise awardees that they have been selected to participate in the survey. Frequency of Reponse: One time survey. Affected Public: Small business concerns supported by NIH through the SBIR Program. Type of Respondents: For-profit small business concerns that have received NIH SBIR awards. The annual reporting burden is as follows: Estimated Number of Respondents: 1,000; Estimated Number of Responses Per Respondent: 1; Averaged Burden Hours Per Response: .5; and Estimated Total Annual Burden Hours Requested: 500. The annualized cost to the public is estimated at $37,500. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed information collection; (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 respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Jo Anne Goodnight, NIH SBIR/STTR Program Coordinator, Rockledge II Bldg., Room 6186, 6701 Rockledge Drive, Bethesda, MD 20892–7910, or call non-toll-free number (301) 435–2688 or email your request, including your address, to: *jg128w@nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before August 13, 2001.

Dated: June 7, 2001.

Jo Anne Goodnight,

Coordinator, Small Business Innovation Research/Small Business Technology Transfer Program, Office of Extramural Programs, Office of Extramural Research, National Institutes of Health.

[FR Doc. 01–14972 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Jackson Heart Study: Annual Follow-Up With Third Party Respondents

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institute 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 November 15, 2000, page 69031–69032 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: The Jackson Heart Study: Annual Follow-up with Third Party Respondents Type of Information Collection Request: New, Need and Use of Information Collection: This is a request for collection of follow-up information from third party individuals (next-of-kin descendants and physicians) for the participants in the Jackson Heart Study (JHS) Follow up. The information is necessary to complete the determination of causes of morbidity and mortality in the JHS Cohort. The initial examination phase of the study began in the fall of 2000 and will take approximately three years to complete. Annual follow-up will begin one year after the initial exam, in the Fall of 2001. The information collected will be used by the public and private sector for public health planning, medical education, other epidemiologic studies, and biomedical. Frequency of Response: One-Time. Affected Public: Individuals or families; Businesses or other for profit; Not-for-profit institutions. Type of Respondents: Third party respondents (next-of-kin decedents and physicians). The annual reporting burden is as follows: Estimated Number of Respondents: 480. Estimated Number of Responses per Respondent: 1. Average Burden Hours Per Response: 0.333. Estimated Total Annual Burden Hours Requested: 160. The annualized cost to respondents is estimated at: $3,600. There are no Capital Costs, Operating Costs or Maintenance Costs to report.

Estimates of the annual reporting burden to respondents:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Morbidity & Mortality AFU 3rd party next-of-kin decedents	240	1	0.33	80
Morbidity & Mortality AFU 3rd party Physicians	240	1	0.33	80
Total	480			160

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information 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 assumption 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.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden 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. Cheryl Nelson, Epidemiology and Biometry Program, Division of Epidemiology and Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, room 8152, Bethesda, MD, 20892, or call non-toll-free number (301) 435–0451, or e-mail your request, including your address to: cn80n@nih.gov.

Comments Due Date: Comments regarding the information collection are best assured of having their full effected if received on or before July 16, 2001.

Peter J. Savage,

Acting Director, Division of Epidemiology and Clinical Applications, NHLBI.

[FR Doc. 01–14973 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel In Vivo Cellular and Molecular Imaging Centers.

Date: July 18–19, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD., Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, room 8088, Rockville, MD 20852, 301/594–1279.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14965 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: July 18–20, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8049, Rockville, MD 20852, 301/594–9582.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14966 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

Date: July 17–18, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD., Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14967 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Exposure Assessment Methods for Cancer Research.

Date: July 16–17, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or profession affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14968 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of Novel Imaging Technologies (Phased Innovation) PAR00–089 and Development of Novel Imaging Technologies: (SBIR/STTR) Initiative.

Date: July 12–13, 2001.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joyce C Pegues, PhD, Scientific Review Administrator, Special Review, Referral, and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8084, Bethesda, MD 20892, 301/594–1286.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14969 Filed 6–13–01; 8:45 am]

BILLING CODE 4140––01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: July 9, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Deborah R. Jaffe, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14970 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Behavioral Research in Cancer Control.

Date: July 10, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14971 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Genetic Modifiers of Single Gene Defect Diseases.

Date: June 25–26, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert B. Moore, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–3541, mooreb@nhlbi.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14961 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Mentored Scientists Development Award SEP.

Date: June 28, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roy L White, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 6, 2001.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14962 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Transactivation of Fetal Hemoglobin Genes for Treatment of Sickle Cell Disease and Cooley's Anemia.

Date: June 18, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert B. Moore, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–3541, *mooreb@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14963 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Oxidative Stress in Alzheimer's Disease.

Date: June 25–26, 2001.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Plaza Hotel, 369 West Vine Street, Lexington, KY 40507.

Contact Person: Louise L. Hsu, PhD., Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 27, 2001.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Function and Dysfunction of Presenilin-1.

Date: July 19–20, 2001.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Best Western Grant Hotel, 1100 South Michigan Ave., Chicago, IL 60605.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 06, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14957 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: June 20, 2001.

Time: 11:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd, Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14958 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applicants, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel NIAAA Special Emphasis Panel.

Date: July 9, 2001.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 6, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramual Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14960 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: June 14, 2001.
Time: 8:30 a.m. to 10:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P. Street, NW, Washington, DC 20037.
Contact Person: Richard D. Crosland, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: June 15, 2001.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P. Street, NW, Washington, DC 20037.
Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.
Date: June 15, 2001.
Time: 1 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P. Street, NW, Washington, DC 20037.
Contact Person: Richard D. Crosland, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14964 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Metabolic Pathology Study Section.
Date: June 20–22, 2001.
Time: 8:30 a.m. to 12 p.m.
Agenda: To Review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715, nga@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 25–26, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Gloria B. Levin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.
Date: June 25–26, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: to review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Russell T. Dowell, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov.

Name of Committee: Musculosketetal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.
Date: June 25–26, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington DC 20007.
Contact Person: Daniel F. McDonald, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
Date: June 25–26, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo Hotel, 2121 P St., NW., Washington, DC 20037.
Contact Person: Dennis Leszczynski, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 25–26, 2001.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Nadarajen A. Vydelingum, Ph.D., Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Room 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.
Date: June 25–26, 2001.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–2359.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.
Date: June 25–26, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721. rakhitg@cse.nih.gov.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25–26, 2001.
Time: 8:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Mary Custer, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25–26, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Governor's House Hotel, 1615 Rhode Island Avenue, N.W., Washington, DC 20036.
Contact Person: Joseph Kimm, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25, 2001.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Prabha L. Atreya, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25–26, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.
Contact Person: Cheri Wiggs, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25–26, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, N.W., Washington, DC 20036–3305.
Contact Person: Anita Miller Sostek, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25, 2001.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Philip Perkins, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: June 25, 2001.
Time: 6 p.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Silver Spring, 8777 Georgia Ave, Silver Spring, MD 20910.
Contact Person: Nadarajen A. Vydelingum, Ph.D., Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 27, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Jean D. Sipe, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, 301/435–1743, sipej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 27–28, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, DVM, MS, Ph.D., Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, sharmag@csr.nih.gov.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 2.
Date: June 27–28, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jerrold Fried, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, 301–435–1777, friedj@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.
Date: June 27–28, 2001.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
Contact Person: Martin L. Slater, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, 301–435–1149.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 2.
Date: June 27–29, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Marcia Litwach, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 27, 2001.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paul K. Strudler, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 27, 2001.
Time: 3 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 27–29, 2001.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037.

Contact Person: David L. Simpson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 06, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14956 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Epidemiology and Disease Control Subcommittee 1, June 11, 2001, 9:00 AM to June 12, 2001, 4:00 PM, Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, 20852 which was published in the **Federal Register** on May 29, 2001, 66 FR 29160–29163.

The meeting time has been changed to 8:30 AM to 6:00 PM. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: June 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–14959 Filed 6–13–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2001 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP, Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS), announce the availability of FY 2001 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, Strengthening Early Childhood Intervention by Integrating Behavior Health Services, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY (millions) 2001	Est. number of awards	Project period (years)
SESS Prototypes	July 30, 2001	$2.5	7	3

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2001 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from:

National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345 Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP), Center for Substance Abuse Treatment(CSAT), and Center for Mental Health Services (CMHS) announce the availability of Fiscal Year 2001 funds for cooperative agreements to Strengthen Early Childhood Interventions by Integrating Behavioral Health Services into customary early childhood service settings(behavioral health is defined as substance abuse prevention treatment and mental health services in this announcement). This program calls for applicants to address the following goals:

(1) To increase access to behavioral health services by confirming the value of integrating behavioral health services into settings that families and young children 0–3 use regularly and frequently.

(2) To replicate and disseminate the most successful approaches to intervening early in the lives of young children impacted by multiple family and social problems in established primary care sites, community based health centers and Early Head Start childhood settings.

(3) To augment the knowledge of integrating behavioral health services in these non-stigmatized and familiar settings serving families and young children, by continued study of the results of these efforts through a

validated set of impact measures, to be selected by grantees.

(4) To incorporate into existing programs, SESS lessons learned, including strength based work with families and cultural competence practices.

Eligibility: Applications for this initiative may be submitted by domestic public and nonprofit primary care organizations, community health clinics and Early Head Start programs.

Availability of Funds: Approximately $2.5 million will be made available for 7 awards. The average award will be $300,000 in total costs (direct and indirect costs). Funds will support a 90-day planning period, local intervention services that address the program goals, data collection utilizing locally selected elements of an established data set, preparation of the project reports, and participation in funder/grantee workgroups on project implementation, data generation and analysis.

Period of Support: Awards may be requested for 3 years. Annual continuation awards depend on the availability of funds and the progress achieved.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions concerning program issues, contact: Jocelyn Whitfield, MS, Office on Early Childhood, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7816, E-Mail *jwhitfil@samhsa.gov*

For questions regarding grants management issues, contact: Edna Frazier, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–6816, E-Mail: *efrazier@samhsa.gov*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 8, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–14985 Filed 6–13–01; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data 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.

PRT–036512

Applicant: The Field Museum of Natural History, Chicago, IL

The applicant requests a permit to import a hawksbill sea turtle (*Eretmochelys imbricata*) shell, a preserved bengal monitor (*Varanus bengalensis*), a Siamese crocodile (*Crocodylus siamensis*) skull and a set of Siamese crocodile skeletal remains from Cambodia for the purpose of scientific research.

PRT–042321

Applicant: Chicago Zoological Society, Brookfield, IL

The applicant requests a permit to import biological samples collected from cheetah (*Acinonyx jubatus*), African leopard (*Panthera pardus*), and African wild dog (*Lycaon pictus*) in Namibia for the purpose of scientific research. The samples are to be collected by Namibia's Ministry of Environment and Tourism (MET) from animals that are found dead or animals that were taken/destroyed in accordance with the country's management or problem animal control mandates. This notification covers activities conducted by the applicant for a period of five years.

PRT–043612

Applicant: William R. Trice, Dallas, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–044148

Applicant: A. Nelson Mc Carter, Houston, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–038607

Applicant: Michael McKenzie, Sulphur Springs, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–034736

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to export two captive born white tigers (*Panthera tigris*) to the Dalian Forest Zoo, Dalian, China, for the purpose of enhancement of the species through conservation education.

PRT–043494

Applicant: St. Louis Zoological Park, St. Louis, Missouri

The applicant requests a permit to import biological samples from wild Galapagos hawk (*Buteo galapagoensis*) from Ecuador for the purpose of scientific research. This notification covers activities conducted by the applicant for a period of five years.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–773494

Applicant: Florida Fish and Wildlife Conservation Commission, St. Petersburg, FL

Permit Type: Take for scientific research.

Name and Number of Animals: Florida manatees (*Trichecus manatus*), variable number.

Summary of Activity to be Authorized: The applicant has requested an amendment to the permit to authorize take and Level B harassment of a variable number of captive-held and wild manatees. The activities include incidentally harassing (Level B harassment) manatees during the course of aerial surveys, photo-identification, equipment exchange and removal, capture, and radio tracking; collecting body temperature of captive, captive-held, rehabilitated, and rescued manatees using nasal or oral temperature probes; calibrating oral/nasal probes with rectal and stomach temperature probes using captive animals; closely approaching and possibly harassing (Level B harassment) captive and wild manatees while using a remote research vessel to read PIT tags; attaching infrared flashers to tethers of tagged manatees; and testing infrared flashers and time-depth recorders imbedded in the belts of 2 captive manatees.

Source of Marine Mammals: Entire range in Florida.

Period of Activity: Up to 5 years from the issuance date of the amended permit.

PRT–043925

Applicant: Samuel T. Fejes, Jr., Anchorage, AK

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–043984

Applicant: Brian Olson, Bloomington, MN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal use.

PRT–044120

Applicant: William David Figge, Orange, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to 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: June 8, 2001.

Monica Farris,

Senior Biologist, Branch of Permits, Office of Management Authority.

[FR Doc. 01–15034 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–01–1610–DL]

Notice of Extension of the Public Comment Period for the Draft Northern and Eastern Colorado Desert Coordinated Management Plan Environmental Impact Statement

AGENCY: California Desert District Office, Riverside, CA., Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management has extended the public comment period an additional 30 days for the Draft Northern and Eastern Colorado Desert Coordinated Management Plan and Environmental Impact. Comments must be submitted or postmarked by July 9, 2001. The ninety-day notice of availability of draft Northern & Eastern Colorado Desert Coordinated Management Plan and Environmental Impact Statement was published in the **Federal Register** on March 12, 2001.

FOR FURTHER INFORMATION CONTACT: Dick Crowe, California Desert District, 6221 Box Springs Blvd., Riverside, California 92507; phone (909) 697–5216.

Dated: May 29, 2001.

Alan Stein,

Assistant District Manager.

[FR Doc. 01–15135 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–01–1610–DL]

Motor Vehicle Use Restrictions: Coyote Mountains, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Pursuant to Title 43 Code of Federal Regulations Part 8364.1 the Bureau of Land Management will seasonally close routes of travel on Public Lands in the Coyote Mountains of western Imperial County to motorized vehicle use.

SUMMARY: Notice is hereby given that from January 1 to June 30 each year the BLM will close sections of BLM routes T670130 and T670214 located in the Coyote Mountains of Imperial County to access by motorized vehicles. The proposed closure is to provide interim protection for the Peninsular Bighorn Sheep (PBS), PBS habitat, and other resource values by reducing disturbances caused by motorized vehicle use authorized under the California Desert Conservation Area (CDCA) Plan, as amended. By taking interim actions as allowed under 43 CFR part 8364.1, the BLM contributes to the conservation of endangered and threatened species in accordance with 7(a)(1) of the ESA. BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternative measures which might be required as a result of the consultation on the CDCA plan in accordance with 7(d) of the ESA.

The closure will remain in effect until BLM receives a biological opinion from the Fish and Wildlife Service on the effects of the CDCA Plan on PBS and implements any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures of the opinion that require implementation.

The sections of the routes subject to this seasonal closure, and the other routes that will consequently be closed, exist in portions of sections 21, 22, 23, 25, 26, 27, 28, 35 and 36, Township 15 South, Range 9 East; of sections 1 and 2, Township 16 South, Range 9 East; and of section 6, Township 16 South, Range 10 East, SBM. The following motorized vehicles are exempt from this order: (1) Fire, military, emergency or law enforcement vehicles when used for emergency or patrol purposes; (2) vehicles whose use is expressly approved by the Authorized Officer; (3) vehicles used for official purposes by employees, agents, or designated representatives of the Federal Government or one of its contractors. These closures shall be in effect year-round beginning no sooner than thirty (30) days from the date of this notice, until completion of programmatic consultation between the BLM under Section 7 of the Endangered Species Act (ESA) with U.S. Fish and Wildlife Service and implementation of any applicable terms and conditions, reasonable prudent alternatives and/or reasonable prudent measures. Closure of these routes also will prevent motorized vehicle use of other BLM routes labeled T670121, T670128 and T670129 that are only accessible via the closed portions of BLM routes T670130 and T670214. Non-motorized uses (*e.g.*, hiking, bicycling, horseback riding) of closed sections on any of the roads described above are not affected by this order. Trails developed primarily for non-motorized use are also not affected by the seasonal closure.

BLM routes T670130 and T670214 are accessible from Painted Gorge Road. Painted Gorge Road is a county-maintained road extending from Evan Hewes Highway to the foothills of the Coyote Mountains (approximately 4–5 miles in length). BLM routes T670130 and T670214 fork off the termination of Painted Gorge Road and continue into the Coyote Mountains, both routes leading to Carrizo Peak. The closure of these two routes will prevent access to Carrizo Peak from Painted Gorge Road.

Two gates will be installed by BLM to prevent access by motorized vehicles, located as follows:

1. Along route T670130 at UTM coordinates 595590.03 E; 3631014.84 N. These UTM coordinates correspond to a point within the NW¼ of section 6, T. 16 S., R. 10 E., SBM.

2. Along route T670214 at UTM coordinates 594895.87 E; 3632292.29 N. These UTM coordinates correspond to a point within the NE¼ of section 36, T. 15 S., R. 9 E., SBM. Any person who fails to comply with this order may be subject to the penalties provided in 43 CFR 8360.0–7.

SUPPLEMENTARY INFORMATION: On March 18, 1998, the U.S. Fish and Wildlife Service (USFWS) declared through publication of a final rule that the Peninsular Bighorn Sheep occupying the Peninsular Ranges of southern California are endangered pursuant to the ESA of 1973, as amended. The current population of bighorn sheep in the United States' Peninsular Ranges approximates 335 animals distributed in eight known ewe groups (subpopulations) from the San Jacinto Mountains south to the Mexican border.

On March 16, 2000, the Center for Biological Diversity, and others (Center) filed for injunctive relief in U.S. District Court, Northern District of California (court) against the Bureau of Land Management (BLM) alleging that the BLM was in violation of Section 7 of the Endangered Species Act (ESA) by failing to enter into formal consultation with the U.S. Fish and Wildlife Service (FWS) on the effects of adoption of the California Desert Conservation Area Plan (CDCA Plan), as amended, upon threatened and endangered species. On August 25, 2000, the BLM acknowledged through a court stipulation that activities authorized, permitted, or allowed under the CDCA Plan may adversely affect threatened and endangered species, and that the BLM is required to consult with the FWS to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat

of listed species. On March 1, 2001, the revised stipulation respecting PBS became effective.

Although BLM has received biological opinions on selected activities, consultation on the overall CDCA Plan is necessary to address the cumulative effects of *all* the activities authorized by the CDCA Plan. Consultation on the overall Plan is complex and the completion date is uncertain. Absent consultation on the entire Plan, the impacts of individual activities, when added together with the impacts of other activities in the desert are not known. The BLM entered into negotiations with plaintiffs regarding interim actions to be taken to provide protection for endangered and threatened species pending completion of the consultation on the CDCA Plan. Agreement on these interim actions avoided litigation of plaintiffs' request for injunctive relief and the threat of an injunction prohibiting all activities authorized under the Plan. These interim agreements have allowed the BLM to continue to authorize appropriate levels of activities throughout the planning area during the lengthy consultation process while providing appropriate protection to the desert tortoise and other listed species in the short term. By taking interim actions as allowed under 43 CFR part 8364.1, the BLM contributes to the conservation of endangered and threatened species in accordance with 7(a)(1) of the ESA. BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternative measures which might be required as a result of the consultation on the CDCA plan in accordance with 7(d) of the ESA.

The EA indicates the following reasons for the closure: In the Draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges (USFWS 1999), several studies are identified that link vehicle use with modification of bighorn sheep behavior (Jorgensen, 1974; Leslie and Douglas, 1980; Campbell and Remington, 1981; Miller and Smith, 1985). The Coyote Mountains are within designated critical habitat for the PBS. The proposed route closure and gate construction would be a benefit to PBS and other wildlife resources. Disturbances from vehicles would be reduced during the critical lambing season which would increase the probability of lamb survival.

Motorized vehicle use in Painted Gorge potentially conflicts with lambing season, January through June, because most visitors use the area between October and May. The existing roads and trails in the Coyote Mountains provide a wide array of recreational opportunities for people who use motorcycles, ATV's, and 4-Wheel vehicles, including trail riding, touring and play riding.

DATES: The seasonal closure will be effective no sooner than July 16, 2001. The EA concerning this closure is available for a 15-day review period. Interested parties should contact the Field Office Manager for a copy and review schedule. Written comments may be sent to the address listed below in this notice.

FOR FURTHER INFORMATION CONTACT: El Centro BLM Field Manager, 1661 South 4th Street, El Centro, CA 92243.

ADDRESSES: Written comments may be sent to Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243, Tel: 760–337–4400.

Dated: June 4, 2001.

Gail Acheson,

Acting Deputy Director for Natural Resources.

[FR Doc. 01–15134 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of Cornell University, Ithaca, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of Cornell University, Ithaca, NY, that meets the definition of ''object of cultural patrimony'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The item is a carved wooden totem pole. The pole includes eagle, beaver, and halibut crest designs.

Museum records indicate that Cornell University obtained the totem pole in 1899 as a gift from Bernhard Fernow, former dean of the New York State College of Forestry at Cornell University. Professor Fernow served as a member of the Harriman Expedition, which removed totem poles and other objects from Cape Fox Village, AK, in 1899.

Evidence for cultural affiliation is provided by historical literature, crests on the pole, and written materials submitted by the Cape Fox Corporation.

Based on the above information, officials of Cornell University have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the Tlingit people, and to the Neix.adi clan in particular, and that under the Tlingit system of communal property ownership could not have been alienated, appropriated, or conveyed by any individual. Officials of Cornell University also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between this object of cultural patrimony and the Neix.adi clan of the Tlingit Tribe, whose interests are represented here by the Cape Fox Corporation.

This notice has been sent to officials of the Cape Fox Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object of cultural patrimony should contact Patricia A. McClary, Associate University Counsel, Cornell University, 300 CCC Building, Garden Avenue, Ithaca, NY 14853–2601, telephone (607) 255–5124, before July 16, 2001. Repatriation of this object of cultural patrimony to the Cape Fox Corporation may begin after that date if no additional claimants come forward.

Dated: May 18, 2001

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–14991 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the Denver Art Museum, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Denver Art Museum, Denver, CO, that meet the definition of ''object of cultural patrimony'' and ''sacred object'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

Three of the cultural items are two cylindrical woodcarvings known as Ahayu:da or War Gods, each measuring approximately 33 inches in length, and one flat woodcarving known as an Ahayu:da altar stick, approximately 37.5 inches in length.

In 1999, the Denver Art Museum obtained the two Ahayu:da in a bequest from the estate of Charles J. Norton. Prior to 1972, Mr. Norton acquired these cultural items from an unknown source. Weathering indicates probable placement of the Ahayu:da at an outdoor shrine. Mr. Norton's tags listed the objects as ''Zuni War Gods.'' Officials of the Denver Art Museum have inspected these cultural items and agreed with this attribution.

In 1966, the Denver Art Museum obtained the Ahayu:da altar stick (Accession no. 1966.398) as a gift from Vander Wagen Brothers, Gallup, NM. Vander Wagen Brothers acquired it prior to 1966 from an unknown source. Weathering indicates probable placement of the Ahayu:da altar stick at an outdoor shrine.

Consultation with officials of the Zuni Tribe of the Zuni Reservation during the summer of 1999 confirmed the identification of the cultural items as carved representations of Ahayu:da, and confirmed that these three cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. These three cultural items also are needed by the Zuni Bow Priest, a traditional religious leader, for ceremonial installation at the appropriate Ahayu:da shrine in accordance with the practice of Zuni traditional religion.

One of the cultural items is a cotton fabric mask known as a Koyemshi Ko'Ko.

In 1948, the Denver Art Museum obtained the Koyemshi Ko'Ko (Accession no. 1948.235) through an exchange with the Brooklyn Museum of Art. In 1904, the Brooklyn Museum of Art obtained the Ko'Ko as a purchase by Stewart Culin from Horabin & McGaffey, Thoreau, NM. Prior to 1904, Horabin & McGaffey obtained the Ko'Ko from George Winters.

Consultation with officials of the Zuni Tribe of the Zuni Reservation during 1996–1997 confirmed the identification of this cultural item as Koyemshi Ko'Ko. Evidence from historical and ethnographic records have confirmed that this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the Denver Art Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these four cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Denver Art Museum also have determined that, pursuant to 43 CFR 10.2 (d)(3), three of the cultural items (two Ahayu:da and the Ahayu:da altar stick) are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver Art Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these objects of cultural patrimony/sacred objects and the Zuni Tribe of the Zuni Reservation. This notice has been sent to officials of the Zuni Tribe of the Zuni Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects of cultural patrimony/sacred objects should contact Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80204, telephone (720) 913–0161, before July 16, 2001. Repatriation of these objects of cultural patrimony/sacred objects to the Zuni Tribe of the Zuni Reservation may begin after that date if no additional claimants come forward.

Dated: May 25, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–14992 Filed 6–13–01; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–440]

In the Matter of Certain 4-Androstenediol; Notice of Commission Determination Not To Review an Initial Determination Finding a Respondent in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) in the above-captioned investigation finding respondent Changzhou Huabang Pharmaceutical Group, Ltd. (Changzhou) in default, and to have waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-Line) at http://dockets.usitc.gov/eol.public. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain 4-androstenediol on December 19, 2000. 65 FR 79424. On April 19, 2001, complainant LPJ, Inc. of Seymour, Illinois, (LPJ) moved pursuant to 19 U.S.C. 1337(a)(1) and Commission rule 210.16 an order directing respondent Changzhou Huabang Pharmaceutical Group, Ltd. (Changzhou) to show cause why it should not be found in default for failure to respond to LPJ's complaint and the Commission's notice of investigation. The Commission investigative attorney (IA) supported LPJ's motion. The presiding administrative law judge (ALJ) (Judge Luckern) issued Order No. 8 on April 30, 2001, directing Changzhou to show

cause why it should not be found in default. Changzhou did not respond to the show cause order.

On May 24, 2001, the ALJ issued an ID (Order No. 9) finding Changzhou in default pursuant to Commission rule 210.16, and ruling that it had waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: June 8, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–14932 Filed 6–13–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 1, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) 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). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Lauren Wittenberg, OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: New collection.

Agency: Office of Small Business Programs (OSBP).

Title: Small Business Program Information Management System.

OMB Number: 1290–0NEW.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 4,000.

Number of Annual Responses: 6,000.

Estimated Time Per Response: 7 minutes to complete the registration form and 2 minutes to submit updates.

Total Burden Hours: 540.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This information will be used by OSBP and DOL agencies to maximize communication with the respective constituency groups regarding relevant OSBP and DOL programs, initiatives, and procurement opportunities; to track and solicit feedback on customer service to group members; and to facilitate registration of group members for OSBP-sponsored activities. The registration forms will collect participant information from the following groups: Small Businesses, Trade Associations; Minority Colleges/Universities; and Tribal Governments.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–15035 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 22, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) 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). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops—29 CFR Part 575.

OMB Number: 1215–0120.

Affected Public: Farms and Individuals or households.

Frequency: On Occasion.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: 4 hours.

Total Burden Hours: 4.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 13(c)(4) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.,* authorizes the Secretary of Labor to grant a waiver of the child labor provisions of the FLSA for the agricultural employment of 10 and 11 year old minors in the hand harvesting of short season crops if specific requirements are met. The Act requires that employers who are granted such waivers keep on file a signed statement of the parent or person standing in the place of the parent of each 10 and 11 year old minor, consenting to their employment, along with a record of the name and address of the school in which the minor is enrolled.

The application for a waiver and supporting data is used by the Department of Labor to determine whether the statutory requirements and conditions for granting an exemption have been met which would permit the applicants to employ 10 and 11 year olds to hand harvest short season crops. Without this information, the Department of Labor would not have the statutory authority to grant a waiver.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–15046 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Women in Apprenticeship and Nontraditional Occupations (WANTO) DOL FY–2001 Budget, Training and Employment Services (TES) 1601 77174

AGENCY: Women's Bureau, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA 01–03).

Note: This notice contains all of the information needed to apply for grant funding. Grant proposals that are not completed as directed will be judged non-responsive and will not be evaluated.

SUMMARY: The Women's Bureau, U.S. Department of Labor (DOL), announces the 2001 Solicitation for Grant Applications (SGA) authorized under the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992. The purpose of this program is to assist employers and labor unions in the placement and retention of women in apprenticeship and nontraditional occupations. To that end, WANTO grant funds are disbursed to eligible community-based organizations which, in turn, provide employers and labor unions with technical assistance geared towards the successful placement and retention of women in apprenticeship and nontraditional occupations.

DATES: One signed original, complete grant application plus five copies of the Technical Proposal and two copies of the Cost Proposal must be submitted by 5 p.m. EST, July 16, 2001. Hand-delivered applications must be received by that time. Applications transmitted by facsimile, e-mail, or telegraph will not be considered.

An application received after July 16, 2001, will not be considered unless:

1. It was sent by registered or certified mail not later than July 9, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address listed under **ADDRESSES**; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. EST on July 12, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the specified time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined in the preceding paragraph. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Office of Procurement Services, Attention: Grant Officer, Reference SGA 01–03, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions concerning this SGA may be sent to Cassandra Willis, at the following Internet address: willis-cassandra@dol.gov. Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Women's Bureau's Website at *www.dol.gov/wb*.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. Authority and Funding

The Women in Apprenticeship and Nontraditional Occupations Act of 1992 (WANTO)(29 U.S.C. 2501 *et seq.*) authorizes DOL to disburse technical assistance grants. The WANTO grants for Fiscal Year (FY) 2001 are funded by DOL FY 2001 Budget: Training and Employment Services (TES)1610174.

The Women's Bureau (WB) co-administers the WANTO program with the DOL Office of Apprenticeship Training, Employer & Labor Services (ATELS). WB has responsibility for implementing the grant process.

B. Purpose

This grant program is designed to assist employers and labor unions (E/LU) in the placement and retention of women in specific sections of the workforce. It is envisioned that the program will promote increased participation by women in apprenticeship and nontraditional occupations (A/NTO). Therefore, WANTO grant funds are distributed to community based organizations (CBO), which provide technical assistance to E/LU with the goal of placing and retaining women in these occupations. DOL has found that placement and

retention of women in A/NTO pose significant challenges. Those challenges are especially acute in fields requiring high technology skills, such as those related to computer-based information technology, for example, telecommunications, utilities, manufacturing, transportation, and general services.

C. Grant Awards

The WB is soliciting proposals on a competitive basis for the WANTO program. WB anticipates that each grantee will receive between $50,000 and $100,000 in funds to conduct innovative projects that comply with the goals set forth in WANTO and in this SGA. The period of performance begins September 30, 2001, and ends on September 29, 2002. The initial performance period may be extended once, for up to three months, at no additional cost to DOL, so that a grantee can finish its final reports. Each application shall clearly state the applicant's intention to begin performance no later than October 1, 2001.

Part II. Application Process

A. Eligible Applicants—Community-Based Organizations

DOL will award grants through a competitive process which identifies the best Community-Based Organizations (CBO) applicants. Applicants shall provide evidence, where available, demonstrating their ability to connect women to apprenticeship and nontraditional occupations. Applicants shall also document any experience in enabling women and/or businesses to contact ATELS field offices for assistance and/or for information pertaining to apprenticeship training/placement. A CBO must not be classified under the IRS Tax Code as a 501(c)(4) entity nor be a public body such as a governmental body, public school, college, or hospital. All proposals must document that these eligibility requirements have been, and will continue to be, satisfied.

A consortium of CBOs may apply for a grant provided they include a copy of the consortium agreement and identify the entity/entities that will administer the grant.

B. Application Contents

The proposals must consist of the following information:

1. Table of Contents, listing all of the report sections.

2. A Two-Page Abstract, giving a clear summary of the technical proposal.

3. Eligibility Documentation, as set forth in Part II, Section A, of this notice.

4. Statement of Work, stated in a clear and concise manner. Explain how the Technical Assistance (TA) project:

a. Complies With Allowable Activities

Grant funds may be used to provide a broad range of TA to assist E/LU in recruiting and retaining women in A/NTO. Examples of allowable TA are: establishing or improving upon workplace assessment tools and surveys; the development of strategic plans for changes in the workplace and in work practices that support women; and providing E/LU that have pledged employment and/or sponsored apprenticeship opportunities for women with linkages to pre-apprenticeship programs. The TA services may, in part, encompass supportive services (such as setting up support groups, assisting with child-care, tools, uniforms, and transportation) that help women enter and remain in A/NTO. However, the primary emphasis shall be on TA that helps E/LU increase the number of women employed in A/NTO. For additional examples of allowable project activities, see section 4 of the WANTO Act (29 U.S.C. 2503).

b. Develops 10 or More New Relationships With E/LU

Grantees need to develop relationships with E/LU in order to provide the E/LU with technical assistance. Without these relationships, a grantee's efforts to place women in A/NTO are unlikely to be productive. Expanding the availability of TA can dramatically increase women's awareness of and participation in A/NTO.

c. Builds Upon the CBO's Established Working Relationships With E/LU

Applicants should show how their existing linkages with E/LU have been and can continue to be effective in moving working women from NTO-related entry level employment into registered apprenticeship or other higher-skilled NTO employment, including employment that requires high-technology skills.

5. Documentation of the following:

A. Established and developing working relationships with E/LU;

b. Successful experience in administering a program that provides TA, particularly information and support, to E/LU for placing women in A/NTO. Such TA should be the major component of the CBO's activities. Activities can also include outreach, orientation, mentoring, support groups, networks, workplace consultation, employee and supervisory workshops, seminars, and other workplace-specific strategic planning to increase the participation of women in A/NTO;

c. Leadership in promoting economic self-sufficiency for women and (where applicable) in mentoring other CBO participating in the WANTO program; and

d. Names of ten or more targeted E/LU to whom the CBO plans to provide TA, along with the information required by Part II, Section A, of this notice.

6. The number of women to be placed into A/NTO;

7. A support services plan for women when the TA results in women being placed into A/NTO. These plans should include cooperative E/LU programs and community-based services, as well as those available at the workplace;

8. A description of any leveraging or co-funding anticipated for the accomplishment of the proposed project;

9. The inclusion of any activities that would encourage and promote the continuation or expansion of grant activities beyond the grant period; and

10. The inclusion of a management plan and job descriptions.

a. The management plan must include: the CBO's organizational chart, and where applicable, a narrative differentiating among the CBO's, the consultant's, and the sub-contractor's staffs and the names and full resumes of any proposed staff.

b. The job descriptions must identify: all key tasks; the hours required for the completion of such tasks; the person(s) responsible for completing each task, including sub-contractors and consultants; and the month-to-month time-line charting the tasks.

11. A listing of all items for which grant funds will be expended. Do not include any cost information, only expenditure items.

12. Copies of the CBO's budget and major funding sources for the past three (3) years, including foundation and government funds, as well as other types of funding.

Part III. Format of the Technical Proposal

The grant technical proposal text is limited to twenty (20) single-sided, double-spaced, 10 to 12 pitch, numbered ''8½ x 11'' typed pages (not including attachments).

Part IV. Application Process and Guidelines

Grant application packages must contain the following:

A. A Technical Proposal

Applicants must submit one (1) original and five (5) copies of their

technical proposal, with original signatures.

B. A Cost Proposal

The Cost Proposal is a physically separate document and must not be included within the twenty-page limit of the technical proposal. The Cost Proposal must include the following:

1. A Standard Form (SF) 424, ''Application for Federal Assistance.'' All copies of the SF 424 must have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the SF 424 the organization's IRS status.

The Catalogue of Federal Domestic Assistance number for this program is 17.700, which should be entered on the SF 424, block 10.

2. A certification prepared within the last six (6) months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The certification should be obtained as follows:

a. For incorporated organizations, a certification from a Certified Public Accountant or

b. For other applicants, their employer's identification number (EIN) issued by the IRS;

3. Budget Information Form 424A with a narrative description of each line item.

4. A copy of the most current Indirect Cost Rate Agreement issued by the cognizant federal agency, if applicable.

5. Applications from a consortium of organizations also must include a copy of the consortium agreement and must identify the consortium that will act as the administrative entity for the project. No member of a consortium shall make a separate application under this grant program. In addition, the agreement must specify the consortium's arrangements for handling the administrative and financial responsibilities for the program.

6. The applicants must include the Assurances and Certifications Signature Page.

Potential applicants who do not have the current version of the standard grant forms listed above can download them from the following OMB Website address: *www.whitehouse.gov/OMB/grants/forms.html.*

To be considered responsive to this SGA, each application must consist of, and follow the order of, the sections listed in Part II, Section B (Application Process, Application Contents), of this solicitation. The application must also include information that the applicant believes will address the selection criteria identified in Part V. ANY PROPOSAL THAT DOES NOT CONFORM TO THESE STANDARDS SHALL BE DEEMED NON-RESPONSIVE TO THIS SGA AND WILL NOT BE EVALUATED.

Part V. Evaluation Criteria and Selection

Applicants are advised that selection for a grant award will be made after careful evaluation of technical proposals by a review panel. Each panelist will evaluate applications against the various criteria on the basis of 100 points available. The scores will then serve as the primary basis to select applications for a potential award. The WB retains the discretion to request that grant applicants clarify statements made in their proposals.

A. Technical Evaluation Criteria/Points

1. Organizational Overview

Applicants must demonstrate their experience with the movement of women to apprenticeship and nontraditional occupations, as well as their capabilities and qualifications. Information submitted should include qualifications of the staff through the submission of pertinent materials such as resumes and organizational charts. In addition, applicants must explain how the proposed management and staffing plans will be responsive to the needs of women—up to 40

2. Established E/LU Linkages

Applicants must demonstrate commitments and/or potential for five (5) or more new working relationships with E/LU and demonstrate experience or potential for working with employed women to move them into apprenticeship or NTO—up to 20

3. Scope of WANTO Project and Projected Outcomes

Applicants must document their workplace assessment and technical assistance strategies for upgrading the skills of women in NTO and ''focus industries'' and for promoting changes in the workplace culture and in work practices that lead to increased numbers of women in A/NTO. Such information should include an applicant's support services plan; budget; listing of cost items; numbers of women to be placed; proposed A/NTO outcomes; leverage and continuance TA—up to 40

4. Bonus Points

Bonus points will be awarded, as follows, for projects that demonstrate their experience or indicate their plans to:

a. Provide opportunities for women to be placed into A/NTO pertaining to the high-technology fields—up to 10

b. Provide services for disabled women to be placed into A/NTO—up to 10

Overall, the Department will review grant proposals to determine whether CBO applicants: (a) Demonstrate experience preparing women to gain employment in apprenticeable occupations or other nontraditional occupations; (b) demonstrate experience working with the business community in preparing women to enter apprenticeable occupations or other nontraditional occupations; (c) have tradeswomen or women in nontraditional occupations as active members of their organizations, as either employed staff or as board members; and (d) have experience delivering TA.

B. Cost Criteria

Proposals will be ranked, based on their costs, in relation to other proposals submitted in response to this SGA.

C. Total Score

When ranking the proposals for the purposes of making selections for awards, the technical quality of the proposals will be weighted three (3) times the estimated price. Proposals received will be evaluated by a review panel based on the criteria described in this SGA under Technical Evaluation Criteria 1 and 2. The panel's recommendations will be advisory, and final awards will be made based on the best interests of the Government, including, but not limited to, such factors as technical quality, geographic balance, and occupational and/or industrial impact.

The submission of a previous proposal for a WANTO grant from any prior year does not guarantee an award under this solicitation. A final or the most recent technical report for WANTO programs should be submitted with this application. Although the Government reserves the right to award on the basis of the applicants' initial submissions, the Government may establish a competitive range or technically acceptable range based upon proposal evaluation for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Grant Officer's determination for award under this SGA 01–03 is the final agency action.

Part VI. Deliverables

This section is provided only so that grantees may more accurately estimate the staffing budgetary requirements when preparing their proposal. Applicants are to exclude from their cost proposal the cost of any requested travel to Washington, DC.

A. Post Grant Award Conference

No later than eight (8) weeks after an award, the grantees and partners shall meet with the WB and the ATELS at the Post-Award Conference to discuss the project, related components and TA; time-lines; technical assistance outcomes; assessment for comment; and final approval. The grantees and partners and the Department will discuss and make decisions on the following program activities:

1. The proposed TA commitments for employment, registered apprenticeship, and related skilled nontraditional occupation activities and responsibilities; the number of targeted partnerships with employers and labor unions; and the number of women who will be served.
2. The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in A/NTO.
3. The types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO.
4. The occupational, industrial, and geographical impact anticipated.
5. The supportive services to be provided to employers and women after successful placement into A/NTO.
6. The plan for the development and maintenance of a relationship with the State level of the ATELS or the corresponding State Apprenticeship Council.

The WB and ATELS will provide further input orally or in writing, if necessary, within ten (10) working days after the Post-Award Conference.

B. Grant Plan of Action

No later than ten (10) weeks after an award, the grantees and the WB will confirm the ''plan of action'' and detailed time-line for program implementation.

C. Grant Implementation

No later than twelve (12) weeks after an award, the grantee(s) shall have begun providing E/LU with TA to recruit, select, train, place, retain, and otherwise prepare women for A/NTO, with progress to be measured in terms of employment growth and rising earnings.

D. Quarterly Reports

1. No later than sixteen (16) weeks after an award, the first quarterly progress report of work done under this grant must be submitted. Thereafter, quarterly reports will be due twenty (20) working days after the end of each of the remaining quarters.
2. Quarterly progress reports must describe:

a. The overall progress achieved during the reporting period, as measured by the number of E/LU provided with TA, as well as by the number of women trained (on and off the workplace) and placed in A/NTO;

b. Any linkages between pre-apprenticeship programs with sponsored apprenticeship programs, giving the name and address of each workplace/company involved, the person(s) responsible for the programs, as well as the number of women affected by or participating in the programs;

c. The number of E/LU receiving TA, giving the E/LU name, address, number of employees at the workplace (including the percentage of women employees), as well as brief profiles of the E/LU;

d. Any systemic workplace and policy changes, whether actual or in process, including the hiring and promotion of women already in the workplace or in career ladders or other training activities;

e. Any public presentations given by the grantee;

f. Any media articles or appearances;

g. Publications disseminated; and

h. Publications developed.

i. Any problems which may impede the performance of the grant and the proposed corrective action.

j. The work to be performed during the next reporting period.

3. In addition, between scheduled reporting dates, the grantee(s) shall immediately inform the Grant Officer's Technical Representative of significant developments affecting the ability to accomplish the work.

E. Final Report

1. No later than sixty-four (64) weeks after an award, the grantee(s) shall submit two (2) copies of the draft Final Report, an integrated draft analysis of the process, and results of the technical assistance activities during the year. The WB and the ATELS will provide written comments on the draft Report within twenty (20) working days, if substantive problems are identified. The grantee's response to these comments shall be incorporated into the Final Report.
2. The Final Report shall cover findings, final performance data, outcome results and assessment, and employer or labor organization plans for follow-up of participants.
3. No later than sixty-four (64) weeks after an award, the grantee(s) shall submit:

a. Two (2) copies of the camera-ready Final Report, bound in a professional manner, and not a collection of loose leaf sheets, and

b. An Executive Summary of the findings and recommendations must be included in the Final Report, separately or combined with the Final Report. These materials must be paid for with grant funds.

Part VII. Grant Requirements

A. Administrative Provisions

The grant awarded under this SGA shall be subject to the following administrative standards and provisions:

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.

B. Allowable Costs.

The WB shall determine what constitutes allowable costs in accordance with OMB Circular A–122, Nonprofit Organizations.

Part VIII. Definitions

The following terms are defined for the convenience of prospective applicants:

Nontraditional Occupations (NTO) are those where women account for less than 25 percent of all persons employed in a single occupational group.

Pre-Apprenticeship Programs are those which prepare individuals for occupational skills training or entry-level employment in NTO. The curriculum includes pre-vocational instruction in identification and use of tools, blueprint reading, basic shop skills, and safety procedures, as well as math skills and physical conditioning.

Apprenticeship is a formal employment relationship designed to promote skill training and learning on the job. ''Hands on'' learning takes place in conjunction with related theoretical instruction (often in a classroom setting). An apprentice who successfully completes an ATELS-registered program, which usually requires 3 to 5 years, is awarded a certificate of completion.

Employers, or groups of employers, and unions design, organize, manage, and finance apprenticeship programs

under the standards developed and registered with ATELS or ATELS-recognized State Apprenticeship Agencies. They also select apprentices who are trained to meet certain pre-determined occupational standards.

Community-Based Organizations (CBO) are private non-profit organizations, which may be faith-based, which are representative of communities or significant segments of communities and which have demonstrated experience administering programs that train women for A/NTO.

Signed at Washington, DC on June 8, 2001.

Lawrence J. Kuss,

Grant Officer.

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications Signature Page

BILLING CODE 4510–23–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION 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. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 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 (0348-0043), 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.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	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.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	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 15.
16.	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.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	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. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Previous Edition Usable

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 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 (0348-0044), 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.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 01–15067 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–23–C

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,690; TA–W–38,690A]

C-Cor.Net Corp; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 6, 2001, applicable to workers of C-Cor.net Corporation, State College, Pennsylvania. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18117).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Tipton, Pennsylvania facility of C-Cor.net Corporation. The workers are engaged in employment related to the production of cable television amplifiers.

Accordingly, the Department is amending the certification to cover works of C-Cor.net Corporation, Tipton, Pennsylvania.

The intent of the Department's certification is to include all workers of C-Cor.net Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–38,690 is hereby issued as follows:

All workers of C-Cor.net Corporation, State College, Pennsylvania (TA–W–38,690) and Tipton, Pennsylvania, Pennsylvania (TA–W–38,690A) who became totally or partially separated from employment on or after February 6, 2000 through March 6, 2003 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 30th day of May, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–15038 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,442; CMI Industries, Inc., Clinton Fabric Division; TA–W–38,442B; TA–W–38,442C]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 13, 2001, applicable to workers of CMI Industries, Inc., Clinton Fabric Division, Clinton, South Carolina. The notice was published in the **Federal Register** on May 2, 2001 (66 FR 22007).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Vance Complex and the Administrative Office of the Clinton Fabric Division of CMI Industries, Clinton, South Carolina. The Vance Complex workers are engaged in the production of griege woven fabric. Workers at the Administrative Office, Clinton Fabric Division, CMI Industries provide administrative services to support the production of griege woven fabric at the subject firms' manufacturing facilities.

Based on these findings, the Department is amending the certification to include workers of the Vance Complex and Administrative Office, CMI Industries, Clinton Fabric Division, Clinton, South Carolina.

The intent of the Department's certification is to include all workers of CMI Industries, Inc. who were adversely affected by increased imports of griege woven fabric.

The amended notice applicable to TA–W–38,442 is hereby issued as follows:

All workers of CMI Industries, Inc., Clinton Fabric Division, Clinton, South Carolina (TA–W–38,442) and Clinton Fabric Division, Vance Complex, Clinton, South Carolina (TA–W–38,442B) and Clinton Fabric Division, Administrative Office, Clinton, South Carolina (TA–W–38,442C) who became totally or partially separated from employment on or after December 4, 1999 through April 13, 2003 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of May, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–15039 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,993; Jake Shook Logging, Inc., Newcastle, WY

TA–W–38,221; Northwest Fourslide, Inc., Sherwood, OR

TA–W–38,917; Meade Industrial Service, Inc., Boardman, OH

TA–W–38,872; J. Paul Levesque and Sons, Inc., Ashland, ME

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,206; Semitool, Inc., Corp., Headquarters, Kallispell, MT and A; Semitool California, San Jose, CA, B; Semitool Western Office, Beaverton, OR, C; Semitool Central Office, Dallas, TX, D; Semitool Austin, Austin, TX, E; Semitool Southwest, Temple, AZ, F; Semitool Southeast, Cary, NC, G; Semitool Northeast, Nashua, NH, H; Libby Plant, Libby, MT

TA–W–38,916; Levelor Home Fashions, Rockaway, NJ

TA–W–38,734; Quadion Co., Minnesota Rubber Div., Mason City, IA

TA–W–39,034; Therm-O-Disc, Inc., El Paso, TX

TA–W–39,023; Texas Instruments Automotive Sensors and Controls San Jose, Inc., San Jose, CA

TA–W–38,969; Textron Gulf, Turf Care and Specialty Products, Racine, WI

TA–W–39,321; Stork RPM, Inc., Tescumbia, AL

TA–W–38,910; Metaldyne Sintered Components, Ridgway, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,262; United Plastics Group, Inc., Anaheim, CA: April 30, 2000.

TA–W–38,727; Edscha, Jackson Division, Jackson, MI: January 30, 2000.

TA–W–39,102; Boyt Harness Co., Osceola, IA: April 4, 2000.

TA–W–38,711 & A; Hart Schaffner and Marx, Rochester, IN and Winchester, KY: February 8, 2000.

TA–W–38,410; Editorial America, Virginia Gardens, FL: November 28, 1999.

TA–W–38,920; Color Edge, Inc., Sturgis, MI: March 12, 2000.

TA–W–38,795; Donkenny Apparel, Wytheville, VA, TN: March 19, 2000.

TA–W–39,290; Sonoco Industrial Products Div., Shepherd, MI: May 4, 2000.

TA–W–38,924; Lexington Fabrics, Inc., Central Div., Florence, AL: March 12, 2000.

TA–W–39,108; Beam-Stream, Inc., Montpelier, OH: April 20, 2000.

TA–W–38,906; O and P Tailor, Inc., a/k/a Bullet Creek Garment Co., Inc., Tellico Plains, TN: March 12, 2000.

TA–W–39,020; Magnesium Corp., of America, Salt Lake City, UT: April 3, 2000.

TA–W–39,042 & A, B; Agilent Technologies, Basic Electronics Systems and Test Unit, Loveland, CO, Design Validation Unit, Colorado Springs, CO, Network System and Test Div., Colorado Springs, CO: March 30, 2000.

TA–W–38,658 & A; Mirro Co., Division of Newell-Rubbermaid, Mirro/Foley Plant 20, Chilton, WI and Mirro/Foley Plant 10, Manitowoc, WI: January 24, 2000.

TA–W–39,146; VF Imagewear (West), Inc., VF Workwear, Inc., Brownsville, TX: April 6, 2000.

TA–W–38,780; Tecumseh Products Co., Somerset, KY: February 13, 2000.

TA–W–38,632; Intertrade Holdings, Inc., Acid Plant, Copperhill, TN: January 9, 2000.

TA–W–39,213; Chicago Specialties, LLC, Chicago, IL: April 23, 2000.

TA–W–38,978; Americo Group, Inc., New York, NY: March 22, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04675; Specialty Plastic Products, Louisville, TN

NAFTA–TAA–04648; Nucor Bearing Products, Wilson, NC

NAFTA–TAA–04796; Erie Coke Corp., Erie, PA

NAFTA–TAA–04696; Americo Group, Inc., New York, NY

NAFTA–TAA–04803; Northwest Fourslide, Inc., Sherwood, OR

NAFTA–TAA–04562; Quadion Company/Minnesota Rubber Div., Mason City, IA

NAFTA–TAA–04747; Therm-O-Disc, Inc., El Paso, TX

NAFTA–TAA–04808; Texas Instruments Automotive Sensors and Controls San Jose, Inc., San Jose, CA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–04762; Cendant Montana, Alliance Marketing Div., Great Falls, MT.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04835; E.I. DuPont, Nylon Div., Camden, SC: April 23, 2000.

NAFTA–TAA–04753; Rubbermaid Cleaning Products, Greenville, NC: April 10, 2000.

NAFTA–TAA–04851; United Plastics Group, Inc., Anaheim Div., Anaheim, CA: May 1, 2000.

NAFTA–TAA–04594; Edscha, Jackson Div., Jackson, MI: February 13, 2000.

NAFTA–TAA–04498; Intertrade Holdings, Inc., Acid Plant, Copperhill, TN: January 11, 2000.

NAFTA–TAA–04789; VF IMagewear (West), Inc., Formerly CF Workwear, Inc., Brownsville, TX: April 9, 2000.

NAFTA–TAA–04863; Vapor Corp., Niles, IL: May 8, 2000.

NAFTA–TAA–04862; Nutech Environmental Corp., Denver, CO: April 26, 2000.

NAFTA–TAA–04678; Color Edge, Inc., Sturgis, MI: March 12, 2000.

NAFTA–TAA–04681 & A; Hart Schaffner and Marx, Rochester, IN and Winchester, KY: March 19, 2000.

NAFTA–TAA–04817; Square D Co., Ashville, NC: April 27, 2000.

NAFTA–TAA–304712; Lexington Fabrics, Inc., Central Div., Florence, AL: April 3, 2000.

I hereby certify that the aforementioned determinations were issued during the month of May, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 5, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–15043 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,657; TA–W–38,657A]

Lanier Clothes Division of Oxford Industries, Inc., et al., Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 7, 2001, applicable to workers of Lanier Clothes, Greenville, Georgia. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18117).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the fusing of men's suits. New information shows that worker separations occurred at the Oxford Transport facility of Oxford Industries, Inc., Buford, Georgia. The Buford Georgia facility provides administrative support services to the subject firms' production facilities, including Lanier Clothes.

Accordingly, the Department is amending the certification to include the workers of the Oxford Transport facility of Oxford Industries, Buford, Georgia, and to correctly identify the subject firm title name to read Lanier Clothes, Division of Oxford Industries, Inc., Greenville, Georgia.

The intent of the Department's certification is to include all workers of Lanier Clothes, Division of Oxford Industries, Inc., Greenville, Georgia who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,657 is hereby issued as follows:

All workers of Lanier Clothes, Division of Oxford Industries, Inc., Greenville, Georgia (TA–W–38,657) engaged in fusing operations, and workers of Oxford Transport, Oxford Industries, Inc., Buford, Georgia (TA–W–38,657A) who became totally or partially separated from employment on or after February 19, 2001, through March 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of May, 2001.

Linda G. Poole,

Certifying Officer Division of Trade Adjustment Assistance.

[FR Doc. 01–15042 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 25, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 25, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of April, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX—

[Petitions instituted on 04/30/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
39,107	Crown Equipment (Wkrs)	New Bremen, OH	04/16/2001	TV Antenna Rotators and Controls.
39,108	Beam-Stream, Inc (Comp)	Montpelier, OH	04/20/2001	Electron Guns.
39,109	Alcoa—St. Lawrence Plt (Wkrs)	Massena, NY	04/16/2001	Primary Aluminum.
39,110	Standard Register (Comp)	Rocky Mount, VA	04/09/2001	Business Forms.
39,111	Price Pfister (Comp)	Pacoima, CA	03/19/2001	Plastic and Metal Parts.
39,112	DuCoa, L.P. (Comp)	Verona, MO	04/11/2001	Calcium Mold Inhibitor.
39,113	Petticoat Junction, Inc (UNITE)	North Bergen, NJ	04/11/2001	Bridesmaid Dresses.
39,114	Carol Wren, Inc. (UNITE)	L. Island City, NY	04/10/2001	Ladies' Sportswear.
39,115	Hon Company (The) (Comp)	Williamsport, PA	04/12/2001	Wood Office Furniture.
39,116	Huntsman Polymers (Wkrs)	Odessa, TX	04/11/2001	Polymers.
39,117	Powder Metal Products (Wkrs)	St. Marys, PA	04/04/2001	Bearings, Engine Parts.
39,118	TKG International Corp (Comp)	Macon, GA	04/13/2001	Textile Printing Screens.

APPENDIX——Continued

[Petitions instituted on 04/30/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
39,119	Wire Maid Manufacturing (Comp)	Schofield, WI	04/09/2001	Fan Guards, Wire Formed and Welded.
39,120	Perfect Fit Industries (Wkrs)	Richfield, NC	04/11/2001	Home Furnishing—Bedding Accessories.
39,121	Titan Tire of Natchez (Wkrs)	Natchez, MS	04/12/2001	Trailer Tires and Industrial Tires.
39,122	J and L Specialty Steel (USWA)	Midland, PA	04/11/2001	Flat Rolled Stainless Steel.
39,123	Specialty Defense (Wkrs)	Louisville, TN	04/12/2001	Baby Car Seats.
39,124	United Foundries, Inc. (IAMAW)	Youngstown, OH	04/16/2001	Cast Iron Rolls.
39,125	BBA Nonwovens (PACE)	Lewisburg, PA	04/17/2001	Thermalbond Hygiene Roll Goods.
39,126	Southern Tee's, Inc. (Wkrs)	Rockingham, NC	04/12/2001	T-Shirts.
39,127	Trumark, Inc. (Comp)	Lansing, MI	04/13/2001	Stamped and Welded Assemblies.
39,128	Delta Fashions (UNITE)	Newark, NJ	04/11/2001	Coats.
39,129	International Specialty (Comp)	Edinburg, PA	04/12/2001	Alloys.
39,130	ECM Motor Co (Comp)	Elkhorn WI	04/12/2001	Sub Fractional Gear Motors.
39,131	Wilmot Printing Co (Wkrs)	El Paso, TX	04/10/2001	Commercial Printers.
39,132	Nypro Alabama, Inc (Comp)	Dothan, AL	04/10/2001	Lead Acid Battery Cases, Tape Boxes.
39,133	Ansell Protective Prod. (Comp)	Tarboro, NC	04/12/2001	Industrial Work Gloves.
39,134	Williamson-Dickie Mfg (Wkrs)	Eagle Pass, TX	04/10/2001	Work Pants and Shorts.
39,135	Brooke Glass Co., Inc. (Comp)	Wellsburg, WV	04/09/2001	Hand Made Light Fixture Shades.
39,136	Western Electronics (Wkrs)	Eugene, OR	04/06/2001	Cable Connecting Assemblies.
39,137	Weitech, Inc. (Wkrs)	Sisters, OR	04/05/2001	Pest Control Units
39,138	Small Woodland Services (Comp)	Eagle Point, OR	04/08/2001	Performed Forestry and Resource Services.
39,139	JDS Uniphase (Wkrs)	San Jone, CA	04/08/2001	Passive Components.
39,140	Dunbrooke Industries, Inc (Comp)	Ocean Springs, MS	04/11/2001	Jackets.
39,141	Textile Sales and Repair (Comp)	Gastonia, NC	03/27/2001	Sell Parts for Textile Machinery.
39,142	Teamstaff (Wkrs)	El Paso, TX	04/10/2001	Contract Employees.
39,143	Carolace Industries, Inc (Wkrs)	Ridgefield, NJ	04/10/2001	Embroidery on Schiffle Machines.
39,144	JBF Industries, Inc. (Comp)	Gloversville, NY	04/10/2001	Sheep and Goat Leathers.
39,145	Marathon Oil Company (Wkrs)	Tyler, TX	04/06/2000	Crude Oil.
39,146	VF Imagewear (Comp)	Brownsville, TX	04/06/2001	Men's Work Clothing.
39.147	Stainless Tank and Equip (CJA)	Cottage Grove, WI	04/04/2001	Stainless Tanks.
39,148	Access Electronics (Wkrs)	Gurnee, IL	04/09/2001	Wire Harnesses.
39,149	Daimler Chrysler Corp (Wkrs)	Arburn Hills, MI	03/31/2001	Admin. and Engineering—Automobiles.
39,150	PSC Scanning, Inc. (Wkrs)	Eugene, OR	04/10/2001	Bar Code Scanners.
39,151	Oxford Automotive, Inc. (Wkrs)	Alma, MI	04/12/2001	Chlorine, Caustic Soda.
39,152	Pioneer Americas, Inc. (Comp)	Tacoma, WA	04/12/2001	Chlorine, Caustic Soda.
39,153	Solon Manufacturing Co (Comp)	Rhinelander, WI	04/09/2001	Ice Cream Sticks.
39,154	Jonathan Engineered (UAW)	Fullerton, CA	04/06/2001	Steel Slides.
39,155	Fiera, Inc. (Wkrs)	Miami, FL	04/11/2001	Customer Service
39,156	CMS Hartzell Manufacturing (IBT)	St. Paul, MN	04/13/2001	Motorola Products.
39,157	Rennoc Corp, Butwin Div (Wkrs)	St. Paul, MN	04/16/2001	Sportswear Jackets.
39,158	ACS Group, Inc. (Wkrs)	Windsor, CT	04/10/2001	Linear Extraction Robots.
39,159	Anderson Electrical Prod (Comp)	Elkton, TN	04/10/2001	Electrical Products.
39,160	Fraser Papers, Inc (Comp)	West Carrollton, OH	04/16/2001	Premium Printing Paper.
39,161	Almond International (Wkrs)	Westbury, NY	04/18/2001	Earings, Bangles, Rings.
39,162	ME International (Wkrs)	Duluth, MN	04/09/2001	Castings.
39,163	Bridgestone/Firestone (Wkrs)	Decatur, IL	04/17/2001	Truck and Passenger Tires.
39,164	Prime Cast (USWA)	South Beloit, IL	04/12/2001	Gray Iron Casting.

[FR Doc. 01–15044 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted ivnestigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest int he subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 25, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 15, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200

Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of May, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 5/07/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,165	E.C.I. Sportswear (UNITE)	New Bedford, MA	04/23/2001	Sportswear and Embroidery.
39,166	Imperial Home Decor Group (PACE)	Plattsburgh, NY	04/20/2001	Converting Wallpaper.
39,167	Maurice Silvera, Inc (Co.)	Lumberton, NC	04/25/2001	Men's Golf Shirts.
39,168	Tamfelt, Inc. (Wkrs)	Canton, MA	04/12/2001	Paper Machine Clothing.
39,169	Red Cap–VF Workwear (Wkrs)	Mathison, MS	04/23/2001	Work Clothes.
39,170	Standard Corp. Mfg. Group (Co.)	Lugoff, SC	04/10/2001	Nylon Fiber.
39,171	Leisure Daise Contracting (Wkrs)	Wallington, NJ	04/23/2001	Blouses, Pants and Slacks.
39,172	Celanese Acetate (UNITE)	Rock Hill, SC	04/24/2001	Acetate Filament.
39,173	DJ Summers (Co.)	New York, NJ	04/23/2001	Ladies' Dresses.
39,174	Lady Hope Dress (UNITE)	Kulpmont, PA	04/17/2001	Dresses.
39,175	Flextronics Binghamton (Co.)	Conklin, NY	04/23/2001	Printed Board Assembly.
39,176	Fashion Group (The) (Wkrs)	Lafayette, TN	04/17/2001	Shirts and Jackets.
39,177	Wano Tool Co. (Wkrs)	Wheeling, IL	04/05/2001	Printed Circuit Board Tools.
39,178	Annalee Dolls (Wkrs)	Meredith, NH	04/12/2001	Soft Sculptured Dolls.
39,179	Rockwell Collins (Wkrs)	Irvine, CA	04/19/2001	Repair Technicians.
39,180	Art Unlimited (Co.)	New Halstein, WI	04/17/2001	Screen Print Sportswear.
39,181	Southwire Company (Co.)	Osceola, AR	04/12/2001	Wire and Cable.
39,182	JPM Co. of Pennsylvania (Co.)	Lewisburg, PA	04/12/2001	Cable Assemblies.
39,183	Challenge Machinery (The) (Co.)	Grand Haven, MI	04/17/2001	Machinery.
39,184	Electro Technology (Wkrs)	Muscle Shoals, AL	04/18/2001	Transformers.
39,185	Cemex Kosmos Cement (IBM)	Pittsburgh, PA	04/11/2001	Gray Portland Cement.
39,186	Renfro Hosiery (Wkrs)	Mount Airy, NC	04/10/2001	Socks.
39,187	Jenson Apparel Group (Co.)	Fall River, MA	04/17/2001	Ladies' Suits.
39,188	Rhoda Lee, Inc (UNITE)	New York, NY	04/19/2001	Markers to produce Blouses.
39,189	Southern Glove (Co.)	Newton, NC	04/20/2001	Cotton Work Gloves.
39,190A	Wright's LLC (Co.)	Orwigsburg, PA	04/19/2001	Knit Fabrics and Knitted Outerwear.
39,190B	Wright's LLC (Co.)	Auburn, PA	04/19/2001	Knit Fabrics and Knitted Outerwear.
39,190	Wright's LLC (Co.)	Allentown, PA	04/19/2001	Knit Fabrics and Knitted Outerwear.
39,191	NVN Corp., Inc. (Wkrs)	Clifton, NJ	04/03/2001	Ladies' Coats.
39,192	Epic Components Co. (Co.)	New Boston, MI	04/18/2001	Plastic Automobile and Truck Components.
39,193	Dani Max (Wkrs)	New York, NY	04/07/2001	Ladies' Suits and Dresses.
39,194	Miami Richard Grading (Wkrs)	Medley, FL	04/23/2001	Cut Fabric.
39,195	Tyco Electronics (Co.)	Harrisonburg, VA	04/18/2001	Electronic Connectors.
39,196	J.C. Viramontes (Co.)	El Paso, TX	04/12/2001	Denim Garments.
39,197	Alken Ziegler Novi (Co.)	Novi. MI	04/16/2001	Transmission Tube.
39,198	Stanley Mechanics Tools (Wkrs)	Dallas, TX	04/14/2001	Rachets, Sockets, Adapters.
39,199	Party Shoes (UNITE)	Chicago, IL	04/26/2001	Dance Shoes.
39,200	Corning Frequency Control (Wkrs)	Carlisle, PA	04/20/2001	Precision Crystals.
39,201	Flexfab, LLC (Wkrs)	Hastings, MI	04/11/2001	Silicone Hoses.
39,202	ECK Industries (GMP)	Manitowoc, WI	04/26/2001	Aluminum Castings.
39,203	Lobelson and McCabe (Wkrs)	Chapel Hill, TN	04/24/2001	Ballet, Tap and Jazz Shoes.
39,204	A–1 Manufacturing (Wkrs)	Brilliant, AL	04/16/2001	Men's Industrial Coveralls.
39,205	Glass Works (USWA)	Weston, WV	04/20/2001	Mouth Blown Glass Ware.
39,206A	Semitool, Inc (Co.)	San Jose, CA	04/20/2001	Semiconductor Industry Equipment.
39,206B	Semitool, Inc (Co.)	Beaverton, OR	04/20/2001	Semiconductor Industry Equipment.
39,206C	Semitool, Inc (Co.)	Dallas, TX	04/20/2001	Semiconductor Industry Equipment.
39,206D	Semitool, Inc (Co.)	Austin, TX	04/20/2001	Semiconductor Industry Equipment.
39,206E	Semitool, Inc (Co.)	Tempe, AZ	04/20/2001	Semiconductor Industry Equipment.
39,206F	Semitool, Inc (Co.)	Cary, NC	04/20/2001	Semiconductor Industry Equipment.
39,206G	Semitool, Inc (Co.)	Nashua, NH	04/20/2001	Semiconductor Industry Equipment.
39,206H	Semitool, Inc (Co.)	Libby, MT	04/20/2001	Semiconductor Industry Equipment.
39,206	Semitool, Inc (Co.)	Kalispell, MT	04/20/2001	Semiconductor Industry Equipment.
39,207	Prairie Wood Products (Wkrs)	Prairie City, OR	04/17/2001	Lumber and Chips.
39,208	RMG Foundry (USWA)	Mishawaka, IN	04/23/2001	Grey and Ductile Castings.
39,209	Mayfair Mills (Wkrs)	Arcadia, SC	04/10/2001	Woven Cloth.
39,210	General Electric (IBEW)	Houston, TX	04/26/2001	Switchboards, Power Panels.
39,211	Burlington Industries (Co.)	Mt. Olive, NC	04/24/2001	Pinch Pleat Draperies.
39,212	E.I. DuPont (Co.)	Camden, SC	04/23/2001	Nylon Synthetic Fiber.
39,213	Chicago Specialties (Co.)	Chicago, IL	04/23/2001	Para Cresol.
39,214	Bridgestone Firestone (USWA)	Bloomington, IL	04/25/2001	Tires—Off the Road, Earth Moving.
39,215	Georgia Pacific (Wkrs)	Louisville, MS	04/26/2001	Wood Building Products.
39,216	Bon L Campo (Wkrs)	El Campo, TX	04/11/2001	Structural Shapes of Aluminum.
39,217	Brillcast, Inc. (Co.)	Grand Rapids, MI	04/25/2001	Functional and Decorative Parts.

APPENDIX—Continued

[Petitions instituted on 5/07/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,218	Compaq Computers (Wkrs)	Houston, TX	04/23/2001	Computers.
39,219	Supreme Machined Products (Co.)	Spring Lake, MI	04/23/2001	Precision Screw Machine Parts.
39,220	American Commercial (Co.)	Orrville, OH	04/24/2001	Constellation Cab and Components.
39,221	Northwest Fourslide (Co.)	Sherwood, OR	04/24/2001	Metal Stampings for Printers.
39,222	Butterick Company (Wkrs)	Altoona, PA	04/18/2001	Paper Clothing Patterns.
39,223	Woodstock Lamp & Shade (Wkrs)	Old Forge, PA	04/10/2001	Lampshades.
39,224	Centis, Inc (Wkrs)	Brea, CA	04/25/2001	Picture/Photo Display.
39,225	Panther Pacific, Inc (Co.)	Lewisville, TX	04/16/2001	Uniform Pants and Jumpsuits.

[FR Doc. 01–15045 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,209]

Mayfair Mills, Arcadia, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 7, 2001 in response to a worker petition which was filed on May 7, 2001 on behalf of workers at Mayfair Mills, Arcadia, South Carolina.

An existing investigation is underway for this worker group (TA–W–38940). Eligibility will be determined by the results of that investigation. Consequently, further investigation in this case would serve no purpose, and this investigation has been terminated.

Signed in Washington, DC this 25th day of May, 2001.

Linda G. Poole,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 01–15040 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—4464]

OEM/Erie Westland L.L.C.; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with section 250(a), subchapter D, chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on January 19, 2001, in response to a worker petition which was filed on behalf of its workers at OEM/Erie Westland L.L.C., Westland, Michigan. The workers produced plastic automotive interior parts.

This case is being terminated because the Department was unable to locate an official of the company to obtain the information necessary to conduct the investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of May, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–15037 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,621]

OEM/Erie Westland L.L.C.; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 5, 2001, in response to a worker petition which was filed on behalf of workers at OEM/Erie Westland L.L.C., Westland, Michigan.

This case is being terminated because the Department was unable to locate an official of the company to obtain the information necessary to conduct the investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of May, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–15041 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for Waiver of Surface Facilities Requirement

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before August 13, 2001.

ADDRESSES: Send comments to Lynnette M. Haywood, Deputy Director, Administration and Management, 4015 Wilson Boulevard, Room 611, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to lhaywood@msha.gov, along with an original printed copy. Ms. Haywood can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Lynnette M. Haywood, Deputy Director, Administration and Management, U.S. Department of Labor, Mine Safety and Health Administration, Room 611, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Haywood can be reached at lhaywood@msha.gov

(Internet E-mail), (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 sections 71.400 through 71.402 and 75.1712–1 through 75.1712–3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver. Title 30 CFR sections 71.403, 71.404, 75.1712–4 and 75.1712–5 provide procedures by which an operator may apply for and be granted a waiver. Applications are filed with the District Manager for the district in which the mine is located and contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds upon which the waiver is requested and the period of time for which it is requested. Waivers for surface coal mines may be granted for a period not to exceed one year; requests for an annual extension may be sought by the operator. Waivers for underground coal mines may be granted for extended periods of time based on the information provided by the mine operator in the request for a waiver.

The purpose for the waiver is to assure the conditions at the mine make it impractical for the mine operator to provide the required facilities, and to document the circumstances for granting of the waiver. This gives the mine operator written documentation that the requirement(s) of the standard have been waived by MSHA and MSHA inspection personnel will not require the mine operator to comply with the part(s) of the standard included in the waiver. Without this written documentation MSHA inspection personnel can not be assured that a mine operator is not required to provide the require sanitary facilities.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Application for Waiver of Surface Facilities Requirement. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Action

This information is necessary in order to assure the mine operator is not required to provide the sanitary facilities as required by the standard. This information provides written documentation that MSHA has waived the requirements for the applicable part(s) of the standard as outlined in the waiver.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Application for Waiver of Surface Facilities Requirement.

OMB Number: 1219–0024.

Affected Public: Business or other for-profit.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden hours
71.403	124	On occasion	124	30	62
71.404 Initial					
71.403	314	Annually	314	20	105
71.404 Extensions					
75.1712–4	108	On occasion	108	30	54
75.1712–5 Initial					
75.1712–4	0	On occasion	0	20	0
75.1712–5 Extension					
Totals	546		546		* 221

* Discrepancies due to rounding.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 7, 2001.

Lynnette M. Haywood,

Deputy Director, Administration and Management.

[FR Doc. 01–15036 Filed 6–13–01; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–067]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (650) 604–5104, fax (650) 604–7486.

NASA Case No. ARC–14480–1: Automation of Information Acquisition and Manipulation System;

NASA Case No. ARC–14512–1: Method and Apparatus for Conducting A Keyterm Search System;

NASA Case No. ARC–14513–1: Method and Apparatus for Conducting A Phrase Search System;

NASA Case No. ARC–14514–1: Method and Apparatus for Generating Phrases from A Database System;

NASA Case No. ARC–14515–1: Method and Apparatus for Discovering Phrases In A Database;

NASA Case No. ARC–14556–1: Auditory Alert Systems With Enhanced Detectability.

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15010 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–068]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23691–2199; telephone (757) 864–3521, fax (757) 864–9190.

NASA Case No. LAR–15602–1: Passive Fetal Heart Monitoring System and Method for Simultaneously Making A Plurality of Acoustic Signal Sensor Elements;

NASA Case No. LAR–15944–1: Phenyethynyl Containing Imide-Silanes;

NASA Case No. LAR–15945–1: A Novel Surface Treatment for Titanium Alloys;

NASA Case No. LAR–15959–1: Structural Tailored High Displacement Ferro-Electric Sensors and Actuators;

NASA Case No. LAR–15990–1: Dual Transmission Interface for Passive Fetal Heart Monitoring;

NASA Case No. LAR–16020–1: Single Vector Force Balance Calibration System;

NASA Case No. LAR–16079–1: Liquid Crystalline Thermosets from Oligo-Esters, Ester-Imides and Ester-Amides.

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15011 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–069]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE(S): June 14, 2001.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544-0013, fax (256) 544–0258.

NASA Case No. MFS–31186–2: Power Divider for Harmonically Rich Wave Forms

NASA Case No. MFS–31294–7: Process for Producing A Cast Article from A Hypereutectic Aluminum-Silicon Alloy;

NASA Case No. MFS–31561–1: Laser Image Contrast Enhancement System (LICES).

Dated: June 4, 2001.

Edward A. Frankle

General Counsel.

[FR Doc. 01–15012 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–070]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214, fax (321) 867–1817.

NASA Case No. KSC–11991: Transient Voltage Recorder;

NASA Case No. KSC–11992: System and Method of Locating Lightning Strikes;

NASA Case No. KSC–12168: Personal Cabin Pressure Monitor and Warning System.

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15013 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–071]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson

Space Center, Mail Code HA, Houston, TX 77058–3696; telephone (281) 483–4871, fax (281) 244–8452.

NASA Case No. MSC–22633–2: Growth Stimulation of Biological Cells and Tissue By Electromagnetic Fields and Uses Thereof;

NASA Case No. MSC–22936–3: Method for Determining The Three-Dimensional Structure of A Protein;

NASA Case No. MSC–22936–4: X–Ray Crystallography Reagent;

NASA Case No. MSC–23029–1: Medium Frequency Pseudo Noise Geological Radar;

NASA Case No. MSC–23153–1: Sensor and Method for Detecting A Superstrate (combined with MSC–23118).

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15014 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–072]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: John Kusmiss, Patent Counsel, NASA Management Office–JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. NPO–21015–1: High Capacity Electrode Materials for Thin Film Batteries Compatible With Integrated Circuit Manufacturing.

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15015 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–073]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration .

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Patent Counsel, Goddard Space Flight Center, Mail Code 710.1, Greenbelt, MD 20771; telephone (301) 286–7351, fax (301) 286–9502.

NASA Case No. GSC–14064–1: Universal Fiber Optic Connector Polishing Fixture With Precision Alignment Capability;

NASA Case No. GSC–14207–1: Gear Bearings;

NASA Case No. GSC–14339–1: 3–D Interactive Display.

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15016 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–074]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 14, 2001.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, Ohio 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–17110–1: MEMS-Based Spinning Nozzle With Pre-Mix Chamber;

NASA Case No. LEW–17116–1: Method for Growth of Step-Free SiC Crystal Surfaces and Fabrication of Electronic Device Structures Thereon.

Dated: June 4, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–15017 Filed 6–13–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel—Meeting Time Changes

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the times of the previously announced June 26–28, 2001 meeting of the Combined Arts Advisory Panel, Media Arts Section (Creativity and Organizational Capacity categories) to the National Council on the Arts have been changed as follows:

• The open portion of the meeting, previously announced for 1:30 p.m. to 2:30 p.m. on Wednesday, June 27th, will be held on Thursday, June 28th from 9 a.m.–10 a.m.

The remaining portions of the meeting, from 9 a.m. to 6:30 p.m. on June 26th, from 9 a.m. to 6 p.m. on June 27th, and from 10 a.m. to 11:30 a.m. (Panel A), and from 11:30 to 5:30 p.m. (Panel B) on June 28th, will be closed.

Dated: June 11, 2001.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 01–15105 Filed 6–13–01; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2, Notice of Availability of the Final Supplement 4 to the Generic Environmental Impact Statement Regarding License Renewal for the Edwin I. Hatch Nuclear Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 4 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–57 and NPF–5 for the Edwin I. Hatch Nuclear Plant

(HNP), Units 1 and 2, for an additional 20 years of operation. The HNP units are operated by the Southern Nuclear Operating Company, Inc. (SNC). HNP is located in Appling County, Georgia. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for HNP, Units 1 and 2 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG–1437; (2) the ER [Environmental Report] submitted by SNC; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 4 to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document management system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

FOR FURTHER INFORMATION CONTACT: Mr. Andrew J. Kugler, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Kugler may be contacted at (301) 415–2828 or by writing to: Andrew J. Kugler, U.S. Nuclear Regulatory Commission, MS 0–11 F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 31 day of May, 2001.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–14975 Filed 6–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; South Texas Project Electric Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from certain regulations found in 10 CFR parts 21, 50, and 100 for Facility Operating License Nos. NPF–76 and NPF–80, issued to STP Nuclear Operating Company (STPNOC or the licensee) for operation of the South Texas Project Generating Station, Units 1 and 2, (STP) located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant the licensee relief from certain special treatment requirements found in Title 10 of the Code of Federal Regulations, Parts 21, 50, and 100 (10 CFR parts 21, 50 and 100) for certain structures, systems, and components (SSCs). The licensee has used a risk-informed process to categorize SSCs as low safety significant (LSS) or non-risk significant (NRS); and other SSCs as medium safety significant (MSS) or high safety significant (HSS). The purpose of this categorization process is to identify those SSCs for which the special treatment requirements may be relaxed. Currently, LSS and NRS SSCs, which are not as risk significant as MSS and HSS SSCs, are treated with the same level of protection. The licensee is seeking limited exemptions from the following regulations for just those SSCs that have been categorized as LSS or NRS:

1. Requirements for quality assurance (QA) found in:

a. 10 CFR part 50, Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' for QA requirements on SSCs that are safety-related (with the exception of the Criterion III, ''Design Control,'' Criterion XV, ''Nonconforming Materials, Parts, or Components,'' and Criterion XVI, ''Corrective Action'');

b. 10 CFR part 50, Appendix A, General Design Criteria (GDC) 1, ''Quality Standards and Records,'' for SSCs important to safety that contains quality assurance program and record keeping requirements;

c. 10 CFR 50.34(b)(6)(ii) that requires the licensee to describe in the Final Safety Analysis Report how 10 CFR part 50, Appendix B, requirements are being satisfied;

d. 10 CFR 50.54(a)(3) regarding NRC review and approval of changes to the QA program that result in a reduction in commitments in the program description as accepted by the NRC for LSS and NRS SSC program descriptions; and,

e. 10 CFR 21.3 defining the term ''basic component'' that includes safety-related LSS and NRS SSCs and impose 10 CFR part 21 requirements for procurement, dedication, and reporting.

2. Requirements for environmental qualification (EQ) found in:

a. 10 CFR 50.49(b) that defines the scope of electric components important to safety subject to the EQ program requirements of 10 CFR 50.49;

b. 10 CFR part 50, Appendix A, GDC 2, ''Design Bases for Protection Against Natural Phenomena,'' for tests and inspections to demonstrate that SSCs important to safety are designed to withstand the effects of natural phenomena without loss of capability to perform their safety functions;

c. 10 CFR part 50, Appendix A, GDC 4, ''Environmental and Dynamic Effects Design Bases,'' for tests and inspections to demonstrate that SSCs important to safety are able to withstand environmental conditions of normal operation, maintenance, testing, and postulated accidents; and,

d. 10 CFR part 100, Appendix A, Sections VI(a)(1) and (a)(2) for testing and inspection to demonstrate that SSCs within the scope of these regulations[1] are designed to remain functional during a safe-shutdown earthquake and operating-basis earthquake, respectively, and 10 CFR 50.34(b)(10) and 10 CFR 50.34(b)(11) to the extent that they reference the 10 CFR part 100, Appendix A, criteria, discussed above.

3. Requirements for testing and inspection found in:

a. 10 CFR part 50, Appendix A, GDC 18, ''Inspection and Testing of Electric Power Systems,'' that requires SSCs important to safety be designed to permit inspection and testing; and

b. 10 CFR part 50, Appendix J, Option B, section III.B, ''Type B and C Tests,'' that requires Type C containment

[1] The scope of (a)(1) are those SSCs necessary to assure (i) the integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe condition, or continued (iii) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the guideline exposures of part 100. The scope of (a)(2) are those SSCs necessary for continued operation without undue risk to the health and safety of the public.

isolation valve leak rate tests for safety-related SSCs.

4. Requirements for monitoring the effectiveness of maintenance under 10 CFR 50.65 for safety-related SSCs and nonsafety-related SSCs that are relied upon to mitigate accidents or transients or are used in plant emergency operating procedures, or whose failure could prevent safety-related SSCs from fulfilling their safety-related function, or whose failure could cause a reactor scram or actuation of a safety-related system. The licensee is requesting an exemption to exclude the LSS and NRS SSCs from the scope of the maintenance rule but would still conduct monitoring at the plant, system, or train level. Failure of an LSS or NRS SSC would not count as a Maintenance Rule Functional Failure unless the failure caused a failure of a high or medium safety significant function.

5. Industry code standards found in:

a. 10 CFR 50.55a(f) and (g) that require repair and replacement, inservice testing (IST), and inservice inspection (ISI), under Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code; and,

b. 10 CFR 50.55a(h) that imposes the quality and qualification requirements of Sections 4.3 and 4.4 of Institute of Electrical and Electronics Engineers (IEEE) 279, ''Criteria for Protection Systems for Nuclear Power Plant Generating Stations,'' for electric SSCs important to safety.

6. 10 CFR 50.59 to the extent that this regulation requires a written evaluation and prior NRC review and approval of changes in special treatment requirements for LSS and NRS SSCs.

The proposed action is in accordance with the licensee's application for exemption dated July 13, 1999, as supplemented on October 14 and 22, 1999; January 26 and August 31, 2000; and January 15, 18, and 23, March 19, and May 8 and 21, 2001 (hereinafter, the submittal).

The Need for the Proposed Action

The exemptions are necessary to provide the licensee relief from regulatory requirements found in 10 CFR parts 21, 50, and 100 for LSS and NRS components currently within the scope of these regulations. In accordance with 10 CFR 21.7 and 10 CFR 50.12, the Commission may grant exemptions from the requirements of 10 CFR parts 21 and 50, respectively, under certain circumstances. Further, the NRC staff has determined that the requested exemptions from 10 CFR part 100, Appendix A, sections VI(a)(1) and (a)(2) may be granted in accordance with the requirements of 10 CFR 50.12. The NRC staff has approved a Graded Quality Assurance Program for STP. Exemptions from certain special treatment requirements are necessary to realize the full benefit of the Graded Quality Assurance Program.

The exemption is also necessary to reduce occupational radiation exposures and costs that would be expended in providing qualifications, quality assurance controls, maintenance, monitoring requirements, testing, and inspections for the LSS and NRS components that may not be necessary to maintain safety.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that many of the exemption requests are not necessary for, or are not consistent with the objective of, maintaining design and functionality of an SSC and will not be granted. The NRC staff has determined that some of the exemption requests that would remove LSS and NRS SSCs from the scope of the regulations, if granted, would not present an undue risk to the public health and safety. The regulations for which exemptions are to be granted are listed below and are referred to as the proposed action in the following sections.

a. 10 CFR 21.3—definition of basic component;

b. 10 CFR 50.34(b)(10) and 10 CFR 50.34(b)(11), impose the requirements of 10 CFR part 100, Appendix A, section VI(a)(1) and (2);

c. 10 CFR 50.49(b), scope of electrical equipment subject to environmental qualification requirements [design aspects of 10 CFR 50.49(e)(1) through (7) continue to apply];

d. 10 CFR 50.55a(f)—IST requirements;

e. 10 CFR 50.55a(g)—repair and replacement, and ISI requirements;

f. 10 CFR 50.55a(h), quality and qualification requirements of sections 4.3 and 4.4 of IEEE 279;

g. 10 CFR 50.59—written evaluations and prior NRC review and approval for changes to special treatment requirements;

h. 10 CFR 50.65(b)—scope of maintenance rule [the requirements of 10 CFR 50.65(a)(4) continue to apply];

i. 10 CFR part 50, App. B—quality assurance requirements (the requirements of Criteria III, ''Design Control,'' XV, ''Nonconforming Materials, Parts, or Components,'' and XVI, ''Corrective Action,'' continue to apply);

j. 10 CFR part 50, Appendix J, Option B, section III.B, Type C containment isolation valve leak rate tests only;

k. 10 CFR part 100, Appendix A, sections VI(a)(1) and (2), seismic requirements for safe shutdown and operating basis earthquakes.

The regulations, listed above, apply to SSCs that are located entirely within the restricted area and, if the exemptions are granted, would not result in off-site impacts due to normal operation. The NRC staff evaluated the licensee's probabilistic risk analysis (PRA) sensitivity study that addressed the overall impact of reduced treatment for LSS and NRS SSCs on plant risk for those LSS SSCs that are modeled in the STP PRA.[2] Since the impact on failure rates for these SSCs resulting from a reduction in special treatment requirements is not known, a factor of 10 increase in the failure rates of all LSS SSCs modeled in the STP PRA was used. The results of the sensitivity analysis showed that the overall plant risk for a core damage event increased by 2.7 percent. The large early release frequency increased by about 1.2 percent. The NRC staff finds the sensitivity study to be an acceptable method of ensuring that the cumulative risk is only slightly impacted when predicting significant changes in the SSC failure rates, which may not occur. Therefore, the NRC staff finds that the postulated change in failure rates of the LSS SSCs that are modeled in the PRA would be expected to have a low overall impact on plant risk.

On the other hand, the proposed exemptions may have a beneficial impact on occupational exposure, since the additional requirements for QA, EQ, monitoring, testing, and inspection for certain LSS and NRS components would not be necessary. The magnitude of this benefit has not been quantified.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there

[2] There are no NRS SSCs and limited LSS SSCs modeled in the plant's PRA due to a negligible impact on risk or due to implicit modeling.

are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the exemption requests listed above, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no significant change in current environmental impacts.

Another alternative is to await applicable regulations that are the result of a future rulemaking under Option 2 of the Commission's alternatives to risk inform 10 CFR part 50 of the NRC's regulations discussed in SECY–98–300, ''Options for Risk-Informed Revisions to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'.'' The exemptions requested by the licensee are a proof-of-concept for this broader rulemaking effort. The Commission plans to use the STPNOC exemption request and other industry pilot programs to assist with the development of the revised risk-informed 10 CFR part 50. The only adverse environmental impact associated with this proposed action would be a slight increase in the risk of an accident, but this impact would not be significantly changed with the alternative of awaiting a rulemaking. Therefore, any relief granted under a subset of a larger set of risk-informed regulations under Option 2 in lieu of the exemption requests would not provide a significant benefit to public health or safety, or the environment. The environmental impacts associated with granting the exemptions found to be acceptable by the NRC staff and the alternatives listed above are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (NUREG–1171) for the South Texas Project, Units 1 and 2, dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on June 1, 2001, the NRC staff consulted with the Texas State official, Arthur C. Tate, of the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 13, 1999, as supplemented on October 14 and 22, 1999; January 26 and August 31, 2000; and January 15, 18, and 23, March 19, and May 8 and 21, 2001. Documents 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, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component of the NRC web site http://www.nrc.gov (Electronic Reading Room).

Dated at Rockville, Maryland, this 8th day of June, 2001.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–14976 Filed 6–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering amending a previously granted approval to dispose of slightly contaminated soil under 10 CFR 20.2002 by expanding the allowable waste stream to include low levels of radioactively contaminated soil generated as a residual byproduct of other types of on-site construction activities. This approval is requested by Vermont Yankee Nuclear Power Corporation (the licensee), for operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee), located in Windham County, Vermont.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the previously granted approvals to dispose of slightly contaminated septic waste, cooling tower silt, soil/sand from roadways and walkways, to include low levels of radioactively contaminated construction soil generated as a residual byproduct of on-site construction activities such as design change implementation and land maintenance.

The proposed action is in accordance with the licensee's request dated September 11, 2000.

The Need for the Proposed Action

The proposed action is needed to dispose of slightly contaminated soil on-site. In accordance with 10 CFR 20.2002, which requires that a licensee apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations, to dispose of licensed material generated by the licensee's activities. The licensee identified 28.3 cubic meters of approved materials (i.e., soil/sand from roadways and walkways, and soil from on-site construction-related activities including, but not limited to, design change implementation and land maintenance) to be disposed of on-site on an annual basis until the expiration of the plant's operating license in 2013. Since the previous approval did not include disposal of soil generated as a result of certain construction-related activities, the licensee is requesting approval to amend the previously granted application pursuant to 10 CFR 20.2002, dated June 15, 2000.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action will be bound by the conditions for the on-site disposals previously reviewed and approved by the NRC. The licensee will continue to use the designated and approved areas on their property (approximately 1.9 acres) and use approximately 10 acres which have not been previously used for disposal. The amount of soil and soil/sand materials that will be disposed has not increased, and will remain at 28.3 cubic meters. Determination of the radiological dose impact of the new material has been made based on the same dose assessment models and pathway assumptions used in the previous submittals. The licensee's proposal was evaluated against the NRC staff's guidelines for on-site disposal and found not to be a significant radiological environmental impact. The bounding dose conditions for the previously approved materials will not be exceeded. The potential exposure to members of the general public from the radionuclides in material was

determined to be less than 1 mrem/year and meets the NRC staff's guidelines.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. If the proposed action is denied, the licensee may be required to ship the material to an off-site low-level radioactive waste disposal facility. Transportation impacts would increase as a result of the additional volume of low-level waste generated for disposal. Furthermore, the costs associated with off-site disposal greatly exceed the cost of on-site disposal without no significant benefit to the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station.

Agencies and Persons Consulted

In accordance with its stated policy, on April 12, 2001, the staff consulted with the Vermont State Official, William Sherman, of the Department of Public Service, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 11, 2000. Documents 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, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 8th day of June 2001.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–14977 Filed 6–13–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding Missed Surveillances Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of requirements regarding missed surveillances imposed on licensees through technical specifications. The NRC staff has also prepared a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to modify requirements for missed surveillances. Licensees of nuclear power reactors to which the models apply could request amendments confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comments on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires July 16, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, MD.

Comments may be submitted by electronic mail to CLIIP@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H4, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1161.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that modifies requirements regarding missed surveillances. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the

availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the modification of requirements regarding missed surveillances in technical specifications. This proposed change was proposed for incorporation into the standard technical specifications by all Owners Groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–358. TSTF–358 can be viewed on the NRC's web page at http://www.nrc.gov/NRR/sts/sts.htm.

Applicability

This proposed change to modify technical specification requirements for missed surveillances is applicable to all licensees who currently have or who will adopt, in conjunction with the proposed change, technical specification requirements for a Bases control program consistent with the Technical Specifications (TS) Bases Control Program described in Section 5.5 of the applicable vendor's STS.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–358 using the CLIIP to include Bases for the proposed technical specification consistent with the Bases proposed in TSTF–358. In addition, for those licensees that have not adopted requirements for a Bases control program by converting to the improved STS or by other means, the staff requests that you include the requirements for a Bases control program consistent with the STS in your request for the proposed change. The need for a Bases control program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the proposed Bases for SR 3.0.3. The staff is requesting that the Bases be included with the proposed license amendments because, in this case, the changes to the technical specifications and changes to the associated Bases form an integrated change to a plant's licensing bases. To ensure that the overall change, including the Bases, includes the appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on incorporation of the changes into the Bases document and on requiring the licensee to control the changes in accordance with the Bases Control Program. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested Bases and Bases control program. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. Following the staff's evaluation of comments received as a result of this notice, the staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The staff will in turn issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed no significant hazards consideration determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the modification of requirements for missed surveillances for each plant that applies for and receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement

Technical Specification Task Force (TSTF) Change TSTF–358

Change to Surveillance Requirement 3.0.3 Regarding Missed Surveillances

1.0 Introduction

In a letter dated November 17, 1999, the Nuclear Energy Institute (NEI) Technical Specification Task Force (TSTF) proposed several changes to the standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry. One of the proposed changes, identified as TSTF–358, was a change to STS surveillance requirement (SR) 3.0.3 regarding missed SRs. The proposed change would modify SR 3.0.3 to allow a delay period for a missed SR of 24 hours or up to the surveillance frequency, whichever is longer.

On February 14, 2000, the staff requested that the NEI TSTF modify TSTF–358 to address several questions and comments that the staff had during their initial review of the proposed change. On September 15, 2000, the NEI TSTF submitted Revision 5 to TSTF–358 for review. (Revisions 2–4 were only reviewed by the industry and were never submitted for NRC review.) This proposal is one of the industry's initiatives under the Risk-Informed Technical Specifications program.

The industry proposed changes, in TSTF–358, to the Technical Specifications (TS) SR 3.0.3 and the SR 3.0.3 Bases have been modified slightly by the NRC staff. The modifications are: (1) The TS SR 3.0.3 proposal has been changed, by the addition of a phrase to the proposed new sentence, to make it clear that not only must a risk evaluation be performed but also that the risk impact must be managed; and, (2) the SR 3.0.3 Bases proposal is changed to properly invoke the program to assess and manage risk required by 10 CFR 50.65(a)(4), and to avoid the misperception that 10 CFR 50.65(a)(4) requires monitoring at times other than before maintenance activities.

The following shows the TSTF–358 TS SR 3.0.3 and SR 3.0.3 Bases with the NRC staff additions and deletions incorporated: (1) The revised TS SR 3.0.3 reads, ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours, and the risk shall be managed;'' and (2) the revised SR 3.0.3 Bases that provides the link to 10 CFR 50.65(a)(4) reads, ''This risk impact should be managed through the program in place to implement 10 CFR 50.65(a)(4) and its implementation guidance, NRC Regulatory Guide 1.182, 'Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.'

2.0 Background

The regulations contained in 10 CFR 50.36, ''Technical Specifications,'' require that technical specifications include surveillance requirements. Surveillance requirements are requirements relating to test, calibration, or inspection to ensure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met. Technical specifications (TS) require surveillance tests to be performed periodically (e.g., weekly or monthly). The periodic test

interval defined in the technical specifications is called the surveillance frequency or surveillance interval. The majority of surveillance tests included in the technical specifications are designed to ensure that standby safety systems will be operable when they are needed to mitigate an accident. By testing these components, failures that may have occurred since the previous test can be detected and corrected.

STS SR 3.0.1 states that SRs shall be met during the MODES or other specified conditions in the applicability for individual limiting conditions for operation (LCOs) and that failure to perform a surveillance within the specified frequency shall be failure to meet the LCO, except as provided in SR 3.0.3.

The current STS SR 3.0.3 requires that, if it is found that a surveillance test was not performed within its specified frequency, the associated LCO be declared not met (e.g., equipment be declared inoperable) unless the missed surveillance test is completed successfully within 24 hours or within the limit of the specified frequency, whichever is *less,* from the time it was discovered that the test was not performed. The requirements in STS SR 3.0.3 are based on NRC Generic Letter 87–09, ''Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) of the Applicability of Limiting Conditions for Operation and Surveillance Requirements.''

Generic Letter 87–09 was published to address three specific issues with the application of technical specifications. One of those issues was missed surveillances. The Generic Letter states, ''The second problem involves unnecessary shutdowns caused by Specification 4.0.3 when surveillance intervals are inadvertently exceeded. The solution is to clarify the applicability of the Action Requirements, to specify a specific acceptable time limit for completing a missed surveillance in certain circumstances, and to clarify when a missed surveillance constitutes a violation of the Operability Requirements of an LCO. It is overly conservative to assume that systems or components are inoperable when a surveillance has not been performed because the vast majority of surveillances do in fact demonstrate that systems or components are OPERABLE. When a surveillance is missed, it is primarily a question of operability that has not been verified by the performance of a Surveillance Requirement. Because the allowable outage time limits of some Action Requirements do not provide an appropriate time for performing a missed surveillance before Shutdown Requirements apply, *the technical specifications should include a time limit that allows a delay of required actions to permit the performance of the missed surveillance based on consideration of plant conditions, adequate planning, availability of personnel, the time required to perform the surveillance, and, of course, the safety significance of the delay in completing the surveillance.* [emphasis added] The staff has concluded that 24 hours is an acceptable time limit for completing a missed surveillance when the allowable outage times of the Action Requirements are less than this limit, or when time is needed to obtain a temporary waiver[1] of the Surveillance Requirement.''

The proposed change would extend the delay time for declaring the LCO not met and entering the required actions by allowing more time to perform the missed surveillance test. This will be achieved by modifying [SR 3.0.3] to allow a delay period from 24 hours up to the surveillance frequency, whichever is greater, to perform a missed surveillance prior to having to declare the LCO not met. The change will add a sentence to [SR 3.0.3] that states, ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours, and the risk impact shall be managed.''

The objective of the proposed change is to minimize the impact on plant risk resulting from the performance of a missed surveillance test by allowing flexibility in considering the plant conditions and other plant activities without compromising plant safety. In addition, implementation of the proposed change would reduce the need for the licensee to apply for regulatory relief to delay the performance of missed surveillances.

The basis for establishing the changes to requirements for missed surveillances in Generic Letter 87–09 continues to apply to the current proposed change to [SR 3.0.3]. As evidenced by the discussion in Generic Letter 87–09, the intent of the change proposed in the Generic Letter was to reduce the impact on plant risk resulting from the performance of a missed surveillance test by allowing some flexibility in the performance of missed tests. The delay time of 24 hours was selected using engineering judgement in the absence of suitable tools to determine a delay period on a case-by-case basis. In addition, the staff recognized in Generic Letter 87–09 that even a 24-hour delay period would not be sufficient in some cases and licensees would need to seek regulatory relief in those cases.

The recent revision to the Maintenance Rule to establish the requirement in 10 CFR 50.65(a)(4) to assess and manage the increase in risk that may result from maintenance activities provides a framework to allow a more risk-informed approach to addressing missed surveillances. This approach is consistent with the Commission's policy to increase the use of probabilistic risk assessment (PRA) technology in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and continues to support the objectives outlined by the staff in Generic Letter 87–09.

2.1 Background Determination

The staff believes that the proposed change to [SR 3.0.3] is appropriate because: (1) The number of missed surveillance tests is a very small fraction of the total number of such tests performed at a nuclear plant each year; (2) the change applies to unintentionally missed surveillance tests and is not intended to be used as an operational convenience to extend surveillance frequencies (as stated in the proposed [SR 3.0.3] Bases); and (3) missed surveillances will be placed in the licensee's corrective action program.

The staff has determined that the proposed change is applicable to all licensees. In Generic Letter 87–09, the staff concluded that the proposed modifications would result in improved technical specifications for all plants and no limitations were put on the applicability of the proposed changes. Because the basis for this proposed change is largely the same as for the change proposed in Generic Letter 87–09, the staff believes the same broad applicability is appropriate. In addition, every licensee is required to comply with the Maintenance Rule and, therefore, will have implemented programs to comply with 10 CFR 50.65(a)(4) to assess and manage risk associated with maintenance and other operational activities.

3.0 Evaluation

The proposed change modifies [SR 3.0.3] to allow a delay period from 24 hours up to the surveillance frequency, whichever is greater, to perform a missed surveillance prior to having to declare the LCO not met. The change will add a sentence to [SR 3.0.3]. that states, ''A risk evaluation shall be performed for any surveillance delayed

[1] The terminology ''temporary waiver'' was subsequently revised to refer to the practice as ''enforcement discretion.''

greater than 24 hours, and the risk impact shall be managed.''

The proposed change will not allow equipment known to be inoperable to be considered operable until the missed surveillance is performed. If it is known that the missed surveillance could not be met, [SR 3.0.1] would require that the LCO be declared not met and the appropriate condition(s) entered. In addition, the Bases for [SR 3.0.3] state that the use of the delay period established by [SR 3.0.3] is a flexibility which is not intended to be used as an operational convenience to extend surveillance intervals, but only for the performance of missed surveillances.

The modification will also include changes to the Bases for [SR 3.0.3] that provide details on how to implement the new requirements. The Bases changes provide guidance for surveillance frequencies that are not based on time intervals but are based on specified unit conditions, operating situations, or requirements of regulations. In addition, the Bases changes state that the licensee is expected to perform any missed surveillance test at the first reasonable opportunity, taking into account appropriate considerations, such as the impact on plant risk and accident analysis assumptions, consideration of unit conditions, planning, availability of personnel, and the time required to perform the surveillance. The Bases also state that the risk impact should be managed through the program in place to implement 10 CFR 50.65(a)(4) and its implementation guidance, NRC Regulatory Guide 1.182, ''Assessing and Managing Risks Before Maintenance Activities at Nuclear Power Plants,'' and that the missed surveillance should be treated as an emergent condition as discussed in Regulatory Guide 1.182. In addition, the Bases state that the degree of depth and rigor of the evaluation should be commensurate with the importance of the component and that missed surveillances for important components should be analyzed quantitatively. The Bases also state that, if the results of the risk evaluation determine that the risk increase is significant, the evaluation should be used to determine the safest course of action. Finally, the Bases state that all missed surveillances will be placed in the licensee's Corrective Action Program.

[Optional Section for applications for changes to technical specifications that do not include a Bases Control Program:

The licensee has included in its application the addition of a Bases control program to the administrative section of the technical specifications. Prior the issuance of the STS (NUREGS 1430–1434), the control of technical specification Bases was not clearly defined by either technical specifications or NRC regulations. The administrative requirements for a Bases control program were added to the STS to define a methodology for evaluating changes to and providing updates of the technical specification Bases. The addition of the technical specification Bases Control Program for plants that have not adopted the STS will provide the same benefits in terms of defining a methodology for the maintenance of the technical specification Bases. The licensee has proposed administrative controls that are consistent with the STS requirements and therefore satisfy the condition that was included in the **Federal Register** Notice for the use of CLIIP for this technical specifications change. The staff finds the addition of the technical specifications Bases Control Program acceptable.]

Key elements provided by the licensee to justify the proposed technical specification change are listed below. These elements were built into the process to ensure that every time a surveillance is missed the risk will be properly assessed and managed. In addition, such elements facilitate regulatory oversight.

- A risk evaluation shall be performed for any surveillance test delayed longer than 24 hours and the risk impact shall be managed.
- Although the proposed change to [SR 3.0.3] allows an increase of the delay time, the missed surveillance test should be performed at the ''first reasonable opportunity.''
- The ''first reasonable opportunity'' will be determined by taking into consideration the risk impact from delaying the surveillance test (including risk from changing plant configurations or shutting the plant down to perform the surveillance, whenever applicable) as well as the impact on any analysis assumptions, in addition to unit conditions, planning, availability of personnel, and the time required to perform the surveillance.
- A missed surveillance will be treated as an emergent condition in the same fashion as other unplanned maintenance activities. The risk impact of the condition will be managed through the program in place to implement 10 CFR 50.65(a)(4) and its implementation guidance, Regulatory Guide 1.182 .
- A missed surveillance will be placed in the licensee's corrective action program, thus providing the staff with a means to verify that the number of missed surveillances continues to be very low.
- The NRC's operating reactor oversight process will provide the framework for inspectors and other staff to review missed surveillances and assess the licensee's actions and performance.

The staff finds that a process containing these key elements is appropriate in this case for the following reasons:

- 10 CFR 50.65(a)(4) requires licensees to implement programs to assess and manage increases in risk that may result from planned maintenance activities. This program is suitable to assess and manage the risk impact of missed surveillances because missed surveillances can be treated as emergent conditions and their risk impact will be assessed and managed in an integrated fashion with concurrent maintenance activities.
- Inspection procedures are in place which will allow NRC staff to oversee the implementation of Maintenance Rule requirements, including the adequacy of risk assessments performed by licensees for maintenance configurations.
- The number of missed surveillance tests is a very small fraction of the total number of such tests performed at a nuclear plant each year. The proposed change is not intended to be used as an operational convenience to extend surveillance frequencies.
- This process is similar to other improvements that have been made to the technical specifications that allow the use of a controlled decision making process by licensees when the process has some high-level regulatory oversight. Two examples of this are the adoption of the Core Operating Limits Report and the Pressure/Temperature Limits Report. In each of these cases, the staff approved the methodology behind the calculation of certain technical specification parameter limits and then allowed the specific limits to be removed from technical specifications and controlled by the licensee using the approved methodology. Similarly, for this proposed change, the staff has already approved guidance that outlines a process for complying with 10 CFR 50.65(a)(4) and, therefore, can allow the licensee to use that guidance to determine the most prudent course of action in the case of a missed surveillance.

The guidance outlining an acceptable process for licensees to assess and manage increases in risk that may result from planned maintenance activities is found in Regulatory Guide 1.182. Regulatory Guide 1.182 endorses a

revised Section 11 to NUMARC 93–01 ''Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Revision 2, updated by the Nuclear Energy Institute.

Section 11 of NUMARC 93–01, dated February 22, 2000, provides guidance for assessing and managing risk impact resulting from performance of maintenance activities, including guidance for establishing action thresholds based on qualitative and quantitative considerations as well as risk management actions. The objective of risk management is to control the temporary and aggregate risk increases from maintenance activities such that the plant's average baseline risk is maintained within a minimal range. This is accomplished by using the results of the risk assessment to plan and schedule maintenance such that the risk increases are limited, and to take additional actions beyond routine work controls to address situations where the temporary risk increase is above a certain threshold.

In order to gain additional insights into the proposed change, the staff referred to the regulatory guidance provided in Regulatory Guide 1.174 entitled ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis, and in Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' although these Regulatory Guides do not specifically address the type of change in this proposal. Regulatory Guide 1.177 provides the staff's recommendations for utilizing risk information to evaluate changes to nuclear power plant technical specifications by assessing the impact of such proposed changes on the risk associated with plant operation. The approach documented in Regulatory Guide 1.177 was taken into consideration by the staff in evaluating the risk information provided in support of the proposed changes in [SR 3.0.3] to increase the time allowed to perform a missed surveillance.

One portion of the guidance in Regulatory Guide 1.177 includes the assessment of the risk impact of the proposed change for comparison to acceptance guidelines consistent with the Commission's Safety Goal Policy Statement, as documented in Regulatory Guide 1.174. In addition, the approach outlined in the guidance aims at ensuring that the plant risk does not increase unacceptably at any time during the implementation of the proposed change (i.e., during the extended surveillance interval).

Another portion of the guidance addresses the need for identifying risk significant configurations resulting from maintenance or other operational activities and taking appropriate compensatory measures to avoid such configurations. This type of evaluation is directly addressed by the requirement to perform a risk assessment for missed surveillances delayed longer than 24 hours.

The staff believes that insights from the guidance provided in Regulatory Guides 1.174 and 1.177 can be used to show how the proposed change is expected to result in, at most, an increase in risk which is small and consistent with the Commission's Safety Goal Policy Statement. The staff believes that in the majority of the cases of missed surveillances, implementation of the proposed change will result in a risk benefit due to the proposed requirement for the licensee to evaluate the risk impact for missed surveillances that would require a delay of longer than 24 hours.

3.1 Risk Impact of the Proposed Change

The staff made a qualitative assessment of the risk impact of the proposed change for comparison with the intent of the acceptance guidelines documented in Regulatory Guide 1.174, consistent with the Commission's Safety Goal Policy Statement. Such risk impact is measured by the average (yearly) risk change. In addition, the staff took into consideration guidance in Regulatory Guide 1.177 aimed at ensuring that the plant risk does not increase unacceptably at any time during the implementation of the proposed change (i.e., during an extended surveillance interval in this case). The staff's qualitative assessment is summarized below.

Average Risk Impact

The probability that a standby active component, such as a pump or a circuit breaker, will fail when demanded during an accident is based on the assumption that the component fails due to ''standby'' stresses (i.e., stresses which are present while the component is in standby, such as corrosion, dirt, lack of lubrication). This probability, also called the component's average ''unavailability,'' is used in probabilistic risk assessments (PRAs) and is most frequently calculated by the following equation.

$$q = \frac{1}{2} * \lambda * T \qquad (1)$$

where:

q = the component's average unavailability,

λ = the component's failure rate (assumed constant) while in standby, and

T = the interval at which the component is tested for operability.

The average unavailability of a structure, system, or component (SSC), calculated by using the above equation, reflects the potential vulnerability of the component to ''standby'' stresses. Such vulnerability increases with time between operability checks (tests) assuming corrective action is taken to restore failed components identified by the test. Thus, the risk impact of a missed surveillance is reflected by the increased unavailability of the related SSCs due to the increase of the interval between surveillance tests. If the missed surveillance affects two or more components, some ''standby'' stresses may impact multiple components. In such a case, the missed surveillance would also increase the average common cause failure (CCF) unavailability of two or more components and this should be addressed in the risk assessment (CCF unavailabilities are calculated by adjusting the single component failure unavailability using standard PRA techniques, such as the beta factor or the Multiple Greek Letter method).

The thresholds of the aggregate risk impacts are based on the permanent change guidelines discussed in Regulatory Guide 1.174. The licensee will be expected to manage the risk from the proposed technical specification change in conjunction with the risk from other concurrent plant activities to ensure that any risk increase, in terms of CDF and LERF, will be small and consistent with the Commission's Safety Goal Policy Statement.

Risk insights from existing PRAs and the low frequency of missed surveillances indicate that the proposed technical specification change is highly unlikely to lead to a significant increase in the average (yearly) risk, in terms of CDF or LERF. Significant risk increases can occur only under the following conditions:

- The number of missed surveillances is allowed to increase significantly;
- High risk configurations are allowed (e.g., by allowing certain combinations of multiple missed surveillances and/or outages); and
- Poor risk management of plant operational activities is allowed.

Any of these conditions would be in violation of the intent of the proposed [SR 3.0.3] and could trigger a review by NRC of the licensee's actions and performance. The implementation guidance found in the proposed [SR 3.0.3] Bases is intended to ensure that

such conditions would not occur. Licensees are already required to manage risk associated with online maintenance activities. Furthermore, the addition of missed surveillances (rather rare plant conditions) to the maintenance activities is not expected to increase risk. On the contrary, insights from existing risk assessments indicate that there are plant conditions during which it is preferable and safer not to have to complete missed surveillance tests for some SSCs. Therefore, the proposed technical specification change will allow the licensee to make informed decisions and take appropriate actions to control risk.

Temporary Risk Impact

In addition to changes in the mean values of CDF and LERF, the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP) are proposed by Regulatory Guide 1.177 as appropriate measures of the increase in probability of core damage and large early release, respectively, during the period of implementation of a proposed technical specification change (i.e., during the extended surveillance period in the case of a missed surveillance). Regulatory Guide 1.182 provides guidance for controlling temporary risk increases resulting from maintenance activities. Such guidance, which is consistent with guidance provided in Regulatory Guide 1.177, establishes action thresholds based on qualitative and quantitative considerations as well as risk management actions. The staff expects that the licensee will implement this guidance for assessing temporary risk increases from missed surveillances concurrently with maintenance and other operational activities.

Instantaneous and temporary risk increases from a missed surveillance are assessed by considering the time-dependent unavailability, most often calculated by the following equation.

$$q(t) = \lambda * t$$

where:

$q(t)$ = the component's unavailability at time t

λ = the component's failure rate (assumed constant) while in standby, and

t = time from end of surveillance frequency of a missed surveillance test.

If the missed surveillance affects two or more components, some ''standby'' stresses may impact multiple components. In such a case, the missed surveillance would increase also the time-dependent CCF unavailability of two or more components and this should be addressed in the risk assessment.

Significant temporary risk increases following a missed surveillance can occur only under the following conditions:

- High risk configurations are allowed (e.g., by allowing certain combinations of multiple missed surveillances and/or outages), and
- Poor risk management of plant operation activities is allowed.

Any of these conditions would be in violation of the intent of the proposed [SR 3.0.3] and could trigger an NRC review of the licensee's actions and performance. The requirements associated with the proposed change are intended to ensure that such conditions would not occur. Thus, the proposed technical specification change is not expected to lead to significant temporary risk increases. Following the discovery of an unintentionally missed surveillance, the licensee will have to assess temporary risk increases, qualitatively or quantitatively depending on the importance of the component affected by the missed surveillance, if the surveillance cannot be performed within 24 hours from the time it has been discovered.

3.2 Risk-Informed Configuration Risk Management

Regulatory Guide 1.177 addressed the need for identifying risk significant configurations resulting from maintenance or other operational activities and taking appropriate compensatory measures to avoid such configurations. The objective of such guidance for this review is to ensure that plant safety will be maintained and monitored during the period of an extended surveillance testing interval (associated with an unintentionally missed surveillance). The licensee proposes to use the program in place to implement the Maintenance Rule to identify ''high-risk'' configurations resulting from missed surveillance tests in conjunction with outages associated with maintenance activities. It is worth noting that the guidance provided in Regulatory Guide 1.177 with regard to the Configuration Risk Management Program was used as the basis for developing the guidance contained in Regulatory Guide 1.182 for the 10 CFR 50.65(a)(4) provisions of the Maintenance Rule. This provides additional assurance that the proposed process for evaluating the risk impact of missed surveillances is consistent with guidance provided in Regulatory Guide 1.177.

3.3 Quality of PRA

Once a missed surveillance is discovered and the licensee determines that the surveillance cannot be performed within 24 hours, the licensee will have to use a risk assessment to determine the most prudent course of action. The risk assessment can be done qualitatively or quantitatively depending on the importance of the component affected by the missed surveillance (missed surveillances for risk important components should be analyzed quantitatively). Such a risk assessment will be consistent with the program to implement the Maintenance Rule guidance to assess and account for both aggregate and temporary risk increases associated with ''emergent'' plant conditions as well as before undertaking online maintenance or other operational activities.

All licensees must have the capability to assess and manage increases in risk from maintenance activities as required by the Maintenance Rule. Risk assessments performed pursuant to 10 CFR 50.65(a)(4) may use qualitative, quantitative or blended methods. The degree of depth and rigor of the evaluation should be commensurate with the complexity of the proposed configuration to be assessed. Section 11 of NUMARC 93–01 provides guidance for using qualitative, quantitative or blended methods to assess risk. Current inspection programs allow the NRC staff to oversee licensee implementation of 10 CFR 50.65(a)(4) requirements, including the adequacy of pre-maintenance risk assessments performed by licensees.

For the reasons listed below, the staff finds that the same ''quality'' of PRA or PRA insights used to perform risk assessments pursuant to 10 CFR 50.55 (a)(4) is also appropriate when assessing the impact of missed surveillances.

- The number of ''emergent'' conditions resulting from missed surveillances is very small (in both absolute terms and in comparison to the frequency of ''emergent'' conditions resulting from equipment failures). The licensee is expected to implement the proposed change to [SR 3.0.3] in a manner that ensures that this statement remains valid.
- A missed surveillance is equivalent to a one-time surveillance frequency extension. Therefore, the risk exposure is limited to the duration of the surveillance frequency extension. Risk increases are small compared to similar increases associated with equipment failures. The average (conditional) risk increase, given a missed surveillance, may be comparable to the risk increase

from equipment failures. However, due to the rarity of missed surveillances, the average (yearly) risk increase from missed surveillances is expected to be small compared to the risk increase from equipment failures.

• PRA insights indicate that the risk impact from missed surveillances is significant only for a relatively small set of standby equipment. This equipment, such as auxiliary feedwater, high pressure injection pumps, and emergency diesel generators, is located outside containment and generally can be easily tested in a short time, if necessary.

• NRC inspection programs allow NRC staff to oversee the implementation of 10 CFR 50.65 (a)(4) requirements, including the adequacy of pre-maintenance risk assessments performed by licensees.

3.4 Summary

The staff review finds that the process proposed by the licensee for addressing missed surveillance requirements meets Commission guidance for allowing technical specification changes. Key elements of the proposed change are listed below.

• A risk evaluation shall be performed for any surveillance delayed longer than 24 hours, and the risk impact shall be managed.

• The missed surveillance test should be performed at ''the first reasonable opportunity.''

• The ''first reasonable opportunity'' will be determined by taking into consideration the risk impact from delaying the surveillance test as well as the impact on any analysis assumptions, in addition to unit conditions, planning, availability of personnel, and the time required to perform the surveillance.

• A missed surveillance will be treated as an ''emergent'' condition in the same fashion as other unplanned maintenance activities. The risk impact of the condition will be managed through the program in place to implement 10 CFR 50.65(a)(4) and its implementation guidance (NRC Regulatory Guide 1.182). Rescheduling of missed surveillances pursuant to Regulatory Guide 1.182 will ensure the necessary provisions for managing the risk impact of performing the surveillance in conjunction with other ongoing plant configuration changes.

• The NRC's operating reactor oversight process will provide the framework for inspectors and other staff to review missed surveillances and assess the licensee's actions and performance. Inspection procedures are in place which will allow NRC staff to oversee the implementation of Maintenance Rule requirements, including the adequacy of pre-maintenance risk assessments performed by licensees.

• A missed surveillance will be placed in the licensee's corrective action program, thus providing the staff with a means to verify that the number of missed surveillances continues to be very low.

• The number of missed surveillance tests is a very small fraction of the total number of such tests performed at a nuclear plant each year. The proposed change is not intended to be used as an operational convenience to extend surveillance frequencies.

• This process is similar to other improvements that have been made to the technical specifications that allow the use of a controlled decision making process by licensees when the process has some high-level regulatory oversight. Two examples of this are the adoption of the Core Operating Limits Report and the Pressure/Temperature Limits Report. In each of these cases, the staff approved the methodology behind the calculation of certain technical specification parameter limits and then allowed the specific limits to be removed from technical specifications and controlled by the licensee using the approved methodology. Similarly, for this proposed change, the staff has already approved guidance that outlines a process for complying with 10 CFR 50.65(a)(4) and, therefore, can allow the licensee to use that guidance to determine the most prudent course of action in the case of a missed surveillance.

For these reasons, the staff finds that the proposed technical specification change, to be implemented in accordance with the above listed key elements, is acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment changes a requirement with respect to a surveillance requirement. [For those adding a Bases Control Program: The amendment also changes recordkeeping, reporting, or administrative procedures or requirements.] The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and c(10)]. Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: A change is proposed to technical specifications to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of up to 24 hours or up to the limit of the specified frequency, whichever is less; to up to 24 hours or up to the limit of the specified frequency, whichever is greater.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not

significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 8th day of June 2001.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Acting Chief, Technical Specification Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–14978 Filed 6–13–01; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 20, 2001, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

(1) OMB Bulletin No. 01–07, Workforce Planning & Restructuring.

Portion closed to the public:

(A) Reassignment of Ms. Ruby Bland.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: June 11, 2001.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 01–15104 Filed 6–12–01; 10:07 am]

BILLING CODE 7905–01–M

DEPARTMENT OF STATE

[Public Notice 3698]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Edmund S. Muskie/FREEDOM Support Act Graduate Fellowship Program

Summary

Subject to the availability of funds, the Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to administer the selection, placement, monitoring, evaluation, follow-on, and alumni activities for the FY 2002 Edmund S. Muskie/FREEDOM Support Act Graduate Fellowship Program. Proposals should include provisions for the recruitment of FY 2003 fellows.

The Edmund S. Muskie/FREEDOM Support Act Graduate Fellowship Program (herein referred to as the Muskie/FSA Program) selects outstanding citizens from the New Independent States (NIS) to receive fellowships for Master's level study in the United States in the fields of business administration, economics, education, environmental management, international affairs, law, library and information science, journalism/mass communications, public administration, public health, and public policy. Fellowships are granted to qualified individuals who are citizens of Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan. Muskie/FSA Program fellows will be enrolled in graduate degree, certificate, and non-degree programs lasting one to two academic years, with the majority enrolled in two-year degree-granting programs. It is estimated that approximately 330 fellows will receive fellowships under the FY 2002 program. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals.

Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

Program Information

Overview: The Muskie/FSA Program is designed to foster democratization and the transition to market economies in the NIS through intensive academic study and professional training. The academic component of the program begins in the fall semester of the year following the award (in this case 2002). Fellows may participate in a nine, twelve, eighteen, or twenty-four month academic program. Fellows also take part in an eight to twelve week internship during the summer following the first academic year, with an option for a second internship following the second year of study. Fellows must return to their home countries at the

conclusion of their program. The Muskie/FSA Program is not intended as a precursor to doctoral studies, extended professional training, or employment in the United States. At the end of their designated academic and/or internship programs, fellows are required to immediately return to their home countries.

ECA will consider awarding one or more grants for this program. Should more than one organization be selected to administer the Muskie/FSA Program, ECA will decide on the distribution of fellows between grantee organizations.

Should an applicant organization wish to work with other organizations in the implementation of this program, ECA prefers that a sub-grant agreement be developed. However, ECA will entertain separately submitted proposals from two or more organizations for joint program management, as long as the proposals demonstrate a value-added relationship and clearly delineate responsibilities. Program responsibilities should not be duplicated and the arrangement should not produce prohibitive administrative expenses.

The Muskie/FSA Program must conform to ECA requirements and guidelines outlined in the Solicitation Package. ECA programs are subject to the availability of funds and must comply with J–1 Visa regulations. Please refer to the Solicitation Package for further information.

Applicant organizations must demonstrate the ability to administer all aspects of the Muskie/FSA Program—selection, university placements, orientation, monitoring and support of FY 2002 fellows including all logistics, financial management, evaluation, follow-on, and alumni tracking and programming, as well as advertisement for, and recruitment of, FY 2003 applicants in the NIS. Applicant organizations must demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions in the NIS. Organizations will take the lead in the recruitment and selection of appropriate host institutions from throughout the United States for pre-academic, English as a Foreign Language, and academic programs. Organizations will serve as the principal liaison with Muskie/FSA Program host institutions for ECA. Applicant organizations should demonstrate the ability to work with private sector organizations in the United States and the NIS to facilitate fellows' professional development and post-program re-entry. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI) Statement, which is part of the formal solicitation package available from ECA.

Guidelines: The award to the grantee organization will begin on or about October 1, 2001 and will be approximately two years in duration. Recruitment and initial selection activities for FY 2002 fellows will be performed by the current grantee organizations. The level of funding for FY 2002 is uncertain, but is anticipated to be approximately $20,460,000. Based on this figure, applicant organizations should submit a budget to fund no fewer than 330 fellows. The final number of fellowships per country will be announced following the grant award; however, for planning purposes organizations should assume the following distribution of fellows by country: Armenia 40, Azerbaijan 28, Belarus 9, Georgia 24, Kazakstan 15, Kyrgyzstan 11, Moldova 8, Russian Federation 67, Tajikistan 3, Turkmenistan 7, Ukraine 101, Uzbekistan 17. Additionally, applicant organizations should assume the following number of fellows by field of study: Business Administration 45, Economics 30, Education 30, Environmental Management 30, International Affairs 35, Journalism/Mass Communications 20, Law 30, Library and Information Science 10, Public Administration 40, Public Health 30, and Public Policy 30.

Applicant organizations are encouraged, through cost sharing and other methods, to provide for as many fellowships as possible above and beyond the minimum numbers supplied by ECA.

Budget Guidelines: ECA grant guidelines limit organizations with less than four years experience conducting international exchanges to $60,000 in Bureau grant support. Because of the scope and complexity of this program, organizations with less than four years experience in conducting international exchanges are not eligible to apply under this competition.

ECA encourages applicant organizations to provide maximum levels of cost sharing and funding from private sources in support of its programs. Applicant organizations must submit a comprehensive line item budget to include a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. A comprehensive narrative must accompany the budget, clearly explaining all proposed costs (staff salaries and time on task must be supported by appropriate documentation and certified as true and accurate representations of actual costs and percentage of task).

Allowable costs for the program include the following:

(1) Program Expenses
(2) Domestic Administration
(3) Overseas Administration

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with ECA concerning this RFGP should reference the above title and number *ECA/A/E/EUR–02–02.*

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–5429, fax: (202) 260–7985, e-mail: *nsargent@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify ECA Program Officer Nadine Asef-Sargent on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from ECA's website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time, Thursday, August 9, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–02–02*, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal

Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. ECA will transmit these files electronically to Public Affairs Sections at U.S. Embassies in the NIS for review, with the goal of reducing the time it takes to obtain embassy comments for ECA's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' ECA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals, to the full extent deemed feasible.

Review Process: ECA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The Program Office, as well as the Public Affairs Sections overseas, where appropriate, will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and ECA regulations and guidelines and forwarded to ECA grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with an ECA Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development:* The proposal should exhibit originality, substance, precision, and relevance to ECA's mission. Objectives should be reasonable, feasible, and flexible. A detailed and relevant work plan should demonstrate substantive understanding of program goals and logistical capacity.

2. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past ECA grants. ECA will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. *Multiplier Effect:* The program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* The proposal should demonstrate the applicant organization's commitment to promoting the awareness and understanding of diversity through participant recruitment efforts, the selection of U.S. host institutions, and other measures.

5. *Follow-on and Alumni Activities:* The proposal should provide a plan for continued activity which ensures that ECA-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place.

6. *Project Evaluation:* The proposal should include plans to evaluate the program's success, both during and after the program.

7. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. *Cost-sharing:* The proposal should maximize cost sharing through private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided principally through FREEDOM Support Act legislation.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any ECA representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal ECA procedures.

Dated: June 5, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–15052 Filed 6–13–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for June 26–27, 2001, beginning at 8:30 a.m.

on June 26. Arrange for oral presentations by June 22.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Room 11G4, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at effie.upshaw@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 27–28, in Renton, WA.

The agenda will include:

June 26

- Opening Remarks
- FAA Report
- Joint Aviation Authorities Report
- Transport Canada Report
- Harmonization Management Team Report
- Executive Committee Report
- Human Factors Harmonization Working Group (HWG) Report
- Seat Test HWG Report
- Design for Security HWG Report
- Ice Protection HWG Report
- Engine HWG Report
- Continued Airworthiness Assessment Methodology Working Group Report
- Flight Test HWG Report
- Electromagnetic Effects HWG Report
- Powerplant Installation HWG Report
- Mechanical Systems HWG Report
- Cargo Standard HWG Report

June 27

- General Structures HWG Report
- Airworthiness Assurance HWG Report
- Extended Range with Two-Engine Aircraft Tasking Update
- Loads & Dynamics HWG Report
- Flight Guidance System HWG Report
- System Design and Analysis HWG Report
- Avionics Systems HWG Report
- Electrical Systems HWG Report

The ARAC is expected to approve the following submittals for forwarding to the FAA:

- Recommendations addressing installation of a primary ice detection systems, or visual cues for recognizing ice accretion on specified airplane surfaces (Ice Protection HWG);
- Recommendation revising the Class B cargo compartments and establishing standards for a new Class F cargo compartment; and
- Technical reports drafted under the fast track process by the Human Factors, Loads and Dynamics, Mechanical Systems, and Avionics Systems HWG's.

Additionally, there will be a discussion/review of FAA-prepared documents that evolved from technical reports prepared by the System Design and Analysis HWG under the fast track process.

Attendance is open to the public, but will be limited to the space available. Visitor badges are required to enter Boeing Building 10–16. Please confirm your attendance with Norm Turner, (425) 234–3312, or by e-mail—*norman.g.turner@Boeing.com.*—and provide the following information: full legal name, country of citizenship, and company that you represent, if applicable. Please arrive 15 minutes early to avoid any problems with parking or badges.

The public must make arrangements by June 22 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be approved may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 6, 2001.

Brenda Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 01–15163 Filed 6–12–01; 2:26 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ANM–01–02]

FAA Policy on Type Certification Assessment of Thrust Management Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This notice announces an FAA policy applicable to the type certification of transport category airplanes. This notice advises the public, in particular manufacturers of transport category airplanes and their suppliers, that the FAA intends to adopt a new policy concerning the type certification assessment of thrust management systems. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATE: Send your comments by July 16, 2001.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mike McRae, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Propulsion/Mechanical Systems Branch, ANM–112, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2133; fax (425) 227–1320; e-mail: mike.mcrae@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on this policy statement by sending any written data, views, or arguments as you may desire. You must identify the Policy Statement Number ANM–01–02 on your comments, and send your comments, in duplicate, to the address indicated above. The Transport Airplane Directorate (Transport Standards Staff) will consider all communications received on or before the closing date for comments.

Background

The FAA traditionally has certified automated thrust management features, such as autothrottles and ''target rating'' displays, on the basis that they are only conveniences to reduce crew workload and do not relieve the crew of any responsibility for assuring proper thrust management. Consequently, even when the crew is no longer directly involved in performing a given thrust management function, they must be ''aware'' when this function is not being performed safely. Further, when they do become ''aware'' of any thrust management malfunction, they must be capable of taking appropriate corrective action to safely address that malfunction.

For most thrust management systems (TMS) that the FAA has certified to date, this crew ''awareness'' has been accepted as coming from:

a. Inherent aircraft operational cues (for example, failure of the throttles to properly respond to an autothrottle command is usually assumed to be

detectable by improper movement of the throttle levers, engine indications, or other inherent aircraft responses); or

b. Adherence to training and procedures (for example, crews are trained to cross-check the TMS ''target rating'' against the Quick Reference Handbook rating or the rating on a dispatch sheet); or

c. Dedicated failure detection and annunciation (for example, if the autothrottle detects that it cannot perform its function, under some circumstances it will automatically disconnect itself and announce that fact through a crew alerting feature).

Service History Involving TMS Issues

There have been at least two recent accidents related to TMS effects:

1. March 31, 1995, Tarom Airbus Model A310–300, Bucharest, Hungary

The airplane crashed shortly after takeoff. The Romanian investigating team indicated that the probable cause of the accident was the combination of an autothrottle failure that generated asymmetric thrust and the pilot's apparent failure to react quickly enough to the developing emergency.

2. November 24, 1992, China Southern Boeing Model 737–300, Guilin, China

The airplane crashed shortly before landing at Guilin. The Civil Aviation Administration of China team investigating the probable cause of the accident concluded that the right auto throttle did not react during descent and level off. As a result, the thrust asymmetry induced the airplane to roll to the right. The flightcrew failed to recognize the abnormality and make correction in time, ''followed by wrongful control input and crashed.''

Data from these accident investigations have provided evidence that it is incorrect to assume that the flight crew will always detect and address potentially adverse TMS effects strictly from inherent operational cues.

Similarly, other service experience suggests that it is not reasonable to expect the flight crew to adhere strictly to operational checks that are not specified in the flight manual, and that usually indicate the system is working correctly. It is not sufficient to find that the flight crew ''should normally be able'' to detect and safely accommodate these failures. Instead, it should be found that the flight crew is anticipated ''always'' to safely accommodate these failures. This distinction is intended to differentiate between those ''human errors'' that are simply part of anticipated human behaviors and limitations, and those that are ''extraordinary'' or ''negligent.''

The FAA maintains that transport category airplane type designs should safely accommodate anticipated human errors. Therefore, the FAA has concluded that dedicated failure detection and annunciation is necessary to provide adequate ''crew awareness'' of TMS malfunctions.

Intent of This General Statement of Policy

The FAA intends the policy discussed in this notice to ensure that the actual criticality of automated thrust management features is identified and adequately addressed during type certification compliance with the fail-safe requirements of Title 14, Code of Federal Regulations (CFR), part 25, including:

§ 25.901(c) (''Powerplant: Installation''),

§ 25.903(b) (''Engines''), and

§ 25.1309(b) (''Equipment, systems, and installations'').

This policy is included in a draft Advisory Circular (AC) 25.901–1X, ''Safety Assessment of Powerplant Installations,'' which the Aviation Rulemaking Advisory Committee (ARAC) developed and submitted to the FAA as a recommendation for issuance. (Refer to 56 FR 2190, January 22, 1991, for more information about ARAC. Refer to 57 FR 58845, December 11, 1992, for more information about the ARAC-sponsored working group assigned to develop the recommendation.)

Draft AC 25.901–1X currently is part of a planned ''Safety Assessment'' rulemaking package that will include several proposed rules and advisory circulars. The FAA plans to issue those proposed documents for public comment at a future date.

However, the FAA has chosen to publish this particular segment as a general statement of policy in advance of the complete AC 25.901–1X.

To reduce the exposure to accidents like those described above, the FAA expects to use this policy to identify and correct any similar unsafe conditions in the current transport fleet and for all future type certification activities.

Effect of General Statement of Policy

The general policy stated in this document is not intended to establish a binding norm; it does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. The FAA Aircraft Certification Offices (ACO) that certify transport category airplanes and/or the thrust management systems installed on them should generally attempt to follow this policy, when appropriate. However, in determining compliance with certification standards, each ACO has the discretion not to apply these guidelines where it determines that they are inappropriate. Applicants should expect that the certificating officials will consider this information when making findings of compliance relevant to new certificate actions.

In addition, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it an issue for which public comment is appropriate. Therefore, the FAA requests comment on the following proposed general statement of policy relevant to type certification assessment of thrust management systems.

The Policy Statement

Thrust Management Systems. A System Safety Assessment is essential for any airplane system that aids the crew in managing engine thrust (for example, computing target engine ratings, commanding engine thrust levels, etc.). As a minimum, the applicant must assess the system criticality and failure hazard classification.

The system criticality will depend on:

- The range of thrust management errors it could cause;
- The likelihood that the flight crew will detect these errors and take appropriate corrective action; and
- The severity of the effects of these errors with and without intervention by the flight crew.

The hazard classification will depend on the most severe effects anticipated from any system. The need for more in-depth analysis will depend upon such things as the system's complexity, novelty, initial failure hazard classification, and relationship to other aircraft systems.

Automated thrust management features, such as autothrottles and target rating displays, traditionally have been certified on the basis that they are only conveniences to reduce crew workload and do not relieve the flight crew of any responsibility for assuring proper thrust management. In some cases, malfunctions of these systems can be considered minor, at most. However, for this to be valid, even when the flight crew is no longer directly involved in performing a given thrust management function, the flight crew must be provided with information concerning unsafe system operating conditions to

enable them to take appropriate corrective action.

Consequently, failures within any automated thrust management feature that could create a catastrophe if not detected and properly accommodated by flight crew action should be considered either:

1. A catastrophic failure condition when demonstrating compliance with § 25.1309(b) and/or § 25.901(c); or
2. An unsafe system operating condition when demonstrating compliance with the warning requirements of § 25.1309(c).

Issued in Renton, Washington, on June 1, 2001.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14489 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cambria County, PA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation improvement project on S.R. 0056 (Route 56) in Johnstown, Cambria County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Harrisburg, PA 17101–1720, (717) 221–3411 or Vincent S. Greenland, P.E., Project Manager, Pennsylvania Department of Transportation, District 9–0, 1620 North Juniata Street, Hollidaysburg, Pennsylvania 16648, (814) 696–7179.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT), will prepare an EIS to identify and evaluate transportation improvements to Route 56 through the West End of Johnstown, Pennsylvania. Included in the overall project will be the development of a reasonable range of alternatives that meet the project need and supporting environmental documentation and analysis to recommend a preferred alternative for implementation. An extensive public outreach/involvement program has been developed specifically for this project.

Based on preliminary traffic studies performed as part of the Route 56 West End Traffic Study in 1998, improvements to the highway system through Johnstown's West End are necessary to improve traffic conditions. Identified project needs included safety, geometric deficiencies, deficient operational characteristics including poor access and traffic flow with heavy truck volumes, and transportation factors limiting economic vitality.

Possible alternatives to the project include: No build; transportation system management (TSM); relocation alternative to the east through Minersville and around Coopersdale connecting to S.R. 0403; relocation alternative to the east through Minersville and around Coopersdale crossing over 403 and the Conemaugh River prior to connecting back to Route 56 north of Oakhurst; partial relocation alternative that crosses the Conemaugh River north of Fairfield Avenue, follows S.R. 403 through Coopersdale and then crosses back over the Conemaugh River prior to connecting back to Route 56 north of Oakhurst; partial relocation alternative that runs along the Norfolk Southern railroad tracks and the Conemaugh River east of Morrelville and Oakhurst connecting back to Route 56 north of Oakhurst; relocation alternative to the east through Minersville that crosses the Conemaugh River southwest of Coopersdale and runs along the Norfolk Southern railroad tracks and the Conemaugh River east of Morrelville and Oakhurst connecting back to Route 56 north of Oakhurst; a relocation alternative that entails a combination of the alternatives described above; and two additional relocation alternatives yet to be defined. These alternatives will be the basis for a recommendation of an alternative to be carried forward for detailed environmental and engineering studies in the EIS. Incorporated into and studied with the various alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to PENNDOT at the address posted above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA.

[FR Doc. 01–15022 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of dear colleague letter.

SUMMARY: The Federal Transit Administration (FTA) issued a ''Dear Colleague'' letter on March 30, 2001, addressing inquiries regarding its Buy America regulations that focused on the calculation of the cost of the components and subcomponents of rolling stock. In order to ensure wide dissemination of this letter, it is published below, together with further explanation in this preamble.

FOR FURTHER INFORMATION PLEASE CONTACT: Meghan G. Ludtke, FTA, Office of Chief Counsel, Room 9316, (202) 366–4011 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: FTA has received inquiries about the transit industry's calculation of the cost of components and subcomponents of rolling stock under the Buy America provisions. *See* 49 U.S.C. 5323(j) and 49 CFR 661.11. More specifically, based on information in a 1995 FTA Buy America handbook, there was concern that grantees were identifying the entire propulsion system as one component for purposes of calculating the domestic content of rolling stock. As a result, on March 30, 2001, FTA issued a ''Dear Colleague'' letter explaining the applicability of the Buy America requirements to the procurement of rolling stock.

A propulsion system normally consists of a traction motor, propulsion gearbox, acceleration and breaking resistors, and propulsion controls. According to the appendices of the Buy America regulations applicable to rolling stock, each of these items should

be considered a component. *See* 49 CFR 661.11, Appendix B and C.

Section 5323(j)(2)(C) of Title 49, U.S.C., sets forth the general requirements for the procurement of rolling stock: The cost of the components and subcomponents produced in the United States must be at least 60 percent of the aggregate cost of all components and the rolling stock must undergo final assembly in the U.S. For a component to be considered domestic, 60 percent of its subcomponents must be of domestic origin and the component itself must be manufactured in the U.S. 49 CFR 661.11(g). A subcomponent is of domestic origin if it is manufactured in the U.S. 49 CFR 661.11(h). Because the standards for designation as ''domestic'' are different for components and subcomponents, and the requirements for components more stringent, the distinction between the two is important. It is for this reason that FTA included a list of items considered typical components in the appendices of the rolling stock regulations. *See* Appendix B and C, 49 CFR 661.11. As noted above, this list includes items that are generally included in a propulsion system. To the extent that the 1995 FTA handbook identified the items listed in these appendices as something other than components, it was wrong for purposes of calculating domestic content under 49 CFR 661.11.

To more fully explain the Buy America calculation, we provide the following simplified example: Assume that the aggregate cost of all components on a bus is $100. In order to comply with Buy America, more than $60 worth of the components must be of domestic origin. To determine which components count as domestic, the origin of the subcomponents must be reviewed. If a component has a cost of $10 and more than $6 worth of its subcomponents are manufactured in the U.S., then the entire $10 cost of the component is considered domestic and counts toward the required aggregate domestic content of more than $60.

The Buy America analysis begins with identification of the end product being procured. From that determination flows the discussion of which items are components and which are subcomponents and whether the procurement is governed by the general requirements found at 49 CFR 661.5 or the rolling stock requirements found at 49 CFR 661.11. An end product is ''any item * * * that is to be acquired by a grantee, as specified in the overall project contract.'' 49 CFR 661.11(s). If a grantee is procuring a new rail car, the car is the end product and the traction motor would be a component of the end product. If that same grantee procures a replacement traction motor for an existing rail car, then the traction motor would be the end product for purposes of Buy America analysis.

The regulation does not require which components be of U.S. origin, only that more than 60 percent of their aggregate cost derive from domestically produced components. The manufacturer determines which costs will be used to reach that required threshold. The ''Dear Colleague'' letter is consistent with this premise.

The above-referenced ''Dear Colleague'' letter reads as follows:

March 30, 2001.

Dear Colleague:

Under the relevant Buy America requirements, when procuring rolling stock under 49 U.S.C. Chapter 53, the cost of the components and subcomponents produced in the United States must be at least 60 percent of the cost of all components of the rolling stock. In addition, final assembly of the rolling stock must occur in the United States. 49 U.S.C. 5323(j)(2)(C). Under the regulations, a component is considered of domestic origin if the total cost of its subcomponents meets the 60 percent domestic content requirement mandated by law, and the component is manufactured in the United States. 49 CFR 661.11(g).

To assist grantees with the distinction between the terms ''component'' and ''subcomponent'' in the context of rolling stock procurements, the Federal Transit Administration included as appendices to its Buy America regulations, the lists of major components identified by Congress in its committee report accompanying the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 97–424. H.R. CONF. REP. 100–27. For example, included in the list of major components of rail rolling stock are traction motors, propulsion gearboxes, acceleration and braking resistors, and propulsion controls. Consequently, the domestic content value of the subcomponents for these components, or any other elements that may be considered components of rolling stock, must be more than 60 percent, and the component must be manufactured in the United States in order to satisfy the Buy America requirements.

In summary, all items included in the list of major components at 49 CFR 661.11, App. B and C, should be considered components, not subcomponents, for the purposes of calculating domestic content for rolling stock procurements.

If you have any questions, please contact our Office of Chief Counsel at (202) 366–4011.

Sincerely,
Hiram J. Walker,
Acting Deputy Administrator.

Issued on: June 11, 2001.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

[FR Doc. 01–15023 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE TREASURY

Executive Office for Asset Forfeiture; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Executive Office for Asset Forfeiture within the Department of the Treasury is soliciting comments concerning the ''Request for Transfer of Property Seized/Forfeited by a Treasury Agency'', TD F 92–22.46.

DATES: Written comments should be received on or before August 14, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to the Executive Office for Asset Forfeiture, Attn: Jackie A. Jackson, Suite 700, 740–15th Street, NW, Washington, DC 20220. Telephone: (202) 622–2755. E-Mail Address: *Jackie.Jackson @ TEOAF.Treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Executive Office for Asset Forfeiture, Attn: Jackie A. Jackson, Suite 700, 740–15th Street, NW, Washington, DC 20220. Telephone: (202) 622–2755. E-Mail Address: *Jackie.Jackson @ TEOAF.Treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency, TD F 92–22.46.

OMB Number: 1505–0152.

Form Number: TD F 92–22.46.

Abstract: The form was developed to capture the minimum amount of data necessary to process the application for equitable sharing benefits. Only one form is required per seizure. If a law enforcement agency does not make this one time application for benefits under the equitable sharing process, the agency will not benefit from the forfeiture process.

Current Actions: This is a notice for the continued use of the established form. There are no changes to the form or instructions.

Type of Review: Extension (without change).

Affected Public: Federal, State and local law enforcement agencies participating in the Treasury asset sharing program.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 30 Minutes.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

William H. Gonzalez,

Acting Director, Executive Office for Asset Forfeiture.

[FR Doc. 01–14544 Filed 6–13–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Red Bull GMBH''

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''RED BULL GMBH''. The trade name is owned by Red GmbH, an Austrian corporation incorporated in the State of Salzburg, Brunn 115, A–5330 Fuschl am See, Oesterreich, Austria.

The application states that the trade name is used on a product called Red Bull Energy Drink and Point of Sale and other promotional materials for Red Bull Energy Drink.

The merchandise is manufactured in the United States. Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Office of Regulations and Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Ronald Reagan Building, Room 3.4A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (202) 927–2330.

Dated: June 8, 2001.

Joanne Roman Stump,

Chief, Intellectual Property Rights Branch.

[FR Doc. 01–14988 Filed 6–13–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Red Bull North America, Inc.''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''RED BULL GMBH''. The trade name is owned by Red GmbH, an Austrian corporation incorporated in the State of Salzburg, Brunn 115, A–5330 Fuschl am See, Oesterreich, Austria.

The application states that the trade name is used on a product called Red Bull Energy Drink and Point of Sale and other promotional materials for Red Bull Energy Drink.

The merchandise is manufactured in the United States. Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Office of Regulations and Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Ronald Reagan Building, Room 3.4A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (202) 927–2330.

Dated: June 8, 2001.

Joanne Roman Stump,

Chief, Intellectual Property Rights Branch.

[FR Doc. 01–14987 Filed 6–13–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to make determinations for release of liability and substitution of entitlement of veterans-sellers to the government on guaranteed, insured and direct loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 13, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of

Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0111'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Purchaser or Owner Assuming Seller's Loan, VA Form 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6382 is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The data furnished on the form is essential to determinations for release of liability and substitution of entitlement in accordance with Title 38, U.S.C., Sections 3713(a) (release of liability) and 3702(b)(2) (substitution of entitlement).

Affected Public: Individuals or households.

Estimated Annual Burden: 2,250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: May 30, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–14950 Filed 6–13–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Advisory Committee on Women Veterans will conduct a site visit to the VA Boston Healthcare System. The site visit will be held June 25–29, 2001, from 8 a.m. until 4 p.m., at the Veterans Integrated Systems Network (VISN 1), 150 S. Huntington Avenue, Boston, MA 02130.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

All sessions will be open to the public. Those who plan to attend should contact Ms. Maryanne Carson, Department of Veterans Affairs, Center for Women Veterans, 810 Vermont Avenue, NW, Washington, DC 20420, at (202) 273–6193 before the meeting. The tentative agenda is as follows:

Monday 6/25

VISN 1 Network Briefing
Contact Person: Susan McKenzie, COO, VISN 1, 200 Springs Road, Building 61, Bedford, MA 01730 (781–687–3411)
8 a.m.—Meet Committee at hotel and travel to Bedford
9:30 a.m.—Arrive Bedford, Building 61
9:45 a.m.—Overview of network initiatives for women, facilities in the network, strategic plan
10:45 a.m.—Break
11 a.m.—Women Veterans Coordinators Council briefing
12 noon—Lunch
1 p.m.—Women Veterans Coordinators Council briefing continued
2 p.m.—Questions & Answer Period
2:30 p.m.—Break (refreshments)
2:45 p.m.—Health Services Research and Development Overview of research and current study; Katherine Skinner, Ph.D., 200 Springs Road, Bedford, MA 01730 (781–687–2866)
4 p.m.—Return to Boston

Tuesday 6/26

Jamaica Plain Campus
Contact Person: Pat Robinson, LICSW, VA Boston Healthcare System, 150 S. Huntington Avenue, Boston, MA 02130 (617–232–9500 x4120)
7:45 a.m.—Pick up at hotel
8:15 a.m.—Meeting with Director and staff. Overview of VA Boston Healthcare System
8:45 a.m.—Meet with Women's Health Council: Presentation on services for women and mission of Council
9:45 a.m.—Break
10 a.m.—Vet Center: (Tom Hannon & Jen Erbe Leggett) Update on sexual trauma counseling
10:30 a.m.—Tour Women Veterans Health Center
11 a.m.—Women's Health Sciences Division: (Lynda & Dan King) Overview of current research
12 noon—Lunch
1:30 p.m.—Persian Gulf Research
2 p.m.—Women's Stress Disorders Treatment Team: Clinical programs (Alice Clark, Ph.D.)
3 p.m.—Travel to Transitional Residence
3:30 p.m.—Tour of residence and discussion of program (Alice Clark, Ph.D.)
4:30 p.m.—Return to hotel

Wednesday 6/27

8:30 a.m.—Pick up at hotel
9 a.m.—New England Shelter for Homeless Veterans: (Tom Lyons) Tour and overview of programs
10:15 a.m.—Break
10:30 a.m.—Update on homeless program for women veterans (Lauren Dever and Meredith Powers)
11:30 a.m.—Travel to Coast Guard Station
12 noon—Lunch/meeting with State Women Veterans Network (Joan O'Connor)
2 p.m.—Travel to Veterans Benefits Administration (VBA)
2:30 p.m.—Meeting at VBA with Fay Norred, Director, and Patty Carter, Women Veterans Coordinator
4 p.m.—Travel to hotel

Thursday 6/28

Brockton Campus
Contact Person: Diane Harness-DiGloria, ANP, VA Boston Healthcare System, 940 Belmont St, Brockton, MA 02401 (508–583–4500 x1435)
8 a.m.—Pick up at hotel
9 a.m.—Arrive Brockton Women's Health Center
9:15 a.m.—Tour and meet with staff
10 a.m.—Break
10:15 a.m.—Women's inpatient psychiatric unit: Tour and meet with staff
11:45 a.m.—Lunch
1 p.m.—Substance Abuse programs
2 p.m.—Town Meeting
4 p.m.—Return to hotel

Friday, 6/29

8 a.m.—Executive Session (In hotel)
10 a.m.—Break
11:45 a.m.—Lunch
2 p.m.—Break
4 p.m.—Adjourn

Dated: June 6, 2001.

By direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

[FR Doc. 01–14949 Filed 6–13–01; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 66, No. 115
Thursday, June 14, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Size Eligibility Requirements for SBA Financial Assistance and Size Standards for Agriculture

Correction

In rule document 01–14222 beginning on page 30646 in the issue of Thursday, June 7, 2001, make the following correction:

§121.201 [Corrected]

On page 30648, in the table, a dollar sign ($) should have appeared before each number in the table's third column, as shown below:

SMALL BUSINESS SIZE STANDARD BY NAICS INDUSTRY

NAICS code	Description (N.E.C.=not elsewhere classified)	Size standard in number of employees or millions of dollars
	Sector 11—Agriculture, Forestry, and Fishing	
	Subsector 111—Crop Production	
111110	Soybean Farming	$0.75
111120	Oilseed (except Soybean) Farming	$0.75
111130	Dry Pea and Bean Farming	$0.75
111140	Wheat Farming	$0.75
111150	Corn Farming	$0.75
111160	Rice Farming	$0.75
111191	Oilseed and Grain Combination Farming	$0.75
111199	All Other Grain Farming	$0.75
111211	Potato Farming	$0.75
111219	Other Vegetable (except Potato) and Melon Farming	$0.75
111310	Orange Groves	$0.75
111320	Citrus (except Orange) Groves	$0.75
111331	Apple Orchards	$0.75
111332	Grape Vineyards	$0.75
111333	Strawberry Farming	$0.75
111334	Berry (except Strawberry) Farming	$0.75
111335	Tree Nut Farming	$0.75
111336	Fruit and Tree Nut Combination Farming	$0.75
111339	Other Noncitrus Fruit Farming	$0.75
111411	Mushroom Production	$0.75
111419	Other Food Crops Grown Under Cover	$0.75
111421	Nursery and Tree Production	$0.75
111422	Floriculture Production	$0.75
111910	Tobacco Farming	$0.75
111920	Cotton Farming	$0.75
111930	Sugarcane Farming	$0.75
111940	Hay Farming	$0.75
111991	Sugar Beet Farming	$0.75
111992	Peanut Farming	$0.75
111998	All Other Miscellaneous Crop Farming	$0.75
	Subsector 112—Animal Production	
112111	Beef Cattle Ranching and Farming	$0.75

SMALL BUSINESS SIZE STANDARD BY NAICS INDUSTRY—Continued

NAICS code	Description (N.E.C.=not elsewhere classified)	Size standard in number of employees or millions of dollars
112112	Cattle Feedlots	$1.50
112120	Dairy Cattle and Milk Production	$0.75
112210	Hog and Pig Farming	$0.75
112310	Chicken Egg Production	$9.00
112320	Broilers and Other Meat Type Chicken Production	$0.75
112330	Turkey Production	$0.75
112340	Poultry Hatcheries	$0.75
112390	Other Poultry Production	$0.75
112410	Sheep Farming	$0.75
112420	Goat Farming	$0.75
112511	Finfish Farming and Fish Hatcheries	$0.75
112512	Shellfish Farming	$0.75
112519	Other Animal Aquaculture	$0.75
112910	Apiculture	$0.75
112920	Horse and Other Equine Production	$0.75
112930	Fur-Bearing Animal and Rabbit Production	$0.75
112990	All Other Animal Production	$0.75

* * * * * * *

[FR Doc. C1–14222 Filed 6–13–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 14, 2001

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, etc.
Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, 177, and 178

[Docket No. RSPA–98–4952 (HM–223)]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

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

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to clarify the applicability of the Hazardous Materials Regulations (HMR) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. We propose to list in the HMR pre-transportation and transportation functions to which the HMR apply. Pre-transportation functions are functions performed to prepare hazardous materials for movement in commerce by persons who offer a hazardous material for transportation or cause a hazardous material to be transported. Transportation functions are functions performed as part of the actual movement of hazardous materials in commerce, including loading, unloading, and storage of hazardous materials that is incidental to their movement. We propose to clarify that ''transportation in commerce,'' for purposes of applicability of the HMR, begins when a carrier takes possession of a hazardous material and continues until the carrier delivers the package containing the hazardous material to its destination as indicated on shipping papers.

DATES: *Comments.* Submit comments by October 12, 2001. To the extent possible, we will consider comments received after this date in making our decision on a final rule.

ADDRESSES: *Written comments.* Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify Docket Number RSPA–98–4952 (HM–223) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at ''http://dms.dot.gov/'' and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at ''http://dms.dot.gov/.''

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Nancy Machado (202) 366–4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
II. Summary of Issues
III. Analysis of Comments
  A. Agency Interpretation of Authorizing Statute
  B. Bulk versus Non-Bulk Issues
  C. Preemption
  D. Pre-transportation Activities and Specification Packagings
  E. ''Transportation in Commerce''
  F. OSHA and EPA Regulations
IV. Proposal
  A. Packaging Specifications
  B. Pre-Transportation Functions
  C. Transportation that is ''in Commerce''
  D. Transportation Functions Subject to the HMR
  E. State/Local Requirements and Preemption
  F. OSHA Programs and Regulations
  G. EPA Programs and Regulations
V. Section-by-Section Review
VI. Regulatory Analyses and Notices
  A. Executive Order 12866 and DOT Regulatory Policies and Procedures
  B. Executive Order 13132
  C. Executive Order 13084
  D. Regulatory Flexibility Act
  E. Paperwork Reduction Act
  F. Regulation Identifier Number (RIN)
  G. Unfunded Mandates Reform Act
  H. Environmental Assessment

I. Background

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) are promulgated under the mandate in 49 U.S.C. 5103(b) that the Secretary of Transportation ''prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce.'' Section 5103(b)(1)(B) provides that the HMR ''shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate.'' ''Transportation'' is defined as ''the movement of property and loading, unloading, or storage incidental to the movement.'' 49 U.S.C. 5102(12). ''Commerce'' is defined as ''trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; or that affects trade or transportation between a place in a State and a place outside of the State.'' 49 U.S.C. 5102(1). Neither the statute nor the HMR defines the terms ''loading incidental to movement,'' ''unloading incidental to movement,'' or ''storage incidental to movement.'' The legislative history of the statute does not clarify this matter.

The Research and Special Programs Administration (RSPA, we) has issued a number of interpretations, inconsistency rulings, and preemption determinations in response to requests from the public for clarification regarding the meaning of ''transportation in commerce'' and whether particular activities are covered by that term and, therefore, are subject to regulation under the HMR. Loading, unloading, and storage of hazardous materials are areas of particular confusion and concern.

On July 29, 1996, we published an advance notice of proposed rulemaking (ANPRM) seeking comments on the applicability of the HMR to loading, unloading, and storage of hazardous materials (61 FR 39522). We also hosted three public meetings at which interested persons were invited to present ideas, proposals, and recommendations on the applicability of the HMR. Representatives of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and DOT's Federal Railroad Administration (FRA) participated in the public meetings. In addition to DOT, EPA, and OSHA, more than 200 interested persons participated in the public meetings. They included representatives of shippers, carriers, warehouses, state and local public safety agencies, and building and fire code safety organizations. We also received more than 70 written comments.

On April 27, 1999, we published a supplemental ANPRM (64 FR 22718), highlighting comments received in response to the 1996 ANPRM and requesting additional information. In particular, the supplemental ANPRM discussed the three approaches most commonly suggested by commenters to the 1996 ANPRM for applying the HMR to hazardous materials loading, unloading, and storage operations and asked a number of questions focused on the details of each approach. We

received more than 60 comments in response to the supplemental ANPRM.

In addition to the above referenced comments, the docket for this rulemaking also includes over 40 comments originally submitted under Docket HM–212. On March 27, 2000, we withdrew the NPRM issued under Docket HM–212 that addressed cargo tank loading and tank car unloading requirements (65 FR 16161). At the same time, we announced that tank car unloading issues would be addressed as part of Docket No. RSPA–98–4952 (HM–223) and comments submitted to Docket HM–212 would be added to this docket.

The docket for this rulemaking also includes 84 comments and docket submissions related to a request for a preemption determination applicable to certain California and Los Angeles County requirements for handling and transportation of hazardous materials (Docket Nos. PDA–9(R), PDA–7(R), PDA–10(R), and PDA–11(R); February 15, 1995; 60 FR 8773). The preemption determination addressed state and county requirements for rail car storage and unloading of hazardous materials on consignee property.

II. Summary of Issues

Federal hazardous materials transportation law (federal hazmat law), codified at 49 U.S.C. 5101 et seq., authorizes the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations apply to persons who: (1) Transport hazardous materials in commerce; (2) cause hazardous materials to be transported in commerce; or (3) manufacture, mark, maintain, recondition, repair, or test packagings or containers (or components thereof) that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A). The regulations govern any safety aspect of hazardous materials transportation that the Secretary considers appropriate. 49 U.S.C. 5103(b)(1)(B). As noted above, the law defines ''transportation'' to mean ''the movement of property and loading, unloading, or storage incidental to the movement.'' 49 U.S.C. 5102(12). Nevertheless, Congress does not define with specificity the particular activities that fall within the terms ''loading,'' ''unloading,'' and ''storage'' used in the statutory definition of ''transportation.''

It is clear that federal hazmat law directs the Secretary of Transportation to address the safety of hazardous materials transportation, that is, the actual movement of hazardous materials in commerce and the activities related to that movement that are performed by persons who transport hazardous materials in commerce. At the same time, federal hazmat law recognizes the critical safety impact of activities performed in advance of transportation by persons who cause the transportation of hazardous materials in commerce or by persons who manufacture and maintain containers that are represented or sold as qualified for use for such transportation.

In conformance with federal hazmat law, the HMR currently impose regulatory requirements on persons who: (1) Perform functions in advance of transportation to prepare hazardous materials for transportation; (2) perform transportation (i.e., movement and incidental loading, unloading, and storage) functions, or (3) manufacture or maintain containers that are represented or sold as qualified for use for transportation of hazardous materials in commerce. Functions performed in advance of transportation to prepare hazardous materials for transportation—''pre-transportation functions''—include determining the hazard class of a material, preparing a shipping paper, providing emergency response information, selecting an appropriate packaging, filling a packaging, marking and labeling a package, and placarding a transport vehicle. ''Transportation functions'' include the movement of a hazardous material by rail car, motor vehicle, aircraft, or vessel and certain aspects of loading, unloading, and storage operations that are ''incidental'' to such movement. Under the HMR, training requirements apply to persons who perform pre-transportation and transportation functions and to persons who manufacture or maintain packagings certified or sold as qualified for use in transportation in commerce.

There is confusion in the regulated community and among federal, state, and local agencies with hazardous materials safety responsibilities concerning whether and to what extent the HMR apply to particular operations and activities related to the transportation of hazardous materials in commerce. The most obvious area of confusion was identified in the 1996 and 1999 ANPRMs—which loading, unloading, and storage activities are incidental to the movement of hazardous materials in commerce and therefore subject to the HMR. In addition, there is uncertainty concerning the extent to which state and local agencies may regulate hazardous materials safety, particularly at fixed facilities where the lines between pre-transportation, transportation, and non-transportation operations are not clearly articulated. Although the interpretations and administrative determinations we have issued are publicly available, the regulated industry, government agencies, and Indian tribes have not been consistently aware of their existence and availability. Further, some of the interpretations and decisions we have issued need to be revised in light of changes in the Secretary of Transportation's and other federal agencies' statutory authority. In this rulemaking, we intend to consolidate, clarify, and revise, as necessary, these interpretations and administrative decisions and make them part of the HMR.

In developing this rulemaking, we have four goals. First, we want to maintain nationally uniform standards applicable to pre-transportation functions. Second, we want to maintain nationally uniform standards applicable to transportation functions. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities with functions subject to the HMR may also be subject to federal, state, or local regulations governing occupational safety and health or environmental protection.

To achieve these goals, in this NPRM we propose a list of specific functions to which the HMR apply and we identify the types of persons or entities responsible for compliance with the HMR. In addition, we propose to include in the HMR an indication that facilities at which functions regulated by the HMR occur may also be subject to applicable standards and regulations of other federal agencies. We also propose to include in the HMR the statutory criteria under which non-federal governments may be precluded from regulating in certain areas under the preemption provisions of federal hazmat law.

III. Analysis of Comments

The 1999 supplemental ANPRM discussed in detail the comments we received in response to our 1996 ANPRM on this issue. There was no consensus position among commenters to the 1996 ANPRM as to how the HMR should apply to hazardous materials loading, unloading, and storage operations. Commenters generally stated that activities performed in advance of transportation in commerce to prepare hazardous materials for transportation should be under the exclusive regulatory jurisdiction of the Secretary of Transportation. Commenters further stated that activities related to the

development of specifications for packagings authorized for transportation of hazardous materials, including all testing, retesting, reconditioning, and reuse requirements, should be subject to the Secretary's exclusive regulatory jurisdiction. Similarly, commenters generally stated that the Secretary of Transportation should have exclusive regulatory jurisdiction over the movement of hazardous materials in commerce. However, there was no consensus from commenters as to which loading, unloading, and storage activities are incidental to the movement of hazardous materials in commerce and, therefore, subject to regulation under federal hazmat law and the HMR.

Commenters to the 1996 ANRPM generally supported one of three different approaches for defining the transportation functions that fall under the HMR. Many commenters representing hazardous materials manufacturers, shippers, and transporters suggested that ''transportation in commerce'' begins with an intent to ship a hazardous material and that transportation functions subject to HMR requirements should therefore include all activities related to the handling and storage of such a hazardous material. Other commenters, primarily representing state and local government environmental protection agencies, suggested that ''transportation in commerce'' does not begin until a hazardous material is moving on public roads or rights-of-way and that only activities involving such movement should be subject to the requirements in the HMR. Still other commenters, representing a mix of industry, labor, and state governments, suggested that ''transportation in commerce'' begins when a carrier accepts a hazardous material for transportation and that transportation functions subject to HMR requirements should thus include only carrier activities related to transportation of the hazardous material.

Most commenters to the 1999 supplemental ANPRM offer amplifications and clarifications of positions and recommendations submitted in response to the 1996 ANPRM. As with the comments to the 1996 ANPRM, commenters emphasize that the HMR should apply to functions performed in advance of transportation in commerce to prepare a hazardous material for transportation. However, commenters have fundamental disagreements as to the specific activities that fall under the term ''transportation in commerce'' and whether and to what extent the HMR should apply to specific activities.

A. Agency Interpretation of Authorizing Statute

Several commenters assert that ''DOT cannot administratively determine its own jurisdiction. Jurisdiction, for scope of the regulations, is determined by Congress, not the agency * * *'' (FMC Corporation) These commenters suggest that ''each Federal agency's jurisdiction is determined based upon the intent of Congress when it passes statutes for that agency to implement. It seems to be unusual for a Federal agency to seek input from the general public about what its jurisdiction should be * * *'' (HM–223 Working Group, an *ad hoc* organization representing a number of hazardous materials shippers and carriers) For these commenters, the definition set forth in the law is sufficient to determine the extent of the Secretary of Transportation's jurisdiction over hazardous materials transportation. ''The law makes abundantly clear that DOT's jurisdiction applies to loading, unloading, and storage incidental to transportation activities.'' (HM–223 Working Group)

Courts have recognized that where a definitional issue is not squarely addressed by the plain words of a statute or its legislative history, the agency administering the statute may exercise its judgment as to the best means of carrying out the act. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S. Ct. 2778 (1984). See also *Morton V. Ruiz,* 415 U.S. 199, 231 (1974) (''The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill in any gap left, implicitly or explicitly, by Congress.''). Courts give considerable weight to executive department construction of a statutory scheme it is entrusted to administer—unless the construction is directly contrary to clear congressional intent. *Chevron* at 843, 844. See also *INS* v. *Jong Ha Wang,* 450 U.S. 139 (1981).

In ascertaining the best means of carrying out its statutory authority, it is not unusual for an agency to use the rulemaking process to solicit ideas from the public. In fact, the Court in *Chevron* recognized that an agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. *Chevron* at 863, 864. Congress gave the Secretary authority to apply the HMR to the safety aspects of hazardous materials transportation the Secretary considers appropriate. 49 U.S.C. 5103(b)(1)(B). Through this rulemaking, we are asking for public input regarding the wisdom of extending, narrowing, or simply clarifying where the HMR apply.

In this instance, federal hazmat law defines transportation as the ''movement of property and loading, unloading, or storage incidental to the movement.'' Neither the statute nor its legislative history define which loading, unloading or storage activities or functions are ''incidental'' to the movement of hazardous materials in commerce. Consequently, as discussed earlier, RSPA has issued numerous interpretations, inconsistency rulings, and preemption determinations in response to public requests for clarification regarding the meaning of ''transportation in commerce'' and whether particular activities are covered by that term and, as such, covered by the HMR. The lack of clarity in RSPA's statute and the HMR regarding this issue, as well as changes in the Secretary of Transportation's and other federal agencies' statutory authorities, make it necessary for RSPA to reevaluate and codify its position regarding which loading, unloading, and storage activities and functions fall within the term ''transportation'' as set forth in federal hazmat law.

B. Bulk Versus Non-Bulk Issues

Several commenters recommend that we focus this rulemaking on bulk transportation issues only. ''We strongly encourage the agency to separate bulk handling questions in this rulemaking from those involving the handling of non-bulk and intermediate bulk packages * * * [I]t is our view that the vast majority of interest shown by nonfederal and other federal agencies has been in the handling of bulk loads, primarily in temporary storage and during unloading of tank cars and cargo tanks. Here is where the greater risk is perceived * * * In addition * * * here is where the DOT requirements are perceived as lacking sufficient detail.'' (The Conference on Safe Transportation of Hazardous Articles, Inc.) Another commenter states, ''During the 1996 meetings and comments, virtually all concerns expressed by non-federal and other federal agencies focused on bulk transportation, and almost all of this concern was concentrated on the highway and rail modes * * * [W]e recommend that DOT take a phased approach and, in its initial decisions regarding this docket, address only bulk transport by rail and highway.'' (FMC Corporation)

While it is true that the initial ANPRM published in 1996 was

prompted primarily by concerns related to loading, unloading, and storage of hazardous materials in rail tank cars and, to a lesser extent, cargo tanks, we do not agree that this rulemaking should be limited to issues related to bulk transportation of hazardous materials. Our goal is to articulate a statement of the applicability of the HMR that will apply across all modes of transportation and to all types of packagings. The answer to the question of when the regulation of transportation under the HMR begins and ends should be the same for all hazardous materials shipments.

C. Preemption

Congress enacted the Hazardous Materials Transportation Act (HMTA) in 1975 to give the Secretary of Transportation greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.'' A statutory provision for federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). More recently, a Federal Court of Appeals found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

The 1990 amendments to the HMTA codified the ''dual compliance'' and ''obstacle'' criteria that RSPA applied in issuing inconsistency rulings before 1990. As now set forth in 49 U.S.C. 5125(a), these criteria provide that, in the absence of a waiver of preemption by the Secretary under 49 U.S.C. 5125(e) or unless it is authorized by another federal law, a requirement of a state, political subdivision of a state, or Indian tribe is explicitly preempted if:

(1) Complying with a requirement of the state, political subdivision or Indian tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the state, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

In the 1990 amendments to the HMTA, Congress also added additional preemption provisions on certain ''covered subject'' areas and with regard to fees imposed by a state, political subdivision, or Indian tribe on the transportation of hazardous material. The covered subject areas are:

(a) The designation, description, and classification of hazardous material.

(b) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(c) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(d) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(e) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material. 49 U.S.C. 5125(b).

Unless it is authorized by another federal law or a waiver of preemption from the Secretary of Transportation, a non-federal requirement in any of these areas is preempted when it is not ''substantively the same'' as federal hazmat law or a regulation issued under it. 49 U.S.C. 5125(b)(1). RSPA has defined ''substantively the same'' to mean ''conforms in every significant respect to the federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).

Industry commenters to the two ANPRMs published under this docket state that ''national uniformity of hazardous materials regulations is critical'' (American Forest and Paper Association) and support a broad application of the federal hazmat law's preemption provisions. ''DOT should continue to preempt non-federal requirements when they frustrate the safe and efficient transportation of hazardous materials.'' (Association of Waste Hazardous Materials Transporters) ''DOT is the only agency with a legislative mandate to be the preeminent authority [for all transportation activities that impact the safe movement of hazardous materials]. This mandate must guarantee that the safe transportation of hazardous materials will take place without being encumbered by any local, state, or federal regulations that would interfere with such transportation.'' (CF Industries) Further, DOT should ''[d]evelop instructive guidelines on preemption that track the functions of a hazmat employee. DOT is the only agency with Federal preemption authority over state and local regulations and without it, shippers and carriers alike would be required to comply with many differing and often conflicting state and local regulations that would cause confusing and burdensome regulatory schemes.'' (FMC Corporation) Indeed, ''DOT's failure to assert jurisdiction [with regard to loading and unloading of bulk containers] invite[s] state and local agencies to promulgate their own regulations for the loading, unloading, and incidental activities related to the transportation of hazardous materials in contravention of the statutory preemption provisions of [federal hazmat law] * * * Such an invitation is contrary to the goal of providing uniform national regulations for the safe and efficient transportation of hazardous materials.'' (National Paint and Coatings Association)

State and local government agency commenters to the two ANPRMs have a different view of the preemption provisions of federal hazmat law. Several of these commenters believe that ''it is imperative that the HMR not preempt * * * necessary [state or local] regulations, rather the HMR should establish a minimum standard.'' (New Jersey Department of Environmental Protection) Other commenters suggest that ''it is important to distinguish between state standards that are *an obstacle to compliance with HMR* and state standards that *fill gaps in HMR without being an obstacle to compliance.*'' (California Department of Toxic Substances Control) Moreover, ''the HMR should at the very least defer to state and local control. RSPA should respect the rights of local control. Furthermore, this local control should not be subject to preemption petitions. Local citizens mandate the involvement of state and local regulatory agencies.'' (Maine Department of Environmental Protection) ''DOT should not preempt federal, state, or local authorities unless it is clearly authorized to do so and provides for protections at least as stringent as those deemed necessary by federal, state, and local authorities * * * [G]reat deference should be shown to other federal, state, and local authorities by DOT, especially regarding measures designed to protect health, safety, and the environment. Finally, even where preemption is clearly called for and authorized, we would urge that other authorities be allowed to address special, unique local circumstances and conditions.'' (Northeast Waste Management Officials' Association)

As we have stated, one of the goals of this rulemaking is to assure nationally uniform standards applicable to

functions related to preparation for and the actual movement of hazardous materials in commerce. We agree with industry commenters that the preemption provisions of federal hazmat law are critical to achievement of this goal. However, we also agree with state and local government commenters that state and local governments have a legitimate role in the regulation of hazardous materials at fixed facilities and that this role should be accommodated to the extent possible within the context of a nationally uniform hazardous materials transportation safety regulatory program.

D. Pre-Transportation Activities and Specification Packagings

Most commenters to both the 1996 and the 1999 ANPRMs state that activities performed in advance of transportation to prepare a shipment of hazardous materials for transportation in commerce should be subject to exclusive federal regulation under the HMR. Such activities include determining the hazard class of a material, preparing shipping papers, selecting appropriate packaging, marking and labeling the package, and placarding the transport vehicle. Similarly, commenters state that activities related to the specifications for packagings authorized for transportation of hazardous materials in commerce, including all testing, retesting, reconditioning, and reuse requirements, should be subject exclusively to the HMR.

E. ''Transportation in Commerce''

Commenters to the supplemental ANPRM generally indicate that the major issue for this rulemaking is how the term ''transportation in commerce'' is applied for purposes of regulation under the HMR. Thus, commenters addressed questions related to this definition in considerable detail.

Offeror intent. Commenters who support a broad application of the term ''transportation in commerce'' to include all activities related to the handling and storage of a hazardous material that is intended for shipment generally state that such a broad application is necessary to assure national uniformity of regulations applicable to the transportation of hazardous materials. One commenter states that, absent national uniformity, ''shippers and carriers would be required to comply with a myriad of different and often conflicting state and local regulations that would substantially burden the free flow of goods in * * * commerce, and cause potentially conflicting and confusing regulatory schemes.'' (HM–223 Working Group) Another suggests that ''[a]llowing multiple agencies to regulate various aspects of hazmat transportation (a) unduly burdens interstate commerce, (b) increases the risk to public safety, (c) increases costs to transporters, shippers, consignees, and ultimately consumers, and (d) creates excessive administrative burdens.'' (American Trucking Associations)

For these commenters, transportation in commerce is a continuum that begins with an intention to ship a hazardous material and ends when that hazardous material is unloaded at its ultimate destination. Included on this continuum are all activities related to preparation of the hazardous material for shipment; loading of the hazardous material into a packaging or container authorized for transportation by the HMR; storage of the package at the offeror's facility prior to its acceptance by a carrier; intra-facility movements of the package; movement of the package by rail car, motor vehicle, aircraft, or vessel to its ultimate destination; storage of the package at any point prior to its delivery; storage of the package at the facility that is its ultimate destination; intra-facility movements of the package at its ultimate destination; and unloading of the hazardous material at its ultimate destination.

To assure national uniformity, these commenters believe that all of the above activities should be under the exclusive regulatory authority of the HMR. We disagree. This approach significantly expands the scope of the HMR as currently applied to activities that arguably are not part of ''transportation'' as that term is commonly understood. Specifically, some activities to which these commenters suggest that the HMR should apply are neither pre-transportation activities performed to prepare hazardous materials for transportation in commerce nor transportation activities that involve the actual movement of hazardous materials in commerce. For example, storage of a hazardous material at an offeror facility is not a pre-transportation activity conducted to prepare the hazardous material for transportation in commerce. Similarly, storage of a hazardous material at a consignee facility after delivery by a carrier but before the hazardous material is removed from a package is not movement of that material in commerce since movement in commerce is complete.

If we apply the HMR broadly as suggested by some commenters, this ''offeror intent'' approach would have the effect of limiting and, perhaps, precluding regulation of hazardous materials at fixed facilities by state and local governments and could affect other federal programs, as well. Federal, state, and local programs for environmental protection, worker protection, community right-to-know, fire protection, building codes, and zoning could be adversely affected by extending the Secretary of Transportation's regulatory authority to an expanded set of hazardous materials activities at fixed facilities. For example, one commenter opposed to this approach suggests that, if implemented, ''this option would essentially remove all hazardous waste storage and generator facilities from having to comply with [Resource Conservation and Recovery Act] storage and accumulation requirements, allowing unlimited storage in areas [that] might not have secondary containment or other release controls, simply because the hazardous waste is packaged in preparation for shipment at some future date.'' (Arkansas Department of Environmental Quality)

Further, the ''offeror intent'' approach to clarifying the term ''transportation in commerce'' could result in a regulatory regime that would be very difficult both to comply with and enforce. Commenters who support the ''offeror intent'' approach state that ''intent is a legal standard. While evidence of intent may not be established by direct proof, it can be inferred from facts and circumstances.'' (Association of Waste Hazardous Materials Transporters) Commenters suggest several possible indicia of ''intent'' for compliance and enforcement purposes—placing a hazardous material in an authorized packaging or container, preparing shipping papers, affixing labels to packages, or statements by the offeror. One commenter states that ''[t]he combination of packaging marking and labeling/placarding is a clear indication that the hazardous material is intended for transportation. There would be no reason to go through this step if the product is not intended to be transported. The expense associated with selection of a specification [packaging] is typically greater than non-specification packaging. Materials, not intended for transportation, would not [be placed in] specification packaging for intra-plant transfers.'' (Farmland) We do not agree.

An approach to compliance and enforcement that offers no clear standards either for regulated entities or enforcement officials would be highly subjective and would require a case-by-case analysis in almost every instance to

determine if a particular hazardous materials package was intended for transportation in commerce and, thus, subject to the requirements of the HMR. For example, as one commenter states, storing a hazardous material ''in a DOT approved container does not always signify intent to transport. Often a 55-gallon drum is an ideal accumulation container for material [that] may or may not be intended for transportation.'' (Pennsylvania Department of Environmental Protection) Another commenter notes that ''[m]any facilities accumulate hazardous materials in 'DOT approved' containers, but do not intend to 'offer it for transportation' at that time. Additionally, facilities receive hazardous materials in DOT approved packaging.'' (Arkansas Department of Environmental Quality) Further, ''a facility may decide to use DOT specification packaging to protect employees and patients when moving waste from healthcare treatment rooms to on-site storage areas even if disposing of the waste on-site. In addition, a facility may use DOT specification packaging to fulfill the requirements in OSHA's Bloodborne Pathogens Standard in a cost-effective manner regardless of transport.'' (Medical Waste Institute) Using a properly labeled and marked container also assures compliance with OSHA's hazard communication regulations, which require consignees to retain the labels and placards required by the HMR on packages until they have been emptied.

Similarly, preparation of shipping papers does not always indicate an imminent intent to transport a hazardous material in commerce. Shipping papers may be prepared well in advance of package preparation or, in the case of multiple shipments of the same material, a single permanent shipping paper may be used for a number of shipments. In the case of hazardous waste shipments, hazardous waste generators may ''complete a hazardous waste manifest (hazardous materials shipping paper) days or weeks prior to a prearranged site pick-up * * * some times without even contacting the transporter.'' (New Jersey Department of Environmental Protection)

We do not believe that it is possible to develop an enforceable means of determining the applicability of the HMR to a given shipment based solely on ''intent.'' As a commenter notes, basing this determination on an offeror's intent for the package could result in the following enforcement scenario:

(a) If hazardous materials are on a transportation vehicle at a loading dock, but fail to have proper USDOT marking, then the offeror can allege to a USDOT inspector that the materials are not intended for transportation and are not subject to HMR. Although this may subject the offeror to requirements of local or state government, the USDOT inspector is not empowered to enforce those requirements * * *

(b) Likewise if the inspector was a local or state government agency inspecting for [hazardous waste compliance] then the offeror can allege the materials are intended for transportation and are not subject to local or state government regulations. (New Jersey Department of Environmental Protection)

It is true that a person's statement with respect to his intent to offer a package for transportation that contradicts all other facts and circumstances related to that shipment need not frustrate enforcement efforts. For example, if a shipper denies that a shipment sitting on a loading dock with shipping documentation is in fact intended for transportation, an enforcement official is free to consider that statement in combination with other facts and circumstances in determining appropriate enforcement action. However, basing the applicability of the HMR solely on a determination of a shipper's intent would generally result in a regulatory regime that would be confusing for both the regulated industry and federal and state enforcement personnel.

For the reasons outlined above, we do not agree with commenters who suggest that offeror intent should be the determining factor for applicability of the HMR. The ''intent'' approach is inconsistent with federal statutes that provide OSHA with broad authority to protect workers from the risks associated with hazardous materials at fixed facilities. OSHA's authorizing legislation generally prohibits OSHA from imposing regulations where other federal agencies exercise statutory authority to issue or enforce regulations applicable to worker safety. Expanding the scope of the term ''transportation in commerce'' and, thus, the applicability of the HMR, to include activities such as storage at offeror or consignee facilities could hinder OSHA in exercising its statutorily granted authority with respect to such activities. A broad interpretation of ''transportation in commerce'' might also adversely affect several EPA programs. (See ''OSHA and EPA Regulations,'' ''OSHA Programs and Regulations,'' and ''EPA Programs and Regulations'' below for a more detailed discussion of EPA and OSHA statutory authorities and regulatory programs.)

Further, the ''intent'' approach limits the ability of state and local governments to develop community-based solutions to issues such as zoning and community right-to-know. Strong preemption authority under federal hazmat law requires DOT to preempt many state and local laws and regulations concerning hazardous materials transportation that are not the same as the federal requirements. Expanding the scope of the term ''transportation in commerce'' to include the activities proposed by commenters who advocate the ''intent'' approach would extend the applicability of the HMR and, consequently, federal hazmat law's preemption provisions to areas traditionally regulated by state and local governments. (See ''State/Local Requirements and Preemption'' below for a more detailed discussion of the preemption provisions in federal hazmat law.)

Movement on public rights-of-way. Most commenters from state and local government agencies with responsibility for environmental protection support a narrow application of the term ''transportation in commerce.'' In their view, transportation in commerce begins when a transportation vehicle physically leaves an offeror's place of business. As one commenter states, ''49 U.S.C. 5102(12) defines transportation as the 'movement of property * * *' not the selection of packaging materials, etc. 'Movement of property' constituting transportation does not occur until the property is on a transport vehicle. DOT regulations should not apply until 'movement' begins on a public right-of-way, railroad or water or air route.'' (Pennsylvania Department of Environmental Protection)

Under this approach, transportation in commerce would begin when a shipment exits an offeror facility and enters a public right-of-way and ends when the shipment exits the public right-of-way at a facility that may or may not be the destination indicated on shipping documentation. Loading of a hazardous material onto a transport vehicle or into a bulk packaging, unloading of a hazardous material from a transport vehicle or a bulk packaging, storage of a hazardous material at an offeror facility, and storage of a hazardous material at a consignee facility would not fall within the scope of the term ''transportation in commerce'' and, thus, would not be subject to the HMR. Commenters who support this approach are concerned that the scope of the HMR not be so broad as to preempt ''any state, county, or city [hazardous materials] storage requirement * * * This includes secondary containment, transfer equipment, operation of transfer

equipment, storm water systems, storage of incompatible chemicals and site operating procedures that would protect public health and safety and the environment.'' (Washington State Department of Ecology)

This approach provides a clear dividing line for determining when a hazardous material is in transportation in commerce and subject to the HMR and when such materials are out of transportation and potentially subject to regulations of EPA, OSHA, or state and local governments. Thus, this approach enhances both compliance and enforcement. Further, this approach provides communities with wide latitude to develop community- or site-specific solutions to threats to safety posed by hazardous materials. In the words of one commenter, this approach ''respects the rights of states and local governments to maintain their own regulatory programs, designed to fit their own needs and priorities. These programs cover a broad range of issues, such as emergency planning, fire protection, building codes, and hazardous materials handling safeguards.'' (Maine Department of Environmental Protection)

However, the flexibility this approach provides to state and local governments also has the potential to compromise safety by undermining the national uniformity of the HMR. By narrowly applying the term ''transportation in commerce'' to exclude carrier loading and unloading operations, for example, this approach permits state and local governments to regulate such operations and, thus, could subject hazardous materials carriers to a number of different requirements as they transport hazardous materials from community to community or from state to state. Such an outcome would defeat one of the chief purposes of federal hazmat law, the HMR, and this rulemaking—that is, promotion of a national, uniform set of standards that apply to the transportation of hazardous materials in commerce. As one commenter notes, ''The principle of regulatory uniformity has been the basis for the safe, efficient transportation of hazardous materials since the Hazardous Materials Transportation Act * * * was enacted in 1975. Only DOT has been specifically directed by Congress to provide 'greater uniformity' in the regulation of hazardous materials while in transportation in order to promote 'the public health, welfare, and safety.' * * * The underlying principle of [federal hazmat law] is that regulatory uniformity facilitates compliance and enhances safety, particularly as the law relates to non-federal requirements. [Federal hazmat law] is not structured as other environmental or worker safety laws that set minimum standards that can be exceeded by non-federal entities.'' (Association of Waste Hazardous Materials Transporters)

Further, this approach, like the offeror intent approach discussed above, is not consistent with federal hazmat law. Under this option, all loading and unloading operations would be excluded from regulation under the HMR. However, in defining ''transportation'' as ''the movement of property and loading, unloading, and storage incidental to the movement,'' the law clearly intends the Secretary of Transportation's jurisdiction over hazardous materials in transportation to include those loading, unloading, and storage operations that are part of the transportation process.

Carrier possession. Some commenters advocate an approach to defining transportation in commerce that is keyed to a carrier's possession of hazardous materials for purposes of transporting it. '' 'Transportation' * * * occurs when a carrier (that is, the entity used or engaged for the purpose of transport) has control over activities in which the hazardous material is handled, regardless of mode of transportation or location of the activity being performed.'' (American Forest and Paper Association) Under this approach, ''transportation in commerce'' begins when a carrier accepts and exercises control over a hazardous material for purposes of transporting it and ends when the carrier relinquishes control of the shipment. ''Transportation in commerce'' would include hazardous materials loading and unloading operations when performed by a carrier and temporary storage of a hazardous material while in the care, custody, and control of a carrier. ''Care, custody, and control'' would be defined as ''having the hazardous materials physically on or in a transport vehicle * * * [I]n the instances where a * * * carrier controls the loading and/or unloading operations, the * * * carrier should be held responsible for the process * * *'' (American Trucking Associations)

This approach provides a definitive line for determining the applicability of the HMR. Hazardous materials in the care, custody, and control of a carrier, when acting as such, for purposes of transportation would be clearly in transportation in commerce and subject to the HMR. Hazardous materials at offeror or consignee facilities clearly would not be in transportation in commerce and subject to applicable state and local government requirements for storing and handling hazardous materials at fixed facilities.

Further, keying ''transportation in commerce'' to carrier custody and control of a hazardous material provides hazardous materials carriers with a nationally uniform transportation safety standard. The HMR would apply to the transportation operations of hazardous material carriers. States and local governments could not impose requirements on these carriers that conflicted with or were inconsistent with the HMR.

At the same time, this approach accommodates state and local government regulation of hazardous materials at fixed facilities within their jurisdictions. Issues related to fire protection, emergency preparedness, community right-to-know, zoning, and building codes, for example, could be handled by state and local government agencies in the best position to evaluate problems and develop community-based solutions. ''State and local laws and ordinances are usually tailored to meet localized concerns, conditions, and appetencies [that] cannot be addressed effectively by substituting a one-size-fits-all preemptive regulation.'' (Arkansas Department of Environmental Quality)

Finally, this approach is consistent with the definition of ''transportation'' contained in federal hazmat law—''the movement of property and loading, unloading, and storage incidental to the movement.'' Movement of property necessarily involves a carrier. Elsewhere, as one commenter notes, Congress stated, ''The phrase 'services in connection with' as used in the definition of transportation * * * has been uniformly construed to mean services rendered while [a] shipment is in custody and control of [a] carrier, or service [that a] carrier is legally obligated to perform (49 USCS 10102, n 6).'' (American Forest and Paper Association)

F. OSHA and EPA Regulations

On December 29, 1970, Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) for the purpose of assuring safe and healthy workplaces. Under the OSH Act, every employer engaged in a business affecting commerce has a general duty to furnish each of its employees a workplace free from recognized hazards causing, or likely to cause, death or serious physical harm. In addition, employers are required to comply with all safety and health standards issued under the OSH Act that are applicable to working conditions involved in their businesses.

OSHA has promulgated a number of regulations that address the handling of hazardous materials at fixed facilities. These include regulations governing process safety management of highly hazardous chemicals and requirements for handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA regulations also address hazard communication requirements at fixed facilities, including container labeling and other forms of warning, material safety data sheets, and employee training. In addition, facilities that handle and store hazardous materials must comply with OSHA regulations that address more general types of workplace hazards, such as walking and working surfaces, means of egress, noise, air quality, environmental control, personal protective equipment, and fire protection.

The mission of the U.S. Environmental Protection Agency is to protect human health and the natural environment from pollution. More than a dozen major statutes or laws form the legal basis for EPA's programs. Several of these statutes establish programs covering facilities that handle hazardous materials. They include:

• The Emergency Planning and Community Right-to-Know Act (EPCRA; 42 U.S.C. 11011 *et seq.*) requires facilities to provide information concerning the hazardous materials they have on site to states, local planners, fire departments, and, through them, to the public. This information provides the foundation for both community emergency response plans and public-industry dialogues on risks and risk reduction. EPCRA also requires facilities to report releases of certain hazardous materials to state and local emergency responders.

• The Clean Air Act (42 U.S.C. 7401 *et seq.*) establishes a general duty for facility owners or operators to identify hazards that may result from accidental releases of extremely hazardous substances, design and maintain a safe facility as needed to prevent such releases, and minimize the consequences of releases that do occur. EPA has promulgated a list of substances that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health or the environment. EPA also has established a threshold quantity for each listed chemical. Stationary sources that have more than a threshold quantity of a regulated substance in a process are subject to the accident prevention regulations promulgated by EPA, including the requirement to develop risk management plans.

• The Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 321 *et seq.*) gave EPA the authority to control hazardous waste from ''cradle to grave.'' This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA requires hazardous waste transportation regulations to be consistent with transportation regulations issued under federal hazmat law.

• The Clean Water Act (33 U.S.C. 1251 *et seq.*) establishes authority for the Spill Prevention, Control, and Countermeasure (SPCC) program for non-transportation-related facilities. The SPCC regulations are designed to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or onto the navigable waters of the United States or adjoining shorelines.

Commenters to the 1996 and 1999 ANPRMs have varied opinions as to the appropriate relationships between the HMR and the OSHA regulations and the HMR and EPA regulations. Commenters generally state that ''workers need to be protected from harm in the workplace and that OSHA is the lead agency for workplace safety.'' (American Trucking Associations) In addition, commenters generally recognize the ''importance of protecting against degradation of air, water, and land (the 'total environment') * * * as it relates to the public's well-being (i.e., beyond the fenceline).'' (American Forest and Paper Association) Commenters further state that ''[a]ll affected agencies should share a common goal to avoid duplicative or inconsistent rules that are often the consequence of competing jurisdictional authority.'' (Association of Waste Hazardous Materials Transporters) However, commenters do not agree on how this goal can be achieved.

Most commenters accept a degree of shared RSPA–OSHA–EPA jurisdiction where hazardous materials safety is concerned because ''[t]ransportation of hazardous materials affects and is affected by regulations of other Federal agencies addressing worker safety and environmental protection.'' (Utility Solid Waste Activities Group) RSPA and OSHA may share regulatory responsibility for certain activities involving hazardous materials because ''[o]ther regulations, not in conflict with the HMR may enhance safety of the workers, and general public.'' (Farmland) Thus, ''[w]hen a consignor designates a material as 'hazardous' and classifies it according to the HMR, no other government agency should be allowed to alter the class or name as a condition for transport. However, other aspects of the material's environment can be regulated by other government agencies.'' (Association of Waste Hazardous Materials Transporters) Similarly, ''storage of non-bulk packages in warehouses on the plant site are subject to applicable fire and building code standards, OSHA and EPA requirements, and applicable state and local requirements (although clearly the package itself would remain subject to the HMR). Operational standards for use of mechanical package handling equipment should be prescribed by agencies other than DOT, though those agencies should consult with DOT when developing those standards. Workers who handle packages after filling on the chemical plant site are subject primarily to OSHA worker safety standards, but also to DOT standards, such as training requirements and attendance requirements.'' (HM–223 Working Group) In addition, ''storage at an interim transfer facility [is] transportation-related and subject to RSPA packaging standards, [but] the fixed facility itself should not be subject to the HMR, as standards of other agencies * * * adequately cover this.'' (California Department of Toxic Substances Control) Further, ''[f]ire codes, zoning laws, right-to-know, and risk management requirements should apply to storage of hazardous materials. However, such shipments must remain under DOT's jurisdiction.'' (E.I Dupont de Nemours and Company) Another commenter declares, ''Federal, state, and local agencies must be allowed to fulfill their administrative functions in protecting human health, safety, and the environment * * * Altogether, these requirements create safer environments and more effective responses to discharges.'' (New Jersey Department of Environmental Protection) Where OSHA and EPA have established comprehensive regulatory programs, such as OSHA's process safety management program and EPA's risk management program for manufacturing processes, ''[a]dditional requirements under the HMR for * * * manufacturing processes would be burdensome and create confusion by the overlapping of jurisdictional boundaries that are specifically identified by the preeminent authorities as delineated for each government agency.'' (PCS Nitrogen)

The relationship of the HMR to the OSHA worker protection regulations is complicated by a provision in federal

hazmat law that expressly gives OSHA shared jurisdiction with the Secretary of Transportation in four specific areas: training, handling criteria, registration, and motor carrier safety permits. 49 U.S.C. 5107(f)(2). Several commenters believe that this broadening of OSHA's jurisdiction to non-training areas of hazardous materials transportation safety resulted from a drafting error that occurred when Congress enacted the Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101–615 (HMTUSA) and was perpetuated when HMTUSA subsequently was codified at 49 U.S.C. 5101–5127. As one commenter states, ''[w]hile there was general agreement in 1990 to grant shared jurisdiction for training with OSHA, it was never intended for DOT to relinquish its authority in any of the affected areas nor to have shared jurisdiction in any area besides training. Therefore, before RSPA can answer the question, in rulemaking, where jurisdictional lines should be drawn, Congress should amend section 5107 to reflect its original intent.'' (American Trucking Associations) Another commenter asserts that those who wrote the 1990 law that allows this shared jurisdiction agree that the broad grant of authority is the result of a typographical error. ''At the federal level, there is a presumption that Congress enacts law with full knowledge of existing law. However, that is not always the case and unintended consequences can result. Those who wrote the 1990 provision of law, now codified at 49 U.S.C. 5107(f)(2), which allows OSHA to share jurisdiction with DOT over hazmat worker training, hazardous materials handling criteria, permitting of motor carriers of hazardous materials, and the registration of persons engaged in the transportation of these materials, have stated this broad grant of authority was the result of a typographical error and that Congress only intended to affirm OSHA shared jurisdiction in the area of hazmat worker training. Others may wish history to be otherwise, but it is not.'' (Association of Waste Hazardous Materials Transporters)

On the other hand, several commenters see no sound reason for changing the joint authority in section 5107 by eliminating, altering, or confusing the current regulatory scheme. ''The law is clear in its determination of joint responsibility for the training of hazmat employees * * * We believe the issue was contemplated when Congress crafted the law and intended there be joint responsibility to ensure hazmat employers provided the necessary training to provide maximum coverage for the employee's protection.'' (Brotherhood of Locomotive Engineers) Some commenters believe that a line of separation to delineate activities and/or facilities over which the HMR should apply to the exclusion of OSHA requirements could adversely affect worker safety. ''[I]t is inevitable that confusion or degradation of existing requirements could arise if shared jurisdictions are changed. The training perspective offered by OSHA and its associated requirements for personal protective equipment; monitoring; medical surveillance; evacuation for hazmat employees; and hazard communication must be uniformly administered to all elements of industry. In the haste to eliminate regulatory overlaps among regulatory agencies it must not be forgotten that OSHA requirements place an emphasis on employee safety and that focus should not be diluted to promote more efficient and effective compliance with safety standards.'' (Brotherhood of Locomotive Engineers) Another commenter agrees and states, ''[w]ith respect to the relationship between RSPA and OSHA regulation, [we] particularly [draw] to RSPA's attention the provision at section 5107(f)(2) of Title 49 of the U.S. Code. That section expressly provides that regulation by the Secretary of Transportation with respect to hazmat handling, training, permitting, and other activities does not oust OSHA from concurrent jurisdiction over those subjects.'' (International Brotherhood of Teamsters)

Based on their respective statutory authorities, both DOT and OSHA regulate hazardous materials. Prior to 1990, to the extent that DOT's regulation of hazardous materials and OSHA's regulation of hazardous materials overlapped, DOT's regulations took precedence. Section 4(b)(1) of the OSH Act provides that nothing in that Act applies to working conditions of employees where other federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. 29 U.S.C. 653(b)(1). Consequently, where DOT exercised its authority to prescribe or enforce standards or regulations affecting occupational safety or health in a particular area, OSHA was precluded from regulating in that same area, without exception.

In 1990, Congress enacted HMTUSA. Among other things, HMTUSA limited the preemptive effect of the HMR on OSHA regulations in certain specified areas. Specifically, section 1805 of the Act was amended to read as follows:

> For purposes of section 653(b)(1) of title 29, no action taken by the Secretary [of Transportation] *pursuant to this section* shall be deemed to be an exercise of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. 49 U.S.C. App. 1805(b)(3). (Emphasis added.)

This is the so-called ''reverse 4(b)(1)'' provision.

The words ''pursuant to this section,'' found in section 1805(b)(3) referred to the entirety of § 1805, entitled ''Handling,'' and not solely to subsection 1805(b)(3), which pertained to training. Proponents who believe this is a drafting error contend that Congress intended to use the word ''subsection'' instead of ''section'' in section 1805(b)(3). They argue that the references back to highway safety permits and registration make no sense and demonstrate their point.

The 1994 codification of federal hazmat law, however, reinforced the interpretation that the words ''pursuant to this section'' referred to former section 1805 in its entirety. The purpose of this action was to ''clean-up'' several related federal transportation laws, ''restating'' them in a format and language intended to be easier to understand without changing substantive content.

The ''reverse 4(b)(1)'' provision was codified at 49 U.S.C. section 5107(f)(2). The language was revised to read as follows:

> An action of the Secretary of Transportation under subsections (a)–(d) of this section and sections 5106, 5108(c)–(g)(1) and (h), and 5109 of this title is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

49 U.S.C. section 5107(f)(2).

Section 5107(f)(2) indicates that RSPA's exercise of authority under section 5106 (''Handling Criteria'') of federal hazmat law, as well as under other specified sections, does not constitute an exercise of authority under section 4(b)(1) of the OSH Act that would result in preemption of OSHA regulations. Those other specified areas are: (1) registration under 49 U.S.C. section 5108(c)–(g)(1) and (h); (2) motor carrier safety permits under 49 U.S.C. section 5109; and (3) hazmat employee training requirements under 49 U.S.C. section 5107(a)–(d). Consequently, the plain language of section 5107(f)(2) nullifies the HMR's preemptive effect on OSHA regulations in the specified areas. The legislative history of federal hazmat law sheds no light on whether the 1990 extension of OSHA authority was

intentional. In these circumstances, RSPA is bound by the literal language of section 5107(f)(2).

EPA is also authorized to regulate hazardous materials, and its statutes do not expressly preclude EPA from regulating hazardous materials activities regulated by RSPA, although EPCRA does exempt ''transportation, including the storage incident to such transportation'' from many of its requirements. While most of EPA's programs focus on fixed facilities, EPA also regulates transportation of hazardous wastes under RCRA, as noted above. Moreover, loading, unloading, and storage of hazardous materials generally occur at fixed facilities. Recognizing the potential for regulatory overlap, EPA has taken into account RSPA regulation of hazardous materials in deciding whether and how to regulate. Consequently, the decisions RSPA makes in this rulemaking may affect some EPA programs. The nature and extent of that effect will depend on EPA's interpretation and implementation of its statutes and regulations, some of which we describe further below.

Some commenters suggest that regulatory inconsistencies among agencies with responsibilities for hazardous materials safety could be avoided if RSPA incorporated ''within 49 CFR a reference to pertinent regulations or regulatory codes developed by other entities'' for application to hazmat employees. (FMC Corporation) ''Where there is a need for an OSHA standard to protect a hazmat employee of a motor carrier during the normal course of transportation * * * RSPA should adopt that standard, by reference, into the HMR. By doing so, the standard adopted would prevail and be uniform throughout the United States * * * Similarly, RSPA should consider incorporating EPA's environmental regulations that impact hazardous materials during the normal course of transportation.'' (American Trucking Associations) We do not agree.

First, OSHA and EPA are authorized by statute to develop broad programs for worker safety and environmental protection. OSHA is the agency tasked by Congress with ensuring safety in the workplace. EPA is the agency tasked with protecting human health and the natural environment. RSPA lacks the expertise and the resources to establish a credible OSHA safety program within RSPA for all workers who perform functions under the HMR. RSPA has a narrower role to play in the area of transportation worker safety—ensuring that there are adequate protections for transportation employees during the transportation of hazardous materials in commerce. Similarly, RSPA has neither the resources nor the expertise to address in a credible manner all the environmental hazards posed by the transportation of hazardous materials. Again, RSPA has a more limited environmental role—ensuring that hazardous materials transported in commerce are moved without release under normal conditions of transport from their point of origin to their destination.

Second, the OSH Act and many of EPA's authorizing statutes permit states to adopt and enforce regulations for worker safety and environmental protection that may be more stringent than the federal regulations promulgated by OSHA and EPA. By contrast, federal hazmat law preempts many state and local laws and regulations applicable to hazardous materials transportation that are not the same as the federal requirements in the HMR.

The relevant federal statutes do not provide clear guidance as to the preemptive effect OSHA and EPA standards would have if RSPA incorporated them into the HMR. Incorporating OSHA and EPA requirements into the HMR may prevent states from adopting more stringent worker safety and environmental protection standards and would thus undermine the intent of Congress as expressed in the OSH Act and in EPA's authorizing legislation. On the other hand, because the OSHA regulations are promulgated under authority of the OSH Act and EPA regulations under authority of EPA's authorizing statutes, states may be permitted to adopt more stringent requirements irrespective of the preemption provisions of federal hazmat law. Consequently, we do not believe that incorporating certain OSHA or EPA standards into the HMR would result in uniform federal regulation of transportation worker safety or environmental protection in a manner consistent with federal hazmat law, the OSH Act, and the statutes authorizing EPA's programs.

Other commenters suggest that RSPA and OSHA negotiate a memorandum of understanding (MOU) that would delineate each agency's areas of responsibility for worker protection at hazardous materials facilities. We are not convinced that such an effort is necessary or desirable. MOU negotiations can be lengthy and resource-intensive. An MOU may be difficult to develop to all parties' satisfaction and may omit resolution of facts and conditions that inevitably arise, thereby failing to prevent the problems it is designed to avoid. Further, an MOU is a static document and can require amendments when policies change or its provisions become outdated; while such amendments are negotiated, application of the MOU may have to be suspended for extended periods of time. However, we agree with commenters that RSPA and OSHA should cooperate to assure that the HMR and the OSHA regulations are complementary, consistent, and clear. We will consider all possible avenues for enhancing our cooperative relationship, including negotiation of an MOU if both agencies agree that an MOU is practicable and necessary.

We believe that a clarification of the applicability of the HMR and how that may affect the application of OSHA and EPA regulations to specific hazardous materials activities or facilities must be made within the context of each program's authorizing statutes and regulations. This approach involves looking to Congressional and agency intent as expressed in the body of statutes and regulations exercising federal jurisdiction over hazardous materials where transportation and non-transportation activities intersect. The OSH Act, EPA's authorizing statutes, and federal hazmat law express different statutory purposes. Our task is to interpret and implement federal hazmat law in a way that fulfills its statutory purpose and is consistent with the statutory purposes of the OSH Act and EPA's statutes.

IV. Proposal

We agree with commenters that the major issue for this rulemaking is how the term ''transportation in commerce'' is applied for purposes of the HMR. For the reasons stated above, we are proposing to key this application to a carrier's possession of a hazardous materials shipment. We believe that this approach is most consistent with the intent of federal hazmat law and with other federal statutes governing the regulation of hazardous materials at fixed facilities. Further, we believe that this approach assures national uniformity of hazardous materials transportation safety regulations while permitting states, local governments, and Indian tribes sufficient latitude to develop community-specific regulations to address local problems and issues.

The HMR would continue to apply to certain activities performed by offerors to prepare a hazardous material for transportation. We propose a new term to describe these activities—''pre-transportation functions.'' ''Transportation in commerce'' would begin when a carrier takes physical

possession of a hazardous materials package or shipment for purposes of transporting it and would continue until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation. The HMR would apply to all carrier activities after the carrier takes possession of the hazardous material from an offeror for purposes of transporting it until the package is delivered to its destination, including loading and unloading activities conducted by carrier personnel. For purposes of the HMR, such activities would be considered loading or unloading ''incidental to movement.'' In addition, the HMR would apply to storage of a hazardous materials package by any party between the time that a carrier takes possession of the hazardous material for purposes of transporting it until the package is delivered to its intended destination, as evidenced by the shipping documentation under which the package is moving. Except for rail cars stored on leased track, such storage would be considered storage ''incidental to movement.'' We are proposing and requesting comment on two alternatives for applying the HMR to rail cars stored on leased track (see ''Storage Incidental to Movement'' below for alternatives discussion).

Federal hazmat law does not preempt other federal statutes nor does it preempt regulations issued by other federal agencies to implement statutorily authorized programs. The proposals in this rulemaking are intended only to clarify the applicability of the HMR to specific functions and activities. It is not appropriate for DOT to attempt to clarify the applicability of other federal agencies' statutes or regulations to particular functions or activities. However, it is important to note that facilities at which pre-transportation or transportation functions are performed must comply with applicable OSHA and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities must also comply with applicable state and local regulations for hazardous materials handling and storage operations.

Facilities at which pre-transportation or transportation functions are performed may also be subject to EPA and other OSHA regulations. For example, facilities that store hazardous materials may be subject to EPA's risk management, community right-to-know, hazardous waste tracking and disposal, and spill prevention, control and countermeasure program requirements and OSHA's process safety management and emergency preparedness requirements. Questions as to the applicability of EPA or OSHA regulations to particular facilities or operations should be directed to the appropriate EPA or OSHA office.

Our proposal is described in more detail in the following sections.

A. Packaging Specifications

Federal hazmat law and the HMR will continue to apply, as they do currently, to persons who manufacture, mark, maintain, recondition, repair, or test packagings or components thereof that are represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce. Packaging integrity is critical to safe transportation of hazardous materials; therefore, it is imperative that DOT exercise jurisdiction over packaging requirements to the exclusion of state and local governments. Further, uniformity of packaging specifications assures the safe and efficient movement of hazardous materials across state lines and international boundaries. Thus, consistent with the preemption provisions of federal hazmat law, the Secretary's regulatory jurisdiction in this area must preempt state and local law. It is important to note that a packaging marked to certify that it conforms to HMR requirements must be maintained in accordance with applicable specification requirements whether or not it is in transportation in commerce at any particular time.

B. Pre-Transportation Functions

The HMR currently apply to a number of activities performed before a hazardous materials shipment is transported in commerce. Such activities—or functions—include: (1) Determining the hazard class of a hazardous material; (2) selecting a hazardous materials packaging; (3) filling a hazardous materials packaging; (4) securing a closure on a filled hazardous materials package or container or on one containing a residue of a hazardous material; (5) marking a package to indicate that it contains a hazardous material; (6) labeling a package to indicate that it contains a hazardous material; (7) preparing a hazardous materials shipping paper; (8) providing and maintaining hazardous materials emergency response information; (9) reviewing a hazardous materials shipping paper to verify compliance with the HMR or international equivalents; (10) for persons importing a hazardous material in to the United States, providing the shipper and the forwarding agent at the place of entry into the United States with information as to the requirements of the HMR that apply to the shipment of the material while in the United States; (11) certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR; (12) blocking and bracing a hazardous materials package in a freight container or transport vehicle; (13) segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo; and (14) selecting, providing, or affixing placards for a transport vehicle to indicate that it is carrying hazardous materials.

These functions occur before transportation in commerce begins, i.e. before a carrier takes possession of the hazardous material, but, as most commenters agree, they have a direct bearing on the safety of a hazardous materials shipment in commerce and, thus, should be subject to the HMR. Further, regulation of these functions must be uniformly applied and enforced if a hazardous materials shipment is to move smoothly, efficiently, and safely from its point of origin to its destination. Congress recognized the importance of national uniformity in these areas by creating a specific preemption provision in section 5125(b) applicable to state, local, and Indian tribe requirements on: (1) the designation, description, and classification of hazardous material; (2) the packing, repacking, handling, labeling, marking, and placarding of hazardous material; (3) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents; (4) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and (5) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

In this NPRM, we propose to define a new term—''pre-transportation function''—to cover activities performed prior to the transportation of a hazardous material and to which the HMR apply. The requirements in the HMR for pre-transportation functions apply to persons who offer hazardous materials for transportation in

commerce or who cause hazardous materials to be transported in commerce. Persons who ''cause'' hazardous materials to be transported in commerce include freight forwarders, non-vessel operating common carriers, freight brokers, and other entities that may perform pre-transportation functions. Any person who performs a pre-transportation function is subject to applicable requirements of the HMR. We also propose to define ''offer a hazardous material'' to mean the performance of a pre-transportation function under the HMR. In this way, we intend to clarify that, consistent with federal hazmat law, the HMR apply to functions performed to prepare hazardous materials for transportation in commerce as well as to the actual transportation of hazardous materials in commerce.

Under this proposal, we would continue to exercise our statutory authority to inspect for compliance with the HMR requirements applicable to pre-transportation functions. We would also continue to exercise our authority to take appropriate enforcement action when we discover that a pre-transportation function has been performed in a manner that does not comply with the HMR, even if transportation of the hazardous material in commerce has not yet begun (i.e., the carrier has not yet taken possession of the material) or has not been performed at all (i.e., undeclared shipments offered for transportation). This approach is consistent with our authority under section 5103 of federal hazmat law (49 U.S.C. 5103) to regulate activities that affect the safe transportation of hazardous materials in commerce. Also, as stated above, this approach is consistent with Congress' intent that the HMR requirements applicable to the activities we propose to define as ''pre-transportation functions'' be applied and enforced in a manner that promotes uniformity in those areas.

It should be noted that several of the pre-transportation functions identified in our proposed definition generally relate to loading of hazardous materials into packagings or transport vehicles, including filling of a packaging (including a bulk packaging), securing closures on a filled hazardous materials package (including a bulk package) or on one containing a residue of a hazardous material, blocking and bracing hazardous materials in a freight container or transport vehicle, or segregating hazardous materials packages in a freight container or transport vehicle from incompatible cargo. These activities are regulated as pre-transportation functions and not as activities incidental to movement because the carrier has not yet taken possession of the material. In these cases, transportation in commerce has not yet begun. (See ''Transportation Functions Subject to the HMR'' below for a proposed definition of ''loading incidental to movement.'')

C. Transportation That Is ''in Commerce''

In this NPRM, we propose several definitions to clarify the applicability of the HMR to transportation functions and the persons who perform them. Federal hazmat law requires the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. As noted above, the law defines ''transportation'' and ''commerce'' separately. Further, federal hazmat law authorizes the Secretary of Transportation to apply these regulations to persons who transport hazardous materials in commerce or cause hazardous materials to be transported in commerce. Thus, in a number of letters of interpretation issued over the years, we have explained that our statutory authority to issue hazardous materials transportation safety regulations extends, in addition to pre-transportation and packaging functions, only to transportation in commerce or transportation for commercial purposes. Persons who transport hazardous material in commerce or cause hazardous material to be transported in commerce are subject to the federal hazmat law and the HMR. However, a government entity, such as a state-chartered and -funded university, is not subject to the HMR as a carrier unless it transports hazardous materials in furtherance of a commercial enterprise (April 23, 1991 RSPA letter to the Department of Energy; June 1, 1994 RSPA letter to The Honorable Ronald V. Dellums; June 3, 1993 RSPA letter to the U.S. Department of Energy; September 26, 1994 RSPA letter to California Environmental Protection Agency; August 12, 1999 RSPA letter to University of Colorado, Boulder Campus). Similarly, we have stated that the transportation of hazardous materials by private individuals in personal vehicles for personal use is not subject to the HMR (October 1, 1999 RSPA letter to Raymond K. Barwin).

While we have declared in these and other letters of interpretation that the HMR do not apply to transportation of hazardous materials in private motor vehicles by private individuals for personal use, or transportation of hazardous materials by government entities for noncommercial purposes, this statement of applicability is not formally expressed in the HMR. We therefore propose to include in HMR a section specifically stating that noncommercial transportation of hazardous materials is not subject to the HMR. Noncommercial transportation includes transportation of hazardous materials by government employees for government purposes and by private individuals in private motor vehicles for personal use.

We have historically considered commerce to include all private—that is, non-governmental—transportation of hazardous materials except for transportation in a personal vehicle for the personal use of an individual. Thus, noncommercial transportation does not include transportation of hazardous materials by not-for-profit entities. In general, we regard the activities of an entity to be its ''business,'' regardless of whether it is organized for profit or not. To the extent that an entity performs activities for others, including its shareholders and employees, it is engaged in commerce. Thus, the fact that an entity is established as a non-profit organization is not relevant to the determination of whether it performs activities ''in commerce.'' A non-profit entity may engage in commercial activities to the same extent as a for-profit company. Not-for-profit entities that offer or transport hazardous materials are subject to all applicable requirements of the HMR.

In letters of interpretation, we also have clarified that the HMR do not apply to intra-facility movements of hazardous materials that take place entirely on private property where public access is denied or restricted. We have explained that movements of hazardous materials that take place entirely within a private facility are not subject to the HMR. If such movements utilize or cross public roads, however, they are subject to the HMR. (May 3, 1979 Materials Transportation Bureau [RSPA predecessor agency] to the Olin Corporation; September 15, 1981 FHWA letter to Hooker Chemical Company; March 25, 1983 RSPA letter to the Assistant Fire Marshall for the State of Kentucky; April 23, 1991 RSPA letter to the Department of Energy; April 19, 1994 RSPA letter to California Department of Justice; July 2, 1999 RSPA letter to Mr. Mark. R. Maki; and August 19, 1997 RSPA letter to Lockheed Martin Energy Systems, Inc.) It should be noted, however, that these letters of interpretation do not concern baggage or packages offered to airlines for transportation that are moved within the contiguous boundaries of an airport.

Baggage and packages that contain hazardous materials are subject to applicable HMR requirements even when moving within the confines of an airport facility.

One commenter suggests that the HMR incorporate an exception from regulation for the movement of containerized, non-bulk hazardous materials from one part of a facility to another part across a public road. ''Extensive DOT regulation under the HMR is not needed to protect public safety during such crossing * * * The movement * * * associated with the proposed road crossing exception would occur only at the point of origin * * * The personnel involved would be trained per OSHA and EPA requirements on how to handle hazardous materials safely and how to respond in the unlikely event of an incident. On-site emergency response personnel would be immediately available to respond. Those facts warrant the exclusion of a larger quantity of material from the HMR requirements during such crossings.'' (The Boeing Company) We do not believe such an exception is necessary. In letters of interpretation, we have indicated that use of a red traffic signal or road closure to deny public access to a public highway utilized for movements of hazardous materials between areas of the same facility makes the portion of the highway to which access is restricted private and that movements of hazardous materials in such circumstances would not be subject to the HMR (December 30, 1998 RSPA letter to General Electric Company). We have further explained that ''[i]f a road is used by members of the general public (including dependents of Government employees) without their having to gain access through a controlled access point, transportation on (across or along) that road is in commerce. On the other hand, if access to a road is controlled at all times * * * transportation on that road is not in commerce.'' (December 30, 1998 RSPA letter to General Electric Company) Signs and automated access control systems that warn the public that an area is restricted and prevent access to restricted areas are methods that can be used to control public access (December 12, 1997 RSPA letter to Richland Operations Center, Department of Energy). This NPRM proposes to add a statement to the HMR indicating that the HMR do not apply to rail and motor vehicle movements of a hazardous material that occur entirely within a contiguous facility boundary, other than at a transportation facility as defined in this NPRM, where public access is controlled even when such movements are performed by a for-hire carrier.

D. Transportation Functions Subject to the HMR

As discussed above, in addition to pre-transportation and packaging functions, only transportation that is ''in commerce'' is subject to regulation under federal hazmat law. Federal hazmat law defines ''transportation'' as ''the movement of property and loading, unloading, or storage incidental to the movement.'' However, federal hazmat law does not define ''movement '' nor does it define ''loading, unloading, or storage incidental to movement.'' Neither do the HMR currently define these terms.

Movement. Clearly, the key word in the definition of ''transportation'' included in federal hazmat law is ''movement.'' We propose to define ''movement'' to mean ''the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.'' A carrier ''moves'' a hazardous material; thus, transportation in commerce necessarily involves activities performed by a carrier in connection with the movement of a hazardous material. In this NPRM, we propose that, for purposes of applicability of the HMR, transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to its destination as indicated on the shipping paper under which the hazardous material is moving. All loading, unloading, and storage functions performed by a carrier in the course of transporting a hazardous material in commerce would be subject to the requirements of the HMR.

Many hazardous materials shipments are transported by private motor carriers—companies that own the hazardous materials they transport and transport them in company-operated vehicles driven by company personnel. Commenters to the 1996 ANPRM and the 1999 supplemental ANPRM state that the HMR should apply in the same manner to private and for-hire carriers. As one commenter notes, ''Distinctions should not be made between private and common carriers, as the function of the activity is the same whether private or common.'' (HM–223 Working Group) However, the nature of private carriage makes it difficult to identify a point at which a private carrier makes the transition from offeror to carrier to consignee for the purpose of determining when the ''carrier'' takes possession of a hazardous materials shipment from the ''offeror.'' In this NPRM, we propose that, for private motor carriers, transportation in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the motor vehicle driver relinquishes possession of the package at its destination and is no longer responsible for performing functions subject to the HMR.

Under this NPRM, a hazardous material would be in transportation in commerce until it reaches the final destination as indicated on the shipping paper under which the hazardous material is moving, except where the hazardous material is repackaged prior to delivery or stored for purposes other than transportation. For example, when a hazardous material transported in a rail tank car arrives at an intermodal transfer facility where the material will be transferred to several cargo tanks for delivery to a consignee, transportation in commerce ends when the rail carrier relinquishes possession of the tank car at the transfer facility. The transfer facility will perform pre-transportation activities in the process of transferring the material to the cargo tanks and preparing them for transportation. Transportation in commerce would begin when a highway carrier takes possession of the hazardous material from the transfer facility. Similarly, when a hazardous material is transported to and held at a storage facility at the request of the consignor or consignee, as indicated on shipping papers under which the hazardous material is moving, transportation in commerce ends when the carrier places the material in the storage facility, even if it is owned by the carrier. Note, however, that we are proposing and requesting comment on two alternatives for applying the HMR to rail cars stored on leased track (see ''Storage Incidental to Movement'' below for alternatives discussion).

This proposal is consistent with current HMR requirements and letters of interpretation we have issued to clarify the meaning of the term ''transportation in commerce.'' For example, we have explained that ''a hazardous material is considered 'in transit' * * * until it reaches its final destination, provided it has not been repackaged.'' (December 17, 1990 letter to David K. Lindemuth Company, Inc.)

Loading and Unloading Incidental to Movement. Loading and unloading ''incidental to movement'' of a hazardous material is loading or

unloading *associated* with such movement. We therefore propose to define these terms based on whether the activities to which they refer are associated with a carrier's movement in commerce of a hazardous material. Using this approach, we propose to define ''loading incidental to movement'' to mean loading of a hazardous material onto a transport vehicle, aircraft, or vessel or into a bulk packaging for purposes of transporting it when performed by a person employed by or under contract to a for-hire carrier or, in the case of a private motor carrier, when performed by the driver of the motor vehicle into which the hazardous material is being loaded immediately prior to movement in commerce of the hazardous material. We propose to define ''unloading incidental to movement'' to mean unloading of a hazardous material from a transport vehicle, aircraft, or vessel or from a bulk packaging when performed by a person employed by or under contract to a for-hire carrier or, in the case of a private motor carrier, when performed by the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement in commerce is completed. Loading and unloading incidental to movement in commerce would also include loading and unloading of packaged hazardous materials at facilities where such packages are transferred from one transport vehicle to another or from one mode of transportation to another.

As proposed in this NPRM, hazardous materials unloading operations performed by consignees would not be subject to the HMR. Consignee unloading is not part of transportation in commerce as we propose to apply that term because it occurs after movement in commerce is completed.

For the most part, this proposal is consistent with current HMR requirements and letters of interpretation and administrative decisions we have issued to clarify the applicability of the HMR to unloading operations from transport vehicles and bulk packagings other than tank cars. As long ago as 1978, we stated that requirements in the HMR applicable to cargo tank unloading end when the activities of the carrier relative to a given shipment end (November 24, 1978 Materials Transportation Bureau letter to Dow Chemical). More recently, we explained that the HMR requirements governing cargo tank unloading operations do not apply when the cargo tank has been placed on the consignee's premises and the motive power has been removed from the premises (March 23, 1999 RSPA letter to Great Lakes Chemical Corporation).

For hazardous materials transportation by rail tank car, however, the proposals in this NPRM applicable to hazardous materials unloading operations represent a change from current practice and interpretation. Historically, the tank car unloading requirements included in Part 174 of the HMR have been applied to all unloading operations. These requirements are set forth in section 174.67 of the HMR and include procedural and attendance requirements. The requirements date back to a time when tank cars were unloaded while on a carrier's track or public siding in the center of or adjacent to a populated area. Interpretations and administrative determinations issued by RSPA and FRA reflect this historical application of the HMR. Thus, in an administrative determination of preemption applicable to certain California and Los Angeles County requirements for handling and transportation of hazardous materials (February 15, 1995; 60 FR 8773) and in informal letters of interpretation (February 14, 1984 FRA letter to W.R. Grace & Co.), we recognized that section 174.67 applies to consignee unloading and, therefore, that consignee unloading of tank cars is ''unloading that is incidental to transportation'' and subject to requirements of the HMR.

Today, a large proportion of hazardous materials tank cars are unloaded by consignees over extended periods of time directly into manufacturing processes at privately owned facilities where public access is restricted. As one commenter states, ''The transfer of cargo into, and out of, tank cars is primarily a shipper activity. We are not aware of any circumstances in which rail carriers are responsible for loading or unloading, except in emergency operations where the carrier is the consignor or consignee of the tank car.'' (Chemical Manufacturers Association; comments originally submitted under Docket HM–212) Another commenter suggests that the current tank car unloading requirements in the HMR are biased ''toward the old, obsolete, and inappropriate regulatory requirements that only carriers are responsible for unloading. In the majority of cases, the shipper has total control over the unloading process and has established, safe, proven practices to accomplish the load and unload product transfer process.'' (Akzo Chemicals, Inc., comments originally submitted under Docket HM–212).

We agree that hazardous materials tank car loading and unloading operations generally are part of the manufacturing process and, as such, are inappropriate for regulation as transportation functions under the HMR. In this NPRM, we propose that loading of a tank car by a shipper and unloading of a tank car by a consignee within a facility would not be subject to the HMR. This approach is consistent with RSPA's current regulation of cargo tank loading and unloading and takes into account the changes in industry rail tank car unloading practices since the regulations in section 174.67 were promulgated. Accordingly, we propose to remove the obsolete requirements relating to tank car unloading from section 174.67.

While hazardous materials tank car loading and unloading operations per se are more appropriately regulated as manufacturing rather than transportation operations, FRA believes that unique features of rail tank car loading and unloading facilities and of rail tank cars themselves require continued application of certain HMR requirements related to the protection of train and engine crews operating within a shipper or consignee facility. For example, a rail tank car on a gentle slope can move without being attached to motive power. Rail tank cars that do not have their brakes set or wheels blocked have rolled out through plant fence lines; such unrestrained movements have fouled railroad trackage and caused accidents.

In addition, rail carriers routinely enter and exit loading and unloading facilities to pick up or drop off rail cars. Further, facilities frequently contract with rail carriers to move rail cars within a facility. Rail tank cars with hoses attached may be buried within a string of similar cars and not visible to a train and engine crew tasked with switching or relocating the cars. FRA wants to assure that, at the point of physical interface between the general system of rail transportation and the facility rail system, train and engine crews do not make inappropriate assumptions about the status of a particular rail car or series of rail cars and attempt to move cars that are attached to facility storage tanks or manufacturing processes, thereby endangering train and engine crew safety or adversely affecting movement along the general system of rail transportation.

Therefore, in this NPRM we propose to consolidate requirements related to the protection of train and engine crews operating within a shipper or consignee facility in Part 173 of the HMR. Specifically, requirements for posting warning signs, setting hand brakes, and blocking the wheels of hazardous

materials tank cars placed for unloading with closures open would be moved from section 174.67(a)(2) and (a)(3) and added to section 173.31. We further propose to require application of these protective measures whenever a tank car is placed for loading with a closure open. The risk to the general system of rail transportation and to train and engine crews operating within a facility is the same whether a hazardous materials tank car is placed for either loading or unloading with a closure open. The HMR include a requirement at section 174.9 for a rail carrier to inspect at ground level hazardous materials rail cars accepted for transportation or placed in a train for required markings, labels, placards, securement of closures, and leakage. The requirements we are proposing for section 173.31 will serve to reinforce the more general provision in section 174.9.

In addition to the above requirements, hazardous materials rail tank car loading and unloading operations, including unloading operations conducted by railroad employees on railroad property of, typically, diesel fuel for locomotives, are subject to applicable regulations of OSHA, EPA, and state and local governments and Indian tribes.

Storage incidental to movement. Storage ''incidental to movement'' of a hazardous material is storage undertaken by a carrier as part of the essentially uninterrupted movement of a hazardous material in commerce. In general, this would not include the directed holding of a hazardous material by the shipper (offeror) at an en route point until its further movement is requested. (But see the discussion, below, of storage of rail tank cars on leased track.) We propose to define ''storage incidental to movement'' to mean temporary storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material to transport it in commerce until the package containing the hazardous material is delivered to its destination as indicated on shipping documentation. As a specific alternative concerning railroad tank cars stored on railroad property that is the shipping paper destination but not the ultimate destination where the car will be unloaded, we also propose to consider such storage as storage incidental to movement.

Thus, ''storage incidental to movement'' in commerce would include temporary storage at a carrier's terminal where the package containing the hazardous material is to be transferred from one transport vehicle to another or from one transportation mode to another. (Note, however, that, as discussed above, storage of a hazardous material at a carrier's terminal where a hazardous material is repackaged prior to re-shipment is not storage incidental to transportation as we propose to define it in this NPRM.) Storage incidental to movement of a hazardous material in commerce would also include the period during which a transport vehicle carrying hazardous materials is parked temporarily at an en route point, e.g., safe haven, a rail yard, a marine terminal, or at a truck stop, motel, restaurant, rest area, or similar location.

Storage incidental to movement in commerce would include temporary storage of a hazardous material at a carrier's facility after the carrier takes possession of the package for purposes of transporting it with reasonable dispatch to a specifically identified destination and prior to delivery of the package to its consignee. We recognize, however, that a carrier may store hazardous materials under circumstances in which such storage is not incidental to movement as we propose to define it in this NPRM. For example, if a hazardous materials package is consigned to a storage facility operated by a carrier—that is, if the shipping documentation accompanying the shipment indicates a carrier-operated storage facility as the destination—then, movement in commerce ends when the shipment arrives at the storage facility. Subsequent storage of the hazardous material at the storage facility is not storage incidental to movement as proposed in this NPRM. Again, we propose an alternative for railroad tank car storage at interim locations that would consider such cars as in storage incidental to transportation even if the shipping paper shows the interim location as the car's destination.

The temporary holding of a package containing hazardous materials at a motor carrier terminal for consolidation with other packages is clearly within the meaning of storage incidental to movement of a hazardous material in commerce as proposed here. Further, for through shipments, storage incidental to movement in commerce as proposed in this NPRM also includes the temporary holding of a package, freight container, rail car, or other instrument of containment of a hazardous material at a marine terminal pending the arrival of a vessel onto which it will be loaded or prior to its inland movement by rail or highway. Similarly, the holding of a freight container or trailer at a carrier's intermodal container transfer facility is within the meaning of storage incidental to movement of a hazardous material in commerce as proposed here. Storage incidental to movement of hazardous materials in commerce is subject to requirements in the HMR.

As proposed in this NPRM, neither storage of a hazardous material at an offeror facility prior to its acceptance by a carrier nor storage of a hazardous material at a consignee facility after it has been delivered by a carrier would be subject to the HMR. Offerors sometimes store hazardous materials, except for hazardous wastes, in authorized packagings for weeks or even months prior to shipment; similarly, consignees sometimes store hazardous materials in authorized packagings for extended periods after delivery. In the case of a shipper, transportation in commerce has yet to begin because a carrier has not yet taken physical possession of the package; in the case of a consignee, transportation in commerce is completed because the carrier has relinquished physical possession of the package. For a hazardous material that is consigned by an offeror to a storage facility rather than to an end user, the material is no longer in transportation in commerce once it has been delivered to the storage facility even if the storage facility is owned or operated by the carrier. (Under our alternative proposal, tracks of the general railroad system at interim locations where tank cars are stored would not be considered such a storage facility.) Similarly, a hazardous material that is delivered to a transfer facility for repackaging and is stored temporarily pending its repackaging is not in storage incidental to movement and, thus, not subject to the requirements of the HMR.

Generally, this proposed definition of ''storage incidental to movement'' of hazardous materials in commerce is consistent with current HMR requirements and previous interpretations and administrative decisions issued by RSPA. In IR–28, City of San Jose, California; Restrictions on Storage of Hazardous Materials (March 8, 1990; 55 FR 8884), we stated that consignor and consignee storage of hazardous materials is not incidental to transportation in commerce. Similarly, in an administrative determination of preemption applicable to certain California and Los Angeles County requirements for handling and transportation of hazardous materials (February 15, 1995; 60 FR 8773), we stated that ''storage that is incidental to transportation includes storage by a carrier that may occur between the time a hazardous material is offered for

transportation to a carrier and the time it reaches its intended destination and is accepted by the consignee * * * [C]onsignor and consignee storage of hazardous materials is not incidental to transportation in commerce * * *'' Further, ''hazardous materials that are stored at a manufacturing facility awaiting consumption in the manufacturing process are not stored incidental to transportation in commerce, and are beyond the reach of federal hazmat law.'' This position is reiterated in a number of letters of interpretation. (See, for example, an April 4, 1992 RSPA letter to Adcom Express Incorporated, an October 13, 1992 RSPA letter to North American Transportation Consultants, Inc., and an April 23, 1993 RSPA letter to the Southeastern Association of Fire Chiefs Incorporated.)

In the 1999 supplemental ANPRM, we asked whether the HMR should specify a time limit on storage incidental to movement in commerce after which the material would no longer be considered to be ''in transportation in commerce'' and subject to the requirements of the HMR. Most industry commenters opposed a time limit. Typical of their position is the following comment: ''Any time limit is an arbitrary assignment. An arbitrary time limit could increase the risk of a hazardous materials incident because it would force extra handling of hazardous materials * * * It is inappropriate for RSPA (or any other agency) to prescribe a time limit for storage incidental to transportation as it is the reason for the standstill and not the duration that determines whether the storage is incidental to transportation or not.'' (HM–223 Working Group)

On the other hand, many state environmental agencies strongly believe that there should be a time limit on storage incidental to movement of hazardous materials in commerce. ''[I]t is reasonable to expect that the hazardous materials transportation must resume within a specific time frame, from when the hazardous materials transportation ceased [its] movement, to remain subject to the HMR. If the hazardous materials are not being actively transported from one place to another within 24 hours of transportation ceasing, then the materials are no longer in transportation * * * If [the time frame is] exceeded, then the materials are not being transported and 'storage incidental to transportation' has also ceased, and the materials are in non-transportation related storage. The hazardous materials are no longer subject to the HMR * * *'' (New Jersey Department of Environmental Protection)

In this NPRM, we are not proposing to limit the time that a hazardous material shipment may remain in storage incidental to movement of hazardous materials in commerce. We agree with commenters that such a time limit could have an adverse effect on transportation safety. To comply with a time limit, for example, carriers might move hazardous materials from one storage location to another, increasing public exposure and the risk of an incident. Moreover, placing a time limit on the applicability of the HMR to storage of hazardous materials during transportation in commerce could subject carriers to a myriad of different state and/or local hazardous materials labeling, packaging, or other requirements on packages held in incidental storage beyond the specified time limit and could obstruct or unduly burden interstate commerce. As explained later in this preamble, however, facilities at which hazardous materials are held in storage incidental to movement in commerce are not exempt from OSHA requirements governing the safety of workers and the facility, nor are they exempt from state and local fire and building code standards and similar requirements. EPA regulations may also apply. For example, hazardous wastes stored incidental to movement in commerce are subject to EPA RCRA regulations, including time limits for shipment and disposal.

For one aspect of rail transportation, special clarification may be necessary. We have said that storage of rail cars containing hazardous materials on leased track is storage incidental to transportation in commerce and subject to regulation under the HMR; in such instances, the leased track is considered to be carrier property, and any storage of hazardous materials on leased track is considered storage prior to delivery of the hazardous materials to a consignee (see February 14, 1994 letter from FRA to Wheeling and Lake Erie Railway). As we examined storage issues related to this NPRM, we have re-evaluated our previous interpretations concerning storage of hazardous materials in rail cars on leased track.

Leased track may be located directly adjacent to a shipper or consignee facility or within a rail carrier facility some distance from either the shipper or ultimate consignee. The lessee may have exclusive use of the leased track, or the leased track also may be used for movement of rail cars other than those of the shipper or consignee. In some situations, the lease is a ''rolling'' one, comprised of the track beneath a particular rail car. Railroads often agree to store cars along the route to their ultimate destinations due to fluctuation in seasonal demand for the commodities and limited track space at a consignee's facility. Examples are liquefied petroleum gas, often held at locations distant from its end user pending the demand for the product in cold weather, and anhydrous ammonia, often held until the agricultural cycle requires forwarding to a consignee. In these situations, tank cars may be consigned to interim storage locations on leased track. Where that is true, the cars arguably have reached the destination shown on the shipping papers and, under our first alternative, would be considered not in storage that is incidental to transportation. However, these interim storage locations are not the ultimate destination of the shipments, and the railroad maintains effective custody and control of the shipments, which, as proposed in this NPRM and explained earlier in this preamble, is the primary consideration for determining the applicability of the HMR to transportation functions.

Under the Federal Railroad Safety Act (FRSA) and other rail safety laws, FRA has treated leased track as being outside the general rail system and, thus, outside the scope of FRA's rail safety regulations only if such track is ''immediately adjacent'' to a plant facility and the ''lease provides for, and actual practice entails, exclusive use of that trackage by the plant railroad * * *'' 49 CFR part 209, Appendix A. (For a discussion of FRA's jurisdiction over leased track, see Appendix A to Part 209. Like RSPA, FRA has a functional view of safety and relies more on the activities being performed in a particular context than on the job title or facility name to determine if its regulatory authority applies.) Cars on railroad tracks in railroad yards or sidings distant from the consignee are, in FRA's view, still on the general railroad system and within the care, custody, and control of the railroad. Even if a shipper or consignee leases such track, it is rarely for the exclusive use of the shipper's or consignee's cars, and, even if so restricted, the track is not in any practical sense controlled by the distant shipper or consignee.

Current HMR requirements, previous interpretations, and related proposals in this NPRM suggest two possible approaches for addressing storage of rail cars on leased track. First, storage on leased track could be considered storage by a consignee after movement in transportation of the rail car has been completed, as indicated by the

destination on shipping documentation. In such situations, the rail carrier is acting as a storage facility on behalf of the shipper or consignee rather than performing transportation functions as a carrier. Alternatively, storage of rail cars on leased track (other than leased track immediately adjacent to the shipper or consignee facility and exclusively for the shipper or consignee's use) could be considered storage incidental to movement because the cars have not been physically delivered to the consignee, and the carrier retains physical possession of the shipment.

Under the first alternative, which is reflected in the proposed rule text, storage of rail cars on leased track would not be considered ''storage incidental to movement'' in commerce subject to applicable HMR requirements as we propose to define the term in this NPRM. In situations where rail cars stored on leased track have been delivered to the destination indicated on the shipping documentation, new shipping documentation must be prepared before the rail cars can be moved to the consignee location where they will be unloaded. Under this alternative, rail cars stored on leased track would be subject to relevant railroad safety rules administered by FRA. However, because such storage would not be subject to applicable HMR requirements, FRA hazardous materials inspectors could not apply rules concerning proper shipping papers, securement of closures, or placarding of such cars while they were in storage. Moreover, this alternative could present FRA inspectors with the difficult practical problem of determining which railroad cars on a particular general railroad system track or in a railroad yard are subject to the HMR by obtaining shipping papers and lease information on all of the cars before beginning an inspection. Of course, if a shipper or consignee orders the movement of a rail car containing hazardous materials from a leased track where it has been stored to a facility where it will be unloaded, the rail car is subject to the HMR with regard to the performance of all pre-transportation and transportation functions related to its movement. This approach is consistent with the proposals applicable to storage incidental to movement in other modes of transportation and would make clear that relevant rules of other agencies apply to cars in such storage because it is not storage incidental to transportation.

Under the second alternative, which is not reflected in the proposed rule text, rail cars stored on leased track not immediately adjacent to a plant facility would be considered in storage incidental to movement and subject to all applicable HMR requirements even if the leased track is the destination shown on the shipping documents. This would ensure that any rail car subject to the railroad safety laws would also be subject to pertinent hazardous materials requirements. We recognize that this alternative is an exception to the general principle enunciated in this NPRM that storage of a shipment of hazardous materials at the destination indicated on the shipping document is not storage incidental to transportation. However, this alternative would be consistent with the NPRM's proposal that the question of whether a given shipment is moving in transportation in commerce should be answered based in part on whether the shipment is in the physical possession of a carrier. It also would be consistent with FRA's regulation of those cars under FRSA. Further, it can be argued that the risks associated with rail transportation of hazardous materials exist whenever a rail car loaded with hazardous materials is on the general railroad system.

Generally, continuing the current policy that rail cars stored on leased track are stored incidental to movement could be accomplished without changing current regulatory language. However, if the final rule in this proceeding adopts this alternative for rail tank cars but retains the general proposal for other modes, proposed sections 171.1(c)(4), 171.1(d)(3), and 171.8 would be amended to make clear that such interim storage is storage incidental to movement.

Moreover, if we continue the current policy, then separate rulemaking may be necessary to address related safety and emergency response issues. For example, we would need to consider the continued applicability of the section 174.14 expedited movement requirements to such incidental storage. Further, we would need to consider how to assure that emergency response information relevant to the specific hazardous materials stored in rail cars on leased track is available as needed to assist local officials in planning for and responding to incidents involving such rail cars. In addition, we may need to consider imposing a time limit on rail cars stored on leased tracks after which such storage would not be considered storage incidental to movement for purposes of the HMR. Although we generally oppose the imposition of time limits for storage incidental to movement for the reasons stated above, for specific materials stored on leased track a time limit on storage could enhance federal, state, and local government efforts to plan for emergencies.

Commenters are invited to address the alternatives outlined above for applying the HMR to rail cars containing hazardous materials that are consigned to and stored on leased track. Should the HMR continue to apply to rail cars stored on leased track in a manner consistent with FRA's application of its rail safety regulations, as described in the second alternative? If so, what would be the effect of such application on hazardous materials shippers and railroads? What would be the effect on federal, state, and local government regulation for emergency response planning and community right-to-know purposes? Is the 48-hour limit on holding a shipment at any point short of its destination reasonable? If a rail shipment has arrived at the destination shown on the shipping documents, or at the nearest railroad facility, should the railroad be permitted to store it indefinitely? Should a time limit be imposed on the length of time rail cars could be stored on leased track for such storage to be incidental to movement? If so, should such a time limit be commodity specific? What would be the impact of such a time limit?

If, as described in the first alternative, rail cars stored on leased track that is not adjacent to the shipper's or consignee's facility are not considered to be in storage incidental to movement, what would be the effect of such application on hazardous materials shippers and rail carriers? What would be the effect on federal, state, and local government regulations for emergency response planning and community right-to-know purposes? Would placing such storage on leased track outside the HMR present safety issues in terms of FRA's inability to inspect cars in such storage and/or to investigate incidents related to them? How would FRA inspectors be able to readily distinguish cars that are not subject to the HMR from cars that are?

E. State/Local Requirements and Preemption

One of the primary purposes of federal hazmat law is to assure national uniformity of regulations applicable to the transportation of hazardous materials in commerce. Thus, the preemption provisions of federal hazmat law generally preclude non-federal governments from imposing requirements applicable to hazardous materials transportation if complying with the non-federal regulation and complying with federal hazmat law or the HMR is not possible (dual compliance test) or if the non-federal

requirement is an obstacle to carrying out federal hazmat law or the HMR (obstacle test). Further, federal hazmat law preempts a non-federal requirement applicable to any specified covered subject if it is not substantively the same as federal hazmat law or the HMR (covered subjects test). The HMR are not minimum requirements that other jurisdictions may exceed if local conditions warrant; rather, the HMR are national standards and must be uniformly applied across jurisdictional lines. However, non-federal requirements may be authorized by another federal law. Also, RSPA may waive preemption of a non-federal requirement if it: (1) provides the public with at least as much protection as requirements of federal hazmat law and the HMR, and (2) does not impose an unreasonable burden on commerce. 49 U.S.C. 5125(e).

The preemption provisions of federal hazmat law effectively preclude state, local, and tribal governments from regulating pre-transportation functions, as defined in this NPRM, in a manner that differs from the federal requirements if the non-federal requirement is not authorized under another federal law and the non-federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such pre-transportation functions include: (1) Determining the hazard class of a hazardous material; (2) selecting a hazardous materials packaging; (3) filling a hazardous materials packaging; (4) securing a closure on a filled hazardous materials package or container or on one containing a residue of a hazardous material; (5) marking a package to indicate that it contains a hazardous material; (6) labeling a package to indicate that it contains a hazardous material; (7) preparing a shipping paper; (8) providing and maintaining emergency response information; (9) reviewing a shipping paper to verify compliance with the HMR or international equivalents; (10) for persons importing a hazardous material in to the United States, providing the shipper and the forwarding agent at the place of entry into the United States with information as to the requirements of the HMR that apply to the shipment of the material while in the United States; (11) certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR; (12) blocking and bracing a hazardous materials package in a freight container or transport vehicle; (13) segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo; and (14) selecting or providing placards for a transport vehicle to indicate that it is carrying hazardous materials. Note that we have not attempted, in this NPRM, to identify every function that is a pre-transportation function—that is, a function performed in advance of transportation in commerce to prepare a shipment for transportation in commerce or that affects the safety of the shipment in transportation in commerce. State, local, or Indian tribe regulation of pre-transportation functions not specifically identified in this NPRM may also be preempted under federal hazmat law.

Unless the Secretary waives preemption, the preemption provisions of federal hazmat law effectively preclude state, local, and tribal governments from regulating transportation functions, as defined in this NPRM, in a manner that differs from the federal requirements if the non-federal requirement is not authorized by another federal law and the non-federal requirement fails the dual compliance, obstacle, or covered subject test. Examples of such transportation functions include: (1) Movements of hazardous materials in commerce—that is, the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel; (2) loading and unloading of a hazardous material onto or from a transport vehicle, aircraft, or vessel or into or from a bulk packaging when performed by carrier personnel; and (3) storage of a hazardous material between the time that a carrier takes possession of the material until it is delivered to its destination as indicated on shipping documentation.

State, local, and tribal governments may impose regulations on hazardous materials-related functions that are not covered by the HMR or federal hazmat law, except where RSPA has specifically determined that regulation of a hazardous materials-related function is not necessary. For example, hazardous materials that are not being transported in commerce as defined in this NPRM could be subject to non-federal regulations applicable to community right-to-know, fire protection, worker protection, building codes, and zoning requirements. Moreover, although the HMR apply to pre-transportation functions as defined in this NPRM, the facilities within which pre-transportation functions are performed could be subject to non-federal regulations that do not affect the performance of the pre-transportation function—again, fire protection, worker protection, building codes, and zoning requirements may apply. Thus, state and local regulations applicable to hazardous materials stored at a consignee's facility or at a manufacturing facility awaiting use in a manufacturing process would not be preempted (PD–9(R), 60 FR 8787). Similarly, the HMR do not apply to regulation of consignee storage tanks; therefore, state or local requirements as to the types of storage tanks into which a hazardous material may be unloaded from a tank car are not preempted (PD–9(R), 60 FR 8788). Further, local fire code requirements that do not apply to the transportation of hazardous materials in commerce are not preempted (PD–14(R), 63 FR 67506).

The above discussion is intended as general guidance only. We will continue to make preemption determinations applicable to specific non-federal requirements on a case-by-case basis, using the obstacle, dual compliance, and covered subjects tests provided in federal hazmat law. RSPA's preemption determinations are legally binding, subject to judicial review.

F. OSHA Programs and Regulations

The OSH Act vests OSHA with primary responsibility for promulgating and enforcing workplace safety and health standards. Under the OSH Act, every employer has a general duty to provide its employees with a workplace free from recognized hazards that are likely to cause death, illness, or injury. Federal hazmat law authorizes the Secretary of Transportation to develop and enforce regulations for the safe transportation of hazardous materials in commerce. The HMR apply to persons who transport hazardous materials in commerce; cause the transportation of hazardous materials in commerce; and manufacture, repair, or test packagings or packaging components that are certified or sold as qualified for use in the transportation of hazardous materials in commerce. In addition, the ''reverse 4(b)(1)'' provision of federal hazmat law (49 U.S.C. 5107(f)(2)) provides for shared regulatory jurisdiction with OSHA for hazardous materials handling, registration, motor carrier safety permits, and hazmat employee training requirements. As we noted above, in exercising our authority under federal hazmat law to regulate hazardous materials transportation in commerce, we must be consistent with both the statutory purposes of federal hazmat law and OSH Act requirements.

Requirements in the HMR applicable to pre-transportation functions, such as determining the hazard class of a

material, selecting a packaging, and preparing shipping papers, set forth the procedures that must be followed for the performance of specific functions. Thus, the regulations explain how to determine a material's hazard class, how to select an appropriate packaging, and how to complete a shipping paper. One commenter suggests that the existence of a hazmat employee function should determine ''the scope of the agency's preemptive effect * * * No action of a hazmat employee in performing a function under the DOT hazardous materials regulations should be affected or influenced by the requirements of another agency, whether federal or non-federal.'' (The Conference on Safe Transportation of Hazardous Articles, Inc.) We agree that functions under the HMR should not also be subject to conflicting regulation by state and local governments and that other federal requirements should not conflict with the HMR. At the same time, the HMR do not address the work environment within which such functions are performed nor do the HMR address the working conditions applicable to employees performing such functions. It is not appropriate for RSPA to become extensively involved in developing and enforcing a complex regulatory scheme covering working conditions for hazardous materials employees who, although performing various functions regulated under the HMR, are located in facilities that have characteristics similar to those of many industrial workplaces. If RSPA were to address all occupational safety and health issues that arise in facilities where regulated functions are performed, as some commenters have suggested, the agency would need to develop a staff and field capability already possessed by OSHA.

OSHA has concurrent authority in this area and regulates to protect the workers who perform pre-transportation functions. Further, Congress authorized OSHA, rather than the Secretary of Transportation, to promulgate regulations applicable to workplace safety and occupational health, even in facilities where pre-transportation functions are performed. Such facilities are not excepted from OSHA requirements merely because certain of the activities performed at the facility are subject to HMR requirements. The facility must assure that functions subject to the HMR are performed in accordance with the HMR and must also assure that the workplace in which the functions are performed conforms to applicable OSHA requirements for occupational health and safety and that workers who perform such functions are protected from hazards.

Where hazmat employees perform pre-transportation functions as defined in this NPRM, the HMR apply to the function being performed and OSHA's regulations for occupational safety and health apply to the working conditions applicable to the hazmat employee performing the function. Examples include hazmat employees working in chemical plants, manufacturing facilities, and warehouses who determine a material's hazard class under the HMR and prepare packages for shipment. Preparation of hazardous materials packages for shipment must be performed in accordance with the HMR; however, OSHA regulations apply to the working conditions under which the function is performed and to measures necessary to protect the employee performing the function.

The relationship between the OSHA regulations and the HMR for transportation functions is more complex. Congress reauthorized federal hazmat law in 1994 to ''provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce.'' The ''risks to life inherent in the transportation of hazardous material'' include risks to both the general public and to transportation workers, such as airline, railroad, maritime, and motor carrier employees. Protection of the public generally and employees in particular is necessarily an integrated undertaking. Thus, the HMR include requirements aimed at protecting both the general public and employees of hazardous materials carriers who perform transportation functions.

In carrying out the mandate to prescribe regulations for the safe transportation of hazardous materials, the Secretary of Transportation, through the DOT operating administrations, has developed a special expertise that makes the Department uniquely qualified to play the primary federal regulatory role in the protection of workers who operate motor vehicles, trains, aircraft, and vessels used to transport hazardous materials. Further, the preemption provisions in federal hazmat law provide the agency with the statutory authority to promulgate nationally uniform regulations, thereby assuring that carriers are not forced to comply with a number of different and perhaps inconsistent regulatory requirements applicable to the safety of their employees who transport hazardous materials by air, highway, water, or rail in different state or local jurisdictions. Thus, we believe that the proper role for RSPA in the area of occupational safety is to focus our resources on carrier operations, an area in which we have specialized competence and for which uniform national standards are key to safe and efficient transportation.

FRA's approach to assuring the occupational safety and health of railroad employees provides an excellent model for assuring the occupational safety and health of hazmat employees. FRA regulations issued under authority of the Federal Railroad Safety Act of 1970 generally address worker safety in the context of railroad operations. Thus, the FRA regulations cover occupational safety and health issues that are so intimately intertwined with the integrated rail transportation system that they cannot be addressed satisfactorily apart from that system—hours of service requirements, for example. OSHA regulations apply to railroad worker occupational safety and health issues that are not addressed by FRA; these are areas that are not intrinsic to rail operations, but apply generally to all industrial workplaces. For the most part, the FRA regulations prescribe working conditions applicable to train and engine employees. Working conditions applicable to rail carrier employees who work at fixed facilities are regulated by OSHA. (For a more complete discussion of FRA's policy on occupational safety and health regulations applicable to railroad workers, see FRA's policy statement, published in the **Federal Register** on March 14, 1978 (43 FR 10583), a copy of which appears in the public docket to this rulemaking.)

Similarly, the Coast Guard and OSHA have a long-standing working relationship stemming from their separate statutory roles to prescribe and enforce regulations affecting the safety of those on board vessels. The distinguishing factor as to whether OSHA can regulate the working and safety conditions of marine employees on a vessel is determined by the status of the vessel. If the vessel is subject to inspection under sub-title II of Title 46, U.S. Code, hereafter referred to as the Vessel Inspection Laws of the United States, it is ''inspected''. The Coast Guard is the dominant federal agency with the statutory authority to prescribe and enforce standards or regulations affecting the safety of those on board vessels. Under the Vessel Inspection Laws of the United States, the Coast Guard has issued comprehensive standards and regulations concerning working conditions affecting mariners aboard inspected vessels. Consequently,

OSHA is prohibited from regulating conditions affecting occupational safety and health of marine employees under section 4(b)(1) of the OSH Act of 1970. With respect to those vessels not subject to the Vessel Inspection Laws of the United States or ''uninspected'' vessels, OSHA may regulate the working conditions of marine employees except in very limited instances. (For a more complete discussion of Coast Guard's policy on occupational safety and health regulations applicable to seamen aboard inspected vessels see MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES COAST GUARD, U.S. DEPARTMENT OF TRANSPORTATION, AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, CONCERNING THEIR AUTHORITY TO PRESCRIBE AND ENFORCE STANDARDS OR REGULATIONS AFFECTING THE OCCUPATIONAL SAFETY AND HEALTH OF SEAMEN ABOARD VESSELS INSPECTED AND CERTIFICATED BY THE UNITED STATES COAST GUARD dated March 8, 1983, a copy of which appears in the public docket to this rulemaking.)

Our current approach for dividing the responsibility for the occupational safety and health of hazmat employees between OSHA and RSPA is similar. Where the functions performed by hazmat employees are intrinsic to the operations of carriers that transport hazardous materials in commerce, the Secretary of Transportation exercises regulatory authority under federal hazmat law for occupational safety and health issues related to those hazmat employees. Examples include airplane pilots and crews; truck drivers, co-drivers, and other motor carrier employees who load or unload motor vehicles; locomotive engineers and train crews; and marine employees. These hazmat employees perform transportation functions as defined in this NPRM. Thus, when the driver of a cargo tank motor vehicle loads the vehicle at a fixed facility immediately prior to movement in commerce of the vehicle or unloads the vehicle at a fixed facility immediately after movement in commerce is completed, the loading and unloading functions are regulated under the HMR, including requirements applicable to the health and safety of the worker performing the function.

We believe that the current application of the HMR and OSHA regulations to hazmat employees is consistent with the underlying goals of both federal hazmat law and the OSH Act, Congress's recognition of the need for uniformity in hazardous materials transportation in commerce, and the ''reverse 4(b)(1)'' provision of federal hazmat law. Consequently, we are proposing no changes in this division of responsibilities.

G. EPA Programs and Regulations

The concurrent applicability of EPA's regulations and the HMR to loading, unloading, and storage of hazardous materials has caused significant confusion. The clarifications we are proposing in this NPRM concern the applicability of the HMR to specific functions and activities. Entities involved with handling and transporting hazardous materials should be aware that a number of EPA requirements may also apply to their operations. Following are descriptions of some EPA programs that apply to facilities that handle and store hazardous materials.

EPCRA (SARA Title II). The Emergency Planning and Community Right-to-Know Act, enacted by Congress in 1986 as Title III of the Superfund Amendments and Reauthorization Act (SARA; 42 U.S.C. 11011 *et seq.*) requires states to establish state and local emergency planning groups to develop chemical emergency response plans for each community. EPCRA also requires facilities to provide information regarding the hazardous materials they have on site to states, local planners, fire departments and, through them, the public. In addition, EPCRA requires notification of releases of certain hazardous substances. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction. EPCRA emphasizes prevention, preparedness, and response as key factors in reducing the hazards associated with chemical releases.

Pursuant to EPCRA requirements, EPA has issued a list of extremely hazardous substances and threshold planning quantities for each substance. A facility is subject to a one-time emergency planning notification if a substance on the list is present at the facility in an amount in excess of the threshold planning quantity established for the substance. 42 U.S.C. 11002(b)(1).

Among other requirements, facilities where hazardous chemicals, as defined by OSHA, are present must prepare and submit an emergency and hazardous chemical inventory form to the appropriate local emergency planning committee (LEPC), state emergency response commission (SERC), and fire department with jurisdiction over the facility. 42 U.S.C. 11022(a)(1). EPCRA also specifically requires the owner or operator of a facility to promptly provide to an LEPC, on request, information that the LEPC believes is necessary for developing and implementing an emergency plan. 42 U.S.C. 11003(d)(3). Thus, certain hazardous materials that are on site at a facility, in above-threshold quantities, awaiting consumption in the manufacturing process, are regulated under EPCRA.

Except for the release reporting requirements under EPCRA 304, EPCRA does not apply to the transportation in commerce, including storage incident to that transportation, of any substance or chemical subject to EPCRA. 42 U.S.C. 11047. In its regulations implementing EPCRA, EPA states that a substance is stored ''incident to transportation'' in commerce if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. 40 CFR 355.40(b)(4)(ii). Consequently, hazardous materials that are stored incident to transportation in commerce, as defined by EPA, are not subject to the requirements of EPCRA. On the other hand, regulated materials that have been delivered to the ultimate consignee's facility are not stored ''incident to transportation'' in commerce and are subject to EPCRA requirements.

Although its terminology differs, EPA's definition of ''storage incident to transportation'' in commerce for purposes of EPCRA is generally the same as the definition we propose in this NPRM for ''storage incidental to movement'' of a hazardous material in commerce. For both definitions, a hazardous materials package, freight container, or transport vehicle is stored incidental to movement in commerce if it is en route to, but has not yet reached, its consignee. For these situations, most of the EPCRA requirements do not apply. Similarly, EPA agrees with the proposed definition in this NPRM that regulated materials that have been delivered to their consignee are not in transportation in commerce and, thus, are subject to EPCRA requirements.

Based on the proposals in this NPRM, hazardous materials in the following non-transportation situations could be subject to EPCRA requirements:

(1) Hazardous materials stored at an offeror's facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce.

(2) Hazardous materials being unloading from a transport vehicle or bulk packaging by a person employed by or under contract to the consignee following delivery, including unloading into a manufacturing process.

(3) Hazardous materials stored at a consignee facility after delivery, including hazardous materials stored on track leased from a rail carrier by the consignee.

Clean Air Act, Section 112(r) (Risk Management Program). Although EPCRA governs emergency response planning, it does not mandate that facilities establish accident prevention programs. The CAA Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399, amended section 112 of the Clean Air Act, 42 U.S.C. 7412, by adding, among other things, a new subsection (r), which includes requirements related to chemical accident prevention. The goal of section 112(r) is to prevent accidental releases of extremely hazardous substances from ''stationary sources'' and to minimize the consequences of any accidental releases that do occur.

Section 112(r) establishes a general duty for facility owners or operators of stationary sources to identify hazards that may result from accidental releases, design and maintain a safe facility, and minimize the consequences of releases when they occur. Pursuant to section 112(r)(3), EPA has promulgated a list of substances that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. EPA also has established a threshold quantity for each listed chemical. Stationary sources that have more than a threshold quantity of a regulated substance are subject to the accident prevention regulations promulgated by EPA under CAA section 112(r), including the requirement to develop risk management plans.

EPA in its regulations defines ''stationary source'' as follows:

> Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. *The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part.* A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading * * *

40 CFR 68.3. (Emphasis added).

In 1999, EPA clarified its definition of stationary source by stating,

> Because a transportation container may at times function as a storage container or a process at a stationary source, or may function as part of operations at a stationary source, EPA is specifically directed by statute to address these activities (CAA section 112(r)(7)(B)(i)) (''The regulations shall cover storage, as well as operations''). To the extent that DOT is also authorized under Federal Hazmat Law to regulate activities that are at a stationary source, nothing in the CAA prohibits both agencies from exercising concurrent jurisdiction over these activities. As EPA has said in the context of the RMP Rule, compliance with Federal Hazmat Law and HMR requirements may satisfy parallel requirements of part 68. This approach to implementation reflects the coordination between the agencies that is called for under CAA section 112(r)(7)(D). The exercise of concurrent jurisdiction preserves the applicability of the Federal Hazmat Law and HMR and does not supersede or limit DOT's jurisdiction.

(64 FR 28696, at 28698; May 26, 1999).

The proposals in this NPRM would make clear that, from DOT's perspective, the following situations are neither transportation in commerce nor storage incidental to transportation in commerce:

(1) Hazardous materials stored at an offeror's facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce.

(2) Hazardous materials being unloaded from a transport vehicle or bulk packaging by a person employed by or under contract to the consignee following delivery, including unloading into a manufacturing process.

(3) Hazardous materials stored at a consignee facility after delivery, including hazardous materials stored on track leased from a rail carrier by the consignee.

(4) Hazardous materials stored at a carrier facility where shipping papers indicate the carrier facility as the shipment destination.

(5) Hazardous materials temporarily stored at an intermodal carrier facility for repackaging.

Resource Conservation and Recovery Act (RCRA). RCRA requires EPA to issue regulations to ensure the proper management of hazardous waste from its point of generation to its ultimate disposal—''cradle to grave.'' The regulations establish a step-by-step approach to monitor and control hazardous wastes at every point in the waste cycle. The regulated community in this system includes those who generate, recycle, transport, treat, store, and dispose of hazardous wastes.

EPA and DOT have joint responsibility for regulating the transportation of hazardous wastes, and the two agencies' regulations in this area are inter-related. EPA has incorporated DOT's pre-transportation requirements into its regulations—i.e., generators that send hazardous wastes off-site for treatment or disposal must comply with all applicable requirements in the HMR, including those for packaging, marking, and labeling. In addition, generators are required to prepare a uniform hazardous waste manifest to accompany any hazardous waste transported off-site. DOT has incorporated this requirement into its regulations.

Hazardous waste transporters are subject to both the HMR and the EPA regulations governing hazardous waste transportation, storage, and disposal. In the event of a release during transportation, transporters must comply with EPA requirements for hazardous waste spill cleanup. Hazardous wastes stored incidental to movement in commerce as that term is proposed to be defined in this NPRM—that is, between the time that a carrier takes possession of the hazardous waste until the hazardous waste is delivered to the destination indicated on the hazardous waste manifest—must be stored in accordance with EPA requirements for hazardous waste storage, including time limits on such storage. Similarly, in the event that a carrier discovers a leaking hazardous materials package and the offeror directs the carrier to dispose of the material, the carrier is subject to all applicable EPA and DOT requirements for transporting, storing, and disposing of the material.

Spill Prevention, Control, and Countermeasure (SPCC) Program. The Clean Water Act (33 U.S.C. 1251 *et seq.*) establishes authority for the Spill Prevention, Control, and Countermeasure (SPCC) program for non-transportation-related facilities. The SPCC regulations are designed to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or onto the navigable waters of the United States or adjoining shorelines. A 1971 Memorandum of Understanding (MOU) between EPA and DOT establishes definitions of transportation-related and non-transportation-related facilities for purposes of the FWPCA. Under the MOU, SPCC regulations apply to the following non-transportation-related facilities: (1) Oil storage facilities, including all related equipment and appurtenances and bulk plant storage; (2) terminal oil storage; (3) pumps and drainage systems used in the storage of oil, except for in-line or breakout tanks needed for the continuous operation of a pipeline system; and (4) any terminal facility, unit, or process integrally associated with the transfer of oil in bulk to or from a vessel. Loading racks,

transfer hoses, loading arms, and other equipment that is appurtenant to a non-transportation-related facility or terminal and that is used to transfer oil in bulk to or from highway vehicles or rail cars are also subject to regulation under the SPCC program. The SPCC regulations include several requirements for facility rail tank car and cargo tank motor vehicle loading and unloading racks, such as a secondary containment system and lights or barriers to prevent the vehicle from departing the facility prior to disconnecting transfer lines.

V. Section-by-Section Review

General

In Section 171.8, we propose to define a new term, ''movement,'' to mean ''the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.'' Accordingly, we propose to replace the term ''movement'' when it appears in the HMR in a context where the proposed definition would be inappropriate. These changes are proposed for Sections 173.3(c)(2); 173.6(b)(1) and (b)(3); 173.24a(a)(3); 173.62(c) in the table under Packing Instruction 131 each time it appears; 173.166(e)(4)(iii); 173.171 (d); 173.181(a)(2); 173.185(e)(7), (g)(1), and (g)(2); 173.189(b) and (d)(4)(i); 173.219(b)(3); 173.308(a)(4); 173.335(c); 173.416(f); 174.110; 174.112(b) and (c)(3); 174.115(a) and (b)(3); 175.81(a); 176.69(d); 176.76(a)(2) each time it appears; 176.78(f)(8); 176.93(a)(1); 176.116(d); 176.132(c); 176.168(g); 176.200(b) and (c) each time it appears; 177.834(a); 177.840(b)(3); 177.870(e); 178.601(g)(1)(i)(D), (g)(1)(ii), and (g)(4)(v); and 178.704(d)(3).

Part 171

Section 171.1. In this NPRM, we propose to retitle this section ''Applicability of HMR to persons and functions.'' We further propose to add introductory text to this section to explain the authority provided to the Secretary of Transportation under federal hazmat law to establish regulations for the safe transportation of hazardous materials in commerce, the Secretary's delegation of this authority to RSPA, and the applicability of this section to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

In paragraph (a) of this section, we propose to specify that the HMR apply to each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials in commerce, including each person who performs these activities under contract to an agency or branch of the federal government. Proposed paragraph (a) restates requirements in current paragraphs (a)(3) and (b) of Section 171.1.

Proposed paragraph (b) of this section specifies that the HMR apply to pre-transportation functions performed by persons who offer hazardous materials for transportation in commerce or cause hazardous materials to be transported in commerce, including persons who perform pre-transportation functions under contract to an agency or branch of the federal government. Proposed paragraph (b) includes a non-exhaustive list of pre-transportation functions to which the HMR apply.

Proposed paragraph (c) of this section states that the HMR apply to transportation of hazardous materials in commerce and to persons who transport hazardous materials in commerce, including persons who transport hazardous materials in commerce under contract to an agency or branch of the federal government. Proposed paragraph (c) also defines the points at which transportation in commerce begins and ends and lists transportation functions included in ''transportation in commerce''—movement of a hazardous material in commerce, loading incidental to movement of a hazardous material in commerce, unloading incidental to movement of a hazardous material in commerce, and storage incidental to movement of a hazardous material in commerce.

Proposed paragraph (d) of this NPRM lists specific functions that are not subject to the HMR.

Proposed paragraph (e) states that facilities at which functions are performed in accordance with the HMR may also be subject to applicable standards and regulations of other federal agencies.

Proposed paragraph (f) states that facilities at which functions are performed in accordance with the HMR may also be subject to applicable laws and regulations of state and local governments, except to the extent that such laws and regulations are preempted by federal hazmat law. Proposed paragraph (f) also sets forth the criteria established in federal hazmat law for making preemption determinations.

Proposed paragraph (g) restates the penalties for noncompliance with the HMR that are currently in paragraph (c) of Section 171.1. The maximum criminal fines under Title 18 of the United States Code are $250,000 for an individual and $500,000 for a corporation.

Section 171.2. We propose to revise this section to clarify those persons and activities that are subject to the requirements of the HMR. Generally, we propose to revise this section to state more clearly the current requirements and prohibitions.

Proposed paragraph (a) states that a person who performs a function that is required by the HMR must perform the function in accordance with the HMR.

Proposed paragraph (b) requires a person who offers hazardous materials for transportation in commerce to comply with the HMR or with an exemption, approval, or registration issued in accordance with the HMR.

Proposed paragraph (c) requires each person who performs a function covered by or having an effect on the packaging specifications in parts 178, 179, or 180 of the HMR or an exemption or approval to perform the function in accordance with the specification, exemption, or approval.

Proposed paragraph (d) prohibits any person subject to the registration requirements in subpart G of Part 107 from offering or accepting a hazardous material for transportation in commerce or from transporting a hazardous material in commerce unless that person is registered.

Proposed paragraph (e) prohibits any person from offering or accepting a hazardous material for transportation in commerce unless the hazardous material is prepared for shipment as required by the HMR or an applicable exemption, approval, or registration.

Proposed paragraph (f) prohibits any person from transporting a hazardous material in commerce except in conformance with the HMR or an applicable exemption, approval, or registration.

Proposed paragraph (g) restates requirements in current paragraph (c) of Section 171.2. Proposed paragraph (g) prohibits any person from representing, marking, certifying, selling, or offering a packaging as meeting the requirements of the HMR unless the packaging is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable HMR requirements. Proposed paragraph (g) applies the same prohibition to any person who performs these functions under the terms of an exemption, approval, or registration. This paragraph also would require a packaging marked as meeting a DOT

specification or UN standard to conform to the specification or standard at all times that the marking is visible. The requirements of proposed paragraph (g), like the current requirements in Section 171.2(a), would apply whether or not the packaging is used for the transportation in commerce of a hazardous material.

Proposed paragraph (h) restates the requirements in current paragraph (d) of Section 171.2. This paragraph lists the representations, markings, and certifications subject to the prohibitions of proposed paragraph (g) of this section.

Proposed paragraph (i) prohibits any person from certifying that a hazardous material is offered for transportation in commerce in accordance with the HMR unless the hazardous material has been prepared for shipment as required or authorized by the HMR or an exemption, approval, or registration. This proposed paragraph requires persons who offer a hazardous materials package for transportation under the HMR to assure that the package remains in condition for shipment until it is in the possession of the transporting carrier.

Proposed paragraph (j) prohibits any person from marking or representing that a package for transporting a hazardous material in commerce is safe, certified, or in compliance with the HMR unless it meets all applicable regulatory requirements issued under federal hazmat law. This proposed paragraph restates a prohibition in current paragraph (f)(1) of Section 171.2.

Proposed paragraph (k) prohibits any person from marking or representing that a hazardous material is present in a package or transportation conveyance if the hazardous material is not, in fact, present. This proposed paragraph restates a prohibition in current paragraph (f)(2) of Section 171.2.

Proposed paragraph (l) prohibits any person from unlawfully tampering with any marking, label, placard, or description on a document that is required by federal hazmat law or a regulation issued under federal hazmat law. This proposed paragraph also prohibits any person from unlawfully tampering with a package or transportation conveyance used to transport hazardous materials. This proposed paragraph restates a prohibition in current paragraphs (g)(1) and (g)(2) of Section 171.2.

Proposed paragraph (m) prohibits any person from falsifying or altering an exemption, approval, registration, or other grant of authority relevant to the transportation of hazardous materials issued by RSPA. This proposed paragraph further prohibits any person from offering a hazardous material for transportation under an exemption, approval, registration, or other grant of authority that has been altered without the consent of RSPA. Finally, this proposed paragraph prohibits any person from representing, marking, certifying, or selling a packaging under an exemption, approval, registration, or other grant of authority that has been altered without the consent of RSPA.

Section 171.8. We propose to add or revise definitions for the following terms: *Administrator, Associate Administrator, carrier, commerce, consignee, hazmat, HMR, loading incidental to movement, movement, offer a hazardous material, person, pre-transportation function, Secretary, sheathing, storage incidental to movement, transportation or transport, transportation facility, and unloading incidental to movement.*

Part 173

Section 173.1. We propose to remove paragraph (c) and redesignate current paragraph (d) as paragraph (c). Current paragraph (c) is redundant with the proposed revisions to Sections 171.1 and 171.2.

Section 173.10. We propose to remove this section. It contains outdated and obsolete requirements.

Section 173.30. We propose to remove this section because it conflicts with the new definitions of ''loading incidental to movement'' and ''unloading incidental to movement'' proposed in Sections 171.1 and 171.8

Section 173.31. We propose to add new paragraph (g) to consolidate requirements related to the protection of train and engine crews during rail tank car loading and unloading operations.

Part 174

We propose to delete Section 174.67. Consignee unloading of tank cars is not unloading incidental to movement as that term is defined in this NPRM for purposes of HMR applicability; thus, tank car unloading would not be subject to requirements in the HMR.

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of significant public interest. A preliminary regulatory evaluation is available for review in the public docket for this rulemaking.

For the most part, the proposals in this NPRM maintain the status quo for applicability of the HMR and, thus, neither increase nor decrease the costs of compliance with the HMR for persons who offer hazardous materials for transportation or transport hazardous materials in commerce. The only change from the status quo concerning rail tank car unloading operations and storage of rail tank cars on leased track. This NPRM proposes to exclude consignee unloading of rail cars and rail car storage on leased track from regulation under the HMR, thereby reducing the costs of compliance with the HMR for rail tank car unloading facilities and consignees that store hazardous materials in rail cars on leased track. In addition, this NPRM proposes to expand application of current requirements for placing warning signs, setting brakes, and blocking wheels during rail tank car unloading operations to loading operations, as well. FRA believes that rail facilities currently utilize these protective measures as part of their standard safe operating procedures and, thus, should incur minimal increased costs as a result of this proposal.

We invite all commenters to address the issues discussed in the preliminary regulatory evaluation. In particular, we invite comments on our general conclusion that the proposals in this NPRM (other than cost reductions pertaining to the unloading and storage of tank cars) maintain the status quo for applicability of the HMR and, thus, neither increase nor decrease the costs of compliance with the HMR for persons who offer hazardous materials for transportation or transport hazardous materials in commerce. Do you agree that these proposals generally represent a restatement of the current status quo for applicability of the HMR? If not, how would these proposals change your current business practices? Which requirements in the proposal represent potential increases or decreases in the cost of compliance with the HMR? For persons required to comply with the HMR, can you quantify any increased costs? For emergency responders, members of local emergency planning committees, and other interested persons, what benefits would result if the proposals in this NPRM are implemented? Can you quantify any benefits that may result?

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt state law and would have substantial direct effects on

the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject item(s) 1–5 above and would preempt state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary because there appears to be confusion in the regulated community and among federal, state, and local agencies with hazardous materials safety responsibilities concerning whether and to what extent the HMR apply to particular operations and activities related to the transportation of hazardous materials in commerce. The most obvious area of confusion was identified in the 1996 and 1999 ANPRMs issued for this docket—which loading, unloading, and storage activities are incidental to the movement of hazardous materials in commerce and therefore subject to the HMR. In addition, there is uncertainty concerning the extent to which other federal, state, and local agencies may regulate hazardous materials safety, particularly at fixed facilities where the lines between pre-transportation, transportation, and non-transportation operations are not clearly articulated.

Federal hazardous materials transportation law provides at Section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

As required under Executive Order 13132, we consulted with state and local officials early in the process of developing a proposed regulation in this matter. Through letters dated November 2, 1999, we invited the following organizations to participate in a meeting to discuss the HM–223 rulemaking: National Governors' Association; Council of State Governments; National Conference of State Legislatures; U.S. Conference of Mayors; the National Association of Counties; the National Association of Towns and Townships; and the National League of Cities. We met with representatives of the National Governors' Association, the Council of State Governments, and the National Conference of State Legislatures on January 20, 2000. During the meeting, we provided a brief summary of the status of the rulemaking. In addition, we explained the preemption provisions of federal hazmat law and how this rulemaking could affect state and local government programs governing hazardous materials safety. The state and local government representatives asked several questions about time frames and procedures for the rulemaking and expressed general support for the rulemaking goals as expressed in the two ANPRMs. The state and local government representatives did not comment on the issues and options discussed in the two ANPRMs and expressed a preference to wait to submit comments until we publish a specific proposal in an NPRM. We encouraged the state and local representatives to submit written comments in advance of publication of the NPRM to assure that the rulemaking addresses their concerns. After the meeting, we sent letters to all of the invited organizations, summarizing the meeting and again encouraging them to submit written comments to the HM–223 docket in advance of publication of the NPRM. None chose to do so.

RSPA made all written communications submitted in this proceeding by state and local officials available to the Director of the Office of Information and Regulatory Affairs, Office of Management and Budget.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply. Nevertheless, through a letter dated November 2, 1999, we invited the National Congress of American Indians (NCAI) to participate in a meeting to discuss this rulemaking. The NCAI did not attend the meeting, which occurred on January 20, 2000. After the meeting, we sent a letter to the NCAI, summarizing the meeting and encouraging the organization to submit written comments to the docket in advance of publication of this NPRM. The NCAI chose not to do so.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the preliminary regulatory evaluation, I hereby certify that the proposed rule would not have a significant economic impact on a substantial number of small businesses.

Need for the proposed rule. There is confusion in the regulated community and among government agencies with hazardous materials safety responsibilities concerning whether and to what extent the HMR apply to particular operations and activities related to the transportation of hazardous materials in commerce. This NPRM proposes to clarify specific functions to which the HMR apply. Providing a definitive line for determining the applicability of the HMR will reduce confusion on the part of the regulated public concerning where the transportation requirements apply and should have the beneficial effect of clarifying EPA and OSHA requirements for hazardous materials at fixed facilities. This should result in improved compliance with the separate regulatory requirements of DOT, EPA, and OSHA and, thus, enhance hazardous materials transportation safety, reduce risks to the environment from hazardous materials, and promote workplace safety at facilities that

manufacture or handle hazardous materials.

Identification of potentially affected small entities. For the most part, the selected alternative maintains the status quo in terms of applicability of the HMR, thus imposing no new compliance costs on the regulated industry. For rail tank car unloading facilities, the selected alternative reduces the costs of compliance with the HMR by eliminating the current requirement that rail tank car consignees comply with the unloading requirements in section 174.67.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Therefore, since no such special definition has been established, RSPA employs the thresholds published by SBA for industries subject to the HMR. (A complete listing of industries and their SBA thresholds is included as Appendix A to the Preliminary Regulatory Evaluation that has been placed in the public docket for this rulemaking.) Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of these firms are small businesses. These entities will incur no new costs to comply with the HMR if the proposals in this NPRM are implemented.

The Federal Railroad Administration estimates that there are 2,500 rail tank car loading and unloading facilities operated by manufacturers of chemicals and allied products. Since no special definition has been established, we employ the threshold of 500–1,000 employees published by SBA for manufacturers of chemicals and allied products (NAICS Subsector 325). Based on data for 1997 compiled by the U.S. Census Bureau, it appears that 93 percent of these firms are small businesses. The proposals in this NPRM will minimally increase the costs of complying with HMR requirements related to preventing access to rail tank cars during loading operations and will reduce the cost of complying with the HMR unloading requirements.

Related federal rules and regulations. OSHA issues regulations related to safe handling, including containment and transfer operations, of hazardous materials in the workplace. These regulations are codified at 29 CFR part 1910 and include requirements for process safety management of highly hazardous chemicals and for handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA regulations also address hazard communication requirements at fixed facilities, including container labeling and other forms of warning, material safety data sheets, and employee training.

EPA issues regulations, codified at 40 CFR part 68, designed to prevent accidental releases into the environment of hazardous materials at fixed facilities. These regulations include requirements for risk management plans that must include a hazard assessment, a program for preventing accidental releases, and an emergency response program to mitigate the consequences of accidental releases. In addition, EPA regulations applicable to hazardous materials handling at fixed facilities address community right-to-know requirements; hazardous waste generation, transportation, storage, disposal, and treatment; and requirements to prevent the discharge of oil into or onto the navigable waters of the United States or adjoining shorelines.

Conclusion. We have determined that this NPRM will impose no new costs for compliance with the HMR. The NPRM will reduce the costs to comply with the HMR for companies that operate rail tank car loading and unloading facilities.

E. Paperwork Reduction Act

This NPRM does not impose any new information collection requirements.

F. Regulation Identifier Number (RIN)

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

G. Unfunded Mandates Reform Act

This NPRM imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

We find that there are no significant environmental impacts associated with this proposed rule. An environmental assessment has been placed in the public docket for this rulemaking.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Parts 171, 173, 174, 175, 176, 177, and 178 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

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

2. Sections 171.1 is revised to read as follows:

§ 171.1 Applicability of Hazardous Material Regulations (HMR) to persons and functions.

Federal hazardous material transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in commerce. The Secretary is authorized to apply these regulations to persons who transport hazardous materials in commerce. In addition, the law authorizes the Secretary to apply these regulations to persons who perform pre-transportation functions that relate to assuring the safe transportation of hazardous materials in commerce, specifically persons who offer for transportation or otherwise

cause hazardous materials to be transported in commerce. The law also authorizes the Secretary to apply these regulations to persons who manufacture or maintain packagings or components of packagings that are represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce. Federal hazardous material transportation law also applies to: anyone who indicates by marking or other means that a hazardous material is present in a package or transport conveyance when it is not, and to anyone who tampers with a package or transport conveyance used to transport hazardous materials or a required marking, label, placard, or shipping description. In 49 CFR 1.53, the Secretary delegated authority to issue regulations to the Research and Special Programs Administrator. The Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) are issued by the Administrator under that delegated authority. This section addresses the applicability of the HMR to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

(a) *Packagings.* Requirements in the HMR apply to each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the federal government who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce.

(b) *Pre-transportation functions.* Requirements in the HMR apply to pre-transportation functions performed by each person who offers a hazardous material for transportation in commerce or causes a hazardous material to be transported in commerce, including each person performing pre-transportation functions under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the federal government. Pre-transportation functions include the following:

(1) Determining the hazard class of a hazardous material.

(2) Selecting a hazardous materials packaging.

(3) Filling a hazardous materials packaging.

(4) Securing a closure on a filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.

(5) Marking a package to indicate that it contains a hazardous material.

(6) Labeling a package to indicate that it contains a hazardous material.

(7) Preparing a shipping paper.

(8) Providing and maintaining emergency response information.

(9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.

(10) For each person importing a hazardous material into the United States, providing the shipper and the forwarding agent at the place of entry into the United States with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.

(11) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.

(12) Blocking and bracing a hazardous materials package in a freight container or transport vehicle.

(13) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(14) Selecting, providing, or affixing placards for a transport vehicle to indicate that it contains a hazardous material.

(c) *Transportation functions.* Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the federal government who transports a hazardous material in commerce. Transportation in commerce begins when a carrier takes possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material arrives at the destination indicated on a shipping document, package marking, or other medium. For a private motor carrier, transportation in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR. Transportation in commerce includes the following:

(1) *Movement.* Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel (except as delegated at section 1.46(t) of this title).

(2) *Loading incidental to movement of a hazardous material.* Loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel or loading of a hazardous material into a bulk packaging for the purpose of transporting it, when performed by a person employed by or under contract to a for-hire carrier or, in the case of a private motor carrier, when performed by the driver of the motor vehicle into which the hazardous material is being loaded immediately prior to movement of the hazardous material (except as delegated at section 1.46(t) of this title).

(3) *Unloading incidental to movement of a hazardous material.* Unloading of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or unloading of a hazardous material from a bulk packaging when performed by a person employed by or under contract to a for-hire carrier or, in the case of a private motor carrier, when performed by the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement is completed (except as delegated at § 1.46(t) of this title).

(4) *Storage incidental to movement of a hazardous material.* Storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR.

(d) *Functions not subject to the requirements of the HMR.* Requirements of the HMR do not apply to the following:

(1) Storage of a freight container, transport vehicle, or package containing a hazardous material at an offeror facility prior to a carrier taking possession of the hazardous material for

movement in transportation in commerce or, for a private motor carrier, prior to a motor vehicle driver taking physical possession of the hazardous material for movement in transportation in commerce.

(2) Unloading of a hazardous material from a transport vehicle or a bulk packaging performed by a person employed by or working under contract to the consignee or, in the case of a private motor carrier, following delivery of the hazardous material by the carrier to its destination, unloading by a person other than the driver of the motor vehicle from which the hazardous material is being unloaded.

(3) Storage of a freight container, transport vehicle, or package containing a hazardous material after its delivery by a carrier to the destination indicated on a shipping document, package marking, or other medium.

(4) Rail and motor vehicle movements of a hazardous material within a contiguous facility boundary, other than at a transportation facility, where public access is restricted, except to the extent that the movement is on or crosses a public road or on track that is part of the general railroad system of transportation.

(5) Transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a federal, state, or local government employee solely for noncommercial federal, state, or local government purposes.

(6) Transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle, including a leased or rented motor vehicle.

(7) Any matter subject to the postal laws and regulations of the United States.

(e) *Requirements of other federal agencies.* Each facility at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other federal agencies.

(f) *Requirements of state and local government agencies.* Each facility at which functions are performed in accordance with the HMR may be subject to applicable laws and regulations of state and local governments and Indian tribes, except to the extent that such laws and regulations are preempted under 49 U.S.C. section 5125. Under section 5125, a non-federal law or regulation may be preempted, unless otherwise authorized by another federal statute, if—

(1) Complying with both the non-federal law or regulation and a requirement of federal hazardous materials transportation law or the HMR is not possible;

(2) The non-federal law or regulation as applied or enforced is an obstacle to accomplishing and carrying out federal hazardous material transportation law or the HMR; or

(3) The non-federal law or regulation is not substantively the same as a provision of federal hazardous materials transportation law or the HMR with respect to—

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of these documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of federal hazardous material transportation law, an order issued under federal hazardous material transportation law, subchapter A of this chapter, or an exemption or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than $27,500 and not less than $250 for each violation. When a violation is a continuing one and involves transporting of hazardous materials or causing them to be transported or shipped, each day of the violation constitutes a separate offense. Each person who knowingly violates a requirement in § 171.2(l) of this subchapter or willfully violates a provision of federal hazardous material transportation law or an order issued under federal hazardous material transportation law may be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

3. Section 171.2 is revised to read as follows:

§ 171.2 General requirements.

(a) Each person who performs a function covered by this subchapter must perform that function in accordance with this subchapter.

(b) Each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter.

(c) Each person who performs a function covered by or having an effect on a specification prescribed in part 178, 179, or 180 of this subchapter, an approval issued under the HMR, or an exemption issued under subchapter A of this chapter, must perform the function in accordance with that specification, approval, or exemption, as appropriate.

(d) No person may offer or accept a hazardous material for transportation in commerce or transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable.

(e) No person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter.

(f) No person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter.

(g) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter. No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of the exemption, approval, or registration issued under this subchapter or subchapter A of this chapter. Except as provided in section 178.2 of this subchapter, a packaging or container marked as meeting a DOT specification or UN standard must

conform to the specification or standard at all times that the marking is visible. The requirements of this paragraph apply whether or not the packaging or container is used or to be used for the transportation of a hazardous material.

(h) The representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section include—

(1) Specification identifications that include the letters ''ICC'', ''DOT'', ''CTC'', ''MC'', or ''UN'';

(2) Exemption, approval, and registration numbers that include the letters ''DOT'', ''EX'', ''M'', or ''R''; and

(3) Test dates associated with specification, registration, approval, retest, or exemption markings indicating compliance with a test or retest requirement of the HMR, or an exemption, approval, or registration issued under the HMR or under subchapter A of this chapter.

(i) No person may certify that a hazardous material is offered for transportation in commerce in accordance with the requirements of this subchapter unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter. Each person who offers a package containing a hazardous material for transportation in commerce in accordance with the requirements of this subchapter, to include the signing of the shipper's certification, or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter, must assure that the package remains in condition for shipment until it is in the possession of the carrier.

(j) No person may, by marking or otherwise, represent that a container or package for transportation of a hazardous material is safe, certified, or in compliance with the requirements of this chapter unless it meets the requirements of all applicable regulations issued under federal hazardous material transportation law.

(k) No person may, by marking or otherwise, represent that a hazardous material is present in a package, container, motor vehicle, rail car, aircraft, or vessel if the hazardous material is not present.

(l) No person may alter, remove, deface, destroy, or otherwise unlawfully tamper with any marking, label, placard, or description on a document required by federal hazardous material transportation law or the regulations issued under federal hazardous material transportation law. No person may alter, deface, destroy, or otherwise unlawfully tamper with a package, container, motor vehicle, rail car, aircraft, or vessel used for the transportation of hazardous materials.

(m) No person may falsify or alter an exemption, approval, registration, or other grant of authority issued under this subchapter or subchapter A of this chapter. No person may offer a hazardous material for transportation or transport a hazardous material in commerce under an exemption, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter if such grant of authority has been altered without the consent of the issuing authority. No person may represent, mark, certify, or sell a packaging or container under an exemption, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter if such grant of authority has been altered without the consent of the issuing authority.

4. In section 171.8, definitions for ''carrier,'' ''person,'' and ''sheathing'' are revised, and definitions for ''Administrator,'' ''Associate Administrator,'' ''commerce'', ''consignee,'' ''hazmat,'' ''HMR,'' ''loading incidental to movement,'' ''movement,'' ''offer a hazardous material,'' ''pre-transportation function,'' ''Secretary,'' ''storage incidental to movement,'' ''transportation or transport,'' ''transportation facility,'' and ''unloading incidental to movement'' are added in alphabetical order, to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Administrator means the Administrator, Research and Special Programs Administration.

* * * * *

Associate Administrator means the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

* * * * *

Carrier means a person who transports passengers or property in commerce by rail car, aircraft, motor vehicle, or vessel.

* * * * *

Commerce means trade or transportation in the jurisdiction of the United States between a place in a state and a place outside of the state; or that affects trade or transportation between a place in a state and place outside of the state.

* * * * *

Consignee means the person or place shown on a shipping document, package marking, or other media as the location to which a carrier is directed to transport a hazardous material.

* * * * *

Hazmat means a hazardous material.

* * * * *

HMR means the Hazardous Materials Regulations, Parts 171 through 180 of this chapter.

* * * * *

Loading incidental to movement means loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel or loading of a hazardous material into a bulk packaging for the purpose of transporting it, when performed by a person employed by or under contract to a for-hire carrier or, in the case of a private motor carrier, when performed by the driver of the motor vehicle into which the hazardous material is being loaded immediately prior to movement of the hazardous material in commerce.

* * * * *

Movement means the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

* * * * *

Offer a hazardous material means perform, attempt to perform, or is required to perform a pre-transportation function under the HMR.

* * * * *

Person means an individual, corporation, company, association, firm, partnership, society, joint stock company; or a government, Indian tribe, or authority of a government or tribe offering a hazardous material for transportation in commerce or transporting a hazardous material to support a commercial enterprise. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. 5123 and 5124, a Department, agency, or instrumentality of the government.

* * * * *

Pre-transportation function means tendering a hazardous material to a carrier for transportation in commerce; causing a hazardous material to be transported in commerce; or performing a function specified in the HMR that is required to assure the safe transportation of a hazardous material in commerce, including—

(1) Determining the hazard class of a hazardous material.

(2) Selecting a hazardous materials packaging.

(3) Filling a hazardous materials packaging.

(4) Securing a closure on a filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.

(5) Marking a package to indicate that it contains a hazardous material.

(6) Labeling a package to indicate that it contains a hazardous material.

(7) Preparing a shipping paper.

(8) Providing and maintaining emergency response information.

(9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.

(10) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.

(11) Blocking and bracing a hazardous materials package in a freight container or transport vehicle.

(12) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(13) Selecting, providing, or affixing placards for a transport vehicle to indicate that it contains a hazardous material.

* * * * *

Secretary means the Secretary of Transportation.

* * * * *

Sheathing means a covering consisting of non-sparking, non-metallic material used as a lining over metal, and secured to prevent any motion, to reduce sparking or damage to inner packagings.

* * * * *

Storage incidental to movement means storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the hazardous material at its intended destination and is no longer responsible for performing functions subject to the HMR.

* * * * *

Transportation or *transport* means the movement of property and loading, unloading, or storage incidental to the movement.

Transportation facility means an airport, rail yard or terminal, marine terminal, truck terminal, or intermodal terminal. This term also includes a warehouse or storage location where hazardous materials are stored incidental to transportation.

* * * * *

Unloading incidental to movement means unloading of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or unloading of a hazardous material from a bulk packaging when performed by a person employed by or under contract to a for-hire carrier or, in the case of a private motor carrier, when performed by the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement in commerce is completed.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.45 and 1.53.

§ 173.1 [Amended]

6. In § 173.1, paragraph (c) is removed and paragraph (d) is redesignated as new paragraph (c).

§ 173.10 [Removed and Reserved]

7. Section 173.10 is removed and reserved.

§ 173.30 [Removed and Reserved]

8. Section 173.30 is removed and reserved.

9. Section 173.31 is amended by adding new paragraph (g) to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(g) *Tank car loading and unloading.* When placed for loading or unloading and before unsecuring any closure, a tank car must be protected against movement or coupling as follows:

(1) Caution signs must be placed between the rails to give necessary warning to persons approaching the car(s) from the open end of a siding and must be left up until after all closures are secured and the cars are in proper condition for transportation. The signs must be of a durable material, blue in color, rectangular in shape, at least 30.48 cm (12 inches) high by 38.10 cm (15 inches) wide, and bear the word ''STOP.'' The word ''STOP'' must appear in white letters at least 10.16 cm (4 inches) high. Additional words, such as ''Tank Car Connected'' or ''Crew at Work,'' may also appear in white letters under the word ''STOP.''

(2) At least one wheel on the tank car must be blocked against movement in both directions, and the hand brakes must be set. If multiple tank cars are coupled together, sufficient hand brakes must be set and wheels blocked to prevent movement in both directions.

§§ 173.3, 173.6, 173.24a, 173.62, 173.166, 173.171, 173.181, 173.185, 173.189, 173.219, 173.308, 173.335 and 173.416 [Amended]

10. In addition to the amendments set forth above, in Part 173 the word ''movement'' is revised to read ''shifting'' in the following places:

a. Section 173.3(c)(2);
b. Section 173.6(b)(1) and (b)(3);
c. Section 173.24a(a)(3);
d. Section 173.166(e)(4)(iii);
f. Section 173.171(d);
g. Section 173.181(a)(2);
h. Section 173.189(b) and (d)(4)(i);
i. Section 173.335(c); and
j. Section 173.416(f).

11. In addition to the amendments set forth above, in Part 173 the words ''freedom of movement'' are revised to read ''free moving'' in § 173.62(c) in the table under Packing Instruction 131 each time they appear.

12. In addition to the amendments set forth above, in Part 173 the word ''movement'' is revised to read ''moving'' in the following places:

a. Section 173.185(e)(7), (g)(1), and (g)(2);
b. Section 173.219(b)(3); and
c. Section 173.308(a)(4).

PART 174—CARRIAGE BY RAIL

13. The authority citation for Part 174 continues to read as follows:

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

§ 174.67 [Removed and Reserved]

14. Section 174.67 is removed and reserved.

§§ 174.110, 174.112, and 174.115 [Amended]

15. In addition to the amendments set forth above, in Part 174 the word ''movement'' is revised to read ''shifting'' in the following places:

a. Section 174.110;
b. Section 174.112(b) and (c)(3) each time it appears; and
c. Section 174.115(a) and (b)(3) each time it appears.

PART 175—CARRIAGE BY AIRCRAFT

16. The authority citation for Part 175 continues to read as follows:

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

§ 175.81 [Amended]

17. In § 175.81(a), the word ''movement'' is revised to read ''shifting''.

PART 176—CARRIAGE BY VESSEL

18. The authority citation for Part 176 continues to read as follows:

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

§§ 176.69, 176.76, 176.78, 176.93, 176.116, 176.132, 176.168, and 176.200 [Amended]

19. In Part 176, the word ''movement'' is revised to read ''shifting'' in the following places:

a. Section 176.69(d);

b. Section 176.76(a)(2) each time it appears;

c. Section 176.116(d);

e. Section 176.132(c); and

f. Section 176.200(b) and (c) each time it appears.

20. In Part 176, the word ''movement'' is revised to read ''motion'' in § 176.93(a)(1).

21. In Part 176, the word ''movement'' is revised to read ''moving'' in the following places:

a. Section 176.78(f)(8); and

b. Section 176.168(g).

PART 177—CARRIAGE BY PUBLIC HIGHWAY

22. The authority citation for Part 177 continues to read as follows:

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

§§ 177.834, 177.840, and 177.870 [Amended]

23. In Part 177, the word ''movement'' is revised to read ''shifting'' in the following places:

a. Section 177.834(a);

b. Section 177.840(b)(3); and

c. Section 177.870(e).

PART 178—SPECIFICATIONS FOR PACKAGINGS

24. The authority citation for Part 178 continues to read as follows:

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

§§ 178.601, 178.704 [Amended]

25. In Part 178, the word ''movement'' is revised to read ''moving'' in § 178.601(g)(1)(i)(D), (g)(1)(ii), and (g)(4)(v).

26. In Part 178, the word ''movement'' is revised to read ''motion'' in § 178.704(d)(3).

Issued in Washington, DC, on June 1, 2001 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 01–14385 Filed 6–13–01; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Thursday,
June 14, 2001

Part III

Nuclear Regulatory Commission

10 CFR Parts 150 et al.

Revision of Fee Schedules; Fee Recovery for FY 2001; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RIN 3150–AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately $453.3 million.

EFFECTIVE DATE: August 13, 2001.

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov.*

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background
II. Responses to Comments
III. Final Action
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act

I. Background

For FY 2001, the NRC is required to recover through fees approximately 98 percent of its budget authority, less the amounts appropriated from the Nuclear Waste Fund (NWF) and from the General Fund. The fee recovery amount for FY 2001 is approximately $453.3 million.

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount from 100 percent to 98 percent of the NRC's budget authority in FY 2001. The OBRA–90 amendment further decreases the fee recovery amount by an additional two percent per year beginning in FY 2002 until the fee recovery amount is 90 percent by FY 2005.

In addition to the 2 percent reduction to the fee recovery amount for FY 2001, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. The FY 2001 Energy and Water Development Appropriations Act states that this $3.2 million shall be excluded from license fee revenues. The total amount thus to be recovered for FY 2001 is approximately $453.3 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established at 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, the review of applications for renewal of existing licenses, and the review of requests for license amendments. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Responses to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to its licensees and applicants for FY 2001 on March 28, 2001 (66 FR 16982). Although the comment period ended on April 27, 2001, the NRC evaluated the 13 comments which were received by the close of business on May 7, 2001. Many of the comments raised similar issues. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments and NRC's responses are as follows:

A. Legal Issues

1. Information Provided by NRC in Support of Proposed Rule

Comment. One commenter urged the NRC to provide licensees and the public with a more detailed explanation of the specific activities and associated costs that form the basis for the part 171 annual fees, including detailed information on the outstanding major contracts, their purpose, and their costs. The commenter stated that, to enable stakeholders to provide meaningful comment on the proposed rule, the NRC should provide sufficient detail on the costs associated with each component of reactor regulation and other generic costs. The commenter indicated that this more detailed information would allow licensees and the public to provide more effective feedback and comment on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility.

Response. The NRC believes that commenters were provided ample information on which to base constructive comments on NRC's proposed revisions to parts 170 and 171. Consistent with the requirements of OBRA–90, the proposed fees were developed to recover approximately 98 percent of the NRC's FY 2001 budget

authority from the various classes of licensees. In addition to the descriptions of the types of activities included in the proposed fees and explanations of how the fees were calculated to recover the budgeted costs for those activities, the proposed rule also announced that the work papers supporting the proposed rule were available for public examination. As the proposed rule stated, the work papers were available in the NRC's Agencywide Documents Access and Management System (ADAMS) for public examination (Accession No. ML010860287). During the 30-day comment period the work papers were also available in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD for the public's use. The work papers include extensive information detailing the activities and the associated budgeted resources allocated to the various classes of licensees. The work papers show, by strategic arena, the allocation of budgeted costs for each planned accomplishment within each program of each strategic arena. In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG–1100, Volume 16, ''Budget Estimates and Performance Plan, Fiscal Year 2001 (February 2000),'' which discusses the NRC's budget for FY 2001, including the activities to be performed in each strategic arena. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule.

The NRC's budgets and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 98 percent of the NRC's FY 2001 budget authority, less the amounts appropriated from the NWF and the General Fund, as required by OBRA–90, as amended. Therefore the commenter's suggestion that more detailed information would allow the public to provide more effective comments concerning the efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule.

B. Specific Part 170 Issues

1. Hourly Rates

Comment. Some commenters opposed the $144 proposed hourly rate for the materials program. As in similar comments received from the uranium recovery industry on the issue in previous fee schedule rulemakings, the commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and should be substantially reduced.

Response. The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The professional FTE rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information technology overhead costs, as well as general and administrative costs, such as rent, heat, supplies, and payroll and human resources staffs.

The proposed hourly rate of $144 for the materials program is a very slight increase over the $143 hourly rate for FY 2000. As stated in the proposed rule, the increase is primarily due to the Government-wide pay increase in FY 2001. The revised hourly rates, coupled with the direct contract costs, recover through part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA, and the revised hourly rates plus direct contract costs recover through part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through part 170 fees, as required by OBRA–90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. The professional hourly rate for the reactor program is $150, and the professional hourly rate for the materials program is $144. For part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

2. Project Manager Billing Issues

Comment. Four comments were received opposing NRC's assessment of Part 170 fees to uranium recovery licensees to recover the costs for Project Managers (PM) assigned to their licenses. Commenters indicated that the PM charges have become an additional expense for the industry. These commenters raised several specific concerns with this fee recovery policy: the PM costs represent administrative charges that may or may not be directly related to the licensee's operations; the PM charges include generic efforts, such as rulemaking activities; licensees have no way to control these costs because the charges are allocated evenly among the licensees to which that PM is assigned; and the problem is exacerbated when a PM is assigned to only one, or in some cases only a few, licensee(s) who must pay all of the overhead costs associated with that PM. Several commenters supported the re-designation of PMs assigned to uranium recovery licenses as points of contact, particularly for those licensees who are not currently operating. One commenter stated that to the extent the NRC is required to recover these costs, it should do so through the annual fee to spread the costs more equitably across a range of licensees. One commenter asserts that the billing policy is an unjustified and *ultra vires* (beyond NRC's legitimate powers) implementation of its OBRA responsibilities, and that it cannot be defended, particularly as a shift of costs from part 171 fees to part 170 fees, because there has not been a decrease in the part 171 fees commensurate with the increase in part 170 fees. Referring to an NRC guidance document for staff hour reporting and coding of activities in NRC's Regulatory Information Tracking System (RITS) (the system used by the NRC to record and track staff hours and from which data is gathered for fee billing purposes), the same commenter charges that there is virtually no activity a PM performs that is excluded from fee recovery. The commenter claims that licensees are billed for generic efforts, despite statements to the contrary in the final FY 1999 fee rule (64 FR 31448; June 10, 1999), giving as an example ''rulemaking oversight'', which is assigned a code in RITS. The same commenter stated that nothing in the statements of consideration for the FY 1999 final rule, which provided examples of PM activities that would be included in part 170 fees, indicated that licensees would be charged for PM activities for work on the NRC's accounting system or work for another branch/office.

Response. The NRC assesses part 170 fees for PM activities under the authority of the IOAA. In the FY 1999 fee rule, the NRC stated that expanding the scope of part 170 to include, for example, full cost recovery for PMs is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that part 170 fees may be assessed to persons who are identifiable recipients of ''special benefits'' conferred by specifically identified activities of the NRC. Because PM activities are services which the NRC provides to specific, identifiable recipients, it is more appropriate that the costs, less costs for

generic activities and leave time, be recovered through part 170 fees assessed to the recipient of that service, rather than through annual fees assessed to the licensees in the class subject to annual fees.

Contrary to the commenter's claim, generic activities conducted by PMs are not recovered through part 170 fees. The fact that rulemaking activities are assigned a code in RITS does not mean that costs for these generic activities are included in PM costs assessed under part 170. RITS is the system used by the NRC's major program offices for recording staff hours, and the data is used for many purposes. Although the NRC's part 170 billing system uses data from RITS, it is programmed to exclude RITS data related to activities that are not subject to part 170 fees. Rulemaking activities are one example of the types of activities that are excluded from part 170 fee billing. Other examples of the types of activities that are coded in RITS but not billed under part 170 are allegation followup activities, escalated enforcement activities, and Combined Federal Campaign activities.

Generic activities are those NRC activities that broadly benefit classes or subclasses of licensees. Examples of generic activities, as stated in the FY 1999 final rule and reiterated in the FY 2000 final rule (64 FR 31451; June 10, 1999, and 65 FR 36947; June 12, 2000, respectively), include rulemaking and development of generic guidance documents. General activities such as training, general correspondence, attending staff meetings, coordination with and support to other offices, and processing documents into the Agencywide Documents Access and Management System (ADAMS) are not generic activities. In responding to uranium recovery industry comments in the FY 2000 final rule, the NRC listed these examples of the types of PM activities that are recovered through PM part 170 fees. The examples provided by the NRC in the FY 1999 and FY 2000 fee rules of PM activities to be billed under part 170 and those excluded from part 170 billing were not intended to be complete lists. Of the 420 RITS codes for use by PMs assigned to uranium recovery and other types of materials licenses, only 125 are identified for Part 170 billing purposes.

The PM activities charged under part 170 are general activities and activities specifically related to the site, such as licensing reviews. As the commenter indicated, the general activities billed under part 170 include time that a PM spends in reporting to the NRC's accounting system. General activities are part of the costs to the agency of providing the PM services, and the NRC continues to believe that the costs are most appropriately recovered from the licensees benefitting from the PM services.

The concept that the assessment of part 170 fees for PM activities increases the costs to the uranium recovery class is incorrect. PM charges might result in an increase for a particular licensee at a particular point in time. However, billing for PM time under part 170 does not cause an increase, or a decrease, in the total fees assessed to the class. Based on the OBRA–90 fee recovery requirements, all budgeted costs allocated to a class that are not recovered through part 170 fees paid by the class are recovered through annual fees assessed to those licensees in the class subject to the annual fees. Thus, all budgeted costs allocated to a class are paid by the class, either through part 170 fees or part 171 fees.

Although on the surface it may appear to be more fair to recover the PM costs through annual fees, the end result would not necessarily be equitable to those licensees paying the annual fees. If, for example, the NRC were to discontinue assessing part 170 fees to uranium recovery licensees for PM activities and all other conditions remained the same, uranium recovery licensees subject to annual fees would pay more in total costs because those uranium recovery licensees in decommissioning are not subject to annual fees and therefore would no longer pay for the PMs assigned to their site. Instead, the licensees authorized to operate or in a standby status would pay those PM costs through annual fees. To illustrate this point, the estimated average total PM part 170 fees paid per year by uranium recovery licensees in decommissioning or possession only status is $322,000. If the NRC eliminated PM activities from Part 170 fees for the uranium recovery class for a full fiscal year, the 11 licensees authorized to operate or in a standby status would be assessed an additional $322,000 in annual fees for that fiscal year in order to recover those costs.

The NRC finds no basis at this time to change its policy of recovering the costs for PMs through part 170 fees, to change the manner in which the costs are spread among those licensees assigned to one PM, or to change the policy with regard to assessing one licensee for all of the PM's activities when the PM is assigned to that one site only. The NRC believes this is a fair and equitable method of recovering these costs.

3. Clarification of Fee Waiver Provisions in § 170.21, Footnote 4 and § 170.31, Footnote 5

Comment. Two comments were received on the NRC's clarification of the fee waivers provided in 10 CFR 170.21, Footnote 4, criterion 3, and 10 CFR 170.31, Footnote 5, criterion (c) for certain documents submitted to the NRC. One commenter expressed concern that the NRC is shifting cost recovery for generic activities from part 171 to part 170. Both commenters contend that the clarification will discourage generic actions and is inconsistent with the Commission's policies aimed at encouraging industry organizations to work cooperatively with the NRC and recognizing the efficiencies and effectiveness to be gained from these efforts. The commenters assert that the clarification represents a change in policy and will discourage industry initiatives, which serve to reduce NRC resource demands and expedite resolution of issues on a generic basis. One commenter further contends that the clarification is inconsistent with the NRC's strategic goal of making its activities and decisions more effective, efficient, and realistic, and recommends that NRC retain ''the original interpretation'' of the fee waiver.

Response. The NRC's original interpretation of the subject fee waiver provisions has not changed, and has been consistently applied in granting or denying fee waiver requests. However, the NRC has experienced an increase in the number of fee waiver requests that do not meet the criteria. The NRC believes that this increase may be due, at least in part, to the fact that the statements of consideration in the FY 1994 fee rule concerning the waivers (59 FR 36895; July 20, 1994) were not repeated in subsequent fee rulemakings and are not codified in the regulations. Therefore, licensees may be submitting fee exemption requests that do not meet the criteria because they may not be familiar with the intent of the fee waiver provisions.

As the statement of considerations for the 1994 fee rule indicates, the fee waiver provisions of criterion 3 of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 apply to reports submitted for the purpose of supporting NRC's generic regulatory improvements, such as development of generic guidance and regulations and resolution of safety issues applicable to a class of licensees. The NRC has denied fee waiver requests for reports/requests that were not submitted for the *purpose* of *NRC's* regulatory improvements, such

as those submitted for the purpose of furthering the industry's generic actions. Although the NRC may realize some benefits from the review and approval of reports/requests that are submitted for purposes other than NRC's generic regulatory improvements, the primary beneficiary of the review and approval of such reports is the organization that submitted the report. Assessing part 170 fees for these special services rendered to identifiable recipients is consistent with the provisions of the IOAA. Contrary to one commenter's view, reports of this type do not represent NRC generic activities. Therefore the NRC is not shifting cost recovery for generic activities out of part 171 to part 170.

To assist licensees in determining in advance whether their submissions meet the criteria for the fee waiver, the NRC is, in this final rule, re-stating the original statement of considerations for the FY 1994 rule related to the fee waivers, and is adding clarifying language to the Footnotes that the reports/requests must be submitted for the purpose of NRC's regulatory improvements for the fee to be waived. This is not a change in policy, is consistent with how the fee waiver provisions have been applied by the NRC, and is not inconsistent with the NRC's strategic goals.

4. Invoice Information

Comment. Several commenters assert that NRC's invoices lack adequate explanations of the work done and the dates the work was performed. These commenters urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, commenters contend that the change would serve the NRC, its licensees, and the public well.

Response. As the NRC has stated in response to similar comments on previous rules, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in RITS, which is the NRC's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From RITS, the fee billing system captures the NRC staff hours for activities billable under part 170 as well as the work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the name of the staff member performing the work, and the date the work was completed, if applicable, are printed on the enclosure to the part 170 invoices. Currently, the work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in RITS. However, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts. Additionally, the inspection report number is provided on inspection fee bills. Further, as the NRC has stated in previous rules, any applicant or licensee who does not understand the charges or needs more information in order to understand the bill may request additional details from the NRC. All available information in support of the bill will be provided. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

For contractor costs billed to uranium recovery licensees under part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Again, any additional information that is available is provided upon a specific request of the applicant or licensee. However, as the NRC has explained in the past, the NRC does not plan to develop additional systems solely to provide additional information on its fee invoices. Office of Management and Budget Circular A–25, which provides guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems do not need to be established solely for the purpose of determining or estimating full cost.

C. Specific Part 171 Issues

1. Fee Exemption for Educational Institutions

Comment. One college holding an NRC materials license commented that the proposed fee rule would represent a major financial burden to the college and they would have to consider terminating their license. The commenter requested that NRC provide a fee exemption for small colleges and universities.

Response. The NRC has not changed the existing fee exemptions for nonprofit educational institutions. The part 170 and part 171 fee exemptions for nonprofit educational institutions were not shown in the proposed rule for public comment because only sections of a regulation that are being considered for change in a proposed rulemaking are published in the **Federal Register** as part of the rulemaking process.

As provided in 10 CFR 170.11(a)(4) and 10 CFR 171.11(a)(1), fees are not required for a license applied for by, or issued to, a nonprofit educational institution. Therefore, most colleges and universities will continue to be exempt from part 170 and part 171 fees. However, the fee exemptions do not apply to those licenses that authorize human use; remunerated services to other persons; distribution of byproduct, source, or special nuclear materials or products containing byproduct, source, or special nuclear material; or activities performed under a Government contract.

2. Small Entity Fees

Comment. One commenter stated that the range of $350,000 to $5,000,000 in gross annual receipts for the two tiers of annual fees for small entities is too large. The commenter indicated that their firm is at the lower end of the range, paying the same annual fee as another entity with four to five times their gross revenue. The commenter suggested that to help reduce the license fee burden on smaller entities, the NRC establish additional tiers between the $350,000 and $5,000,000 range; for example, a tier of $350,000 to $1,500,000 in gross annual receipts with an annual fee of $1,000, and a tier of $1,500,000 to $5,000,000 with an annual fee of $1,500.

Response. The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross receipts. Reductions in fees for small entities must be paid for by other NRC licensees in order to meet the requirements of OBRA–90, as amended, to recover most of the NRC's budget through fees. While establishing more tiers would provide additional fee relief for some small entities, it would result in an increase in the small entity subsidy other licensees pay. The NRC believes that in order to maintain a reasonable balance between the objectives of OBRA–90 and the of 1980 (RFA) requirement that the NRC examine ways to minimize significant impacts its rules may have on a substantial number of small entities, no further reductions to the fees should be made.

The NRC established reduced annual fees for small entities based on the RFA requirement that if an agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the

impacts on small entities and the alternatives to minimize these impacts. The NRC has performed a regulatory flexibility analysis as part of its fee rulemaking each year since annual fees were first established in FY 1991 under OBRA–90, based on the Commission's conclusion that the annual fees for materials licensees result in substantial fees being assessed to a significant number of small entities.

To minimize the impacts of the annual fees, the NRC has established a maximum annual fee for licensees who qualify as a small entity under NRC's size standards. In 1992, the NRC established a lower tier small entity fee to further reduce the impact of the annual fees for those licensees with relatively low gross annual receipts of less than $250,000 and for small governmental jurisdictions with a relatively low population of less than 20,000 (57 FR 13625; April 17, 1992). In establishing this lower tier, the NRC stated that the additional tier would substantially reduce the impact of the annual fees for those licensees with relatively low gross annual receipts, while at the same time it would not substantially increase the amount of fees that other licensees would be required to pay to subsidize the small entities.

In 1995, the NRC published a final rule amending its size standards (60 FR 18344; April 11, 1995). One aspect of the amendment was to add a size standard of 500 or fewer employees for business concerns that are manufacturing entities. In the final FY 1995 fee rule, the gross-receipts level for the lower-tier small entity fees was increased to the current level of $350,000, and a lower tier of less than 35 employees was established for manufacturing entities.

For FY 2000, approximately 35 percent of the small entities qualifying for reduced annual fees qualified for the lower tier small entity fee. The NRC believes that maintaining a single lower tier annual fee for small entities with relatively low gross annual receipts of less than $350,000, for small governmental jurisdictions with a population of less than 20,000, and for manufacturing entities that have an average of less than 35 employees continues to provide a further reduction to the impact of the annual fees to a significant number of small entities.

Comment. Two comments were received concerning NRC's proposal to discontinue mailing NRC Form 526, ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171,'' with each annual fee invoice. One of the commenters indicated that the proposal would result in a burden on the licensees because they would have to obtain the form by other means, and that many of the ''mom and pop'' operations may not have access to the Internet. This commenter believes that, because only a small percentage of the total number of small entity forms submitted are filed by licensees who do not qualify for small entity status, the proposal would unfairly penalize those who do qualify as a small entity. The commenter stated that because NRC requires the form, the NRC is obligated to supply it by a means that is accessible to all licensees. The commenter suggested that instead of discontinuing mailing the form with the annual fee invoices, the form be modified to make it clear who qualifies and who does not qualify as a small entity.

Both commenters stated that the proposal would result in an additional burden on NRC staff due to increased telephone calls requesting the form and staff efforts to mail or fax the form to those requesting it. One commenter believes that many licensees do not read the proposed and final fee rules, and therefore would not be aware of the revised policy. This would result in more calls to the NRC asking why the form was not enclosed with the invoice.

Response. NRC Form 526 is one sheet, with the five NRC size standards for small entities printed on the front, and the instructions for completing the form printed on the back. Both sides of the form state, in capital letters and in large print, that the form should not be completed if the licensee does not qualify under one of the size standards shown. In addition, the Certification block, which is to be signed by the owner of the small entity or an official empowered to act on behalf of that entity, states ''I certify that the above named NRC licensee qualifies as a small entity under the size standards established by the NRC for its licensees in 10 CFR 2.810 (60 FR 18344). The licensee qualifies as a small entity under the specific size standard indicated above.'' Thus, the NRC believes the form and the accompanying instructions are clear that the form should be completed only by those licensees that qualify as a small entity under NRC's size standards.

However, as indicated in the proposed rule, the NRC continues to receive forms completed by licensees who do not qualify as a small entity. When contacted about improperly filed forms, many of these licensees indicate they thought they had to complete the form because it was enclosed with the annual fee invoice. It is for this reason that the NRC proposed to discontinue including NRC Form 526 with each annual fee invoice.

Licensees who file an improperly completed NRC Form 526 do so under penalty of perjury, and could become the subject of an NRC investigation. This could lead to fines, imprisonment, or both, and the revocation or suspension of the license. The NRC believes that there is merit to trying to minimize the number of improperly filed forms, the resulting risk to the licensees, and the associated drain on NRC resources.

The NRC is adopting the proposed change. However, in order to minimize the impact on NRC licensees and NRC staff resources, implementation of the revised policy of not mailing NRC Form 526 with each annual fee invoice will be phased in. The NRC is evaluating various options to determine the most cost effective means of segregating in the annual fee billing system those licensees who are identified in the accounting system as qualifying small entities for the previous fiscal year. Once this process is in place, the NRC will send NRC Form 526 only with those annual fee invoices issued to licensees who qualified as a small entity for the prior year. When this process is implemented, the NRC will send a notice with the annual fee invoices issued to those licensees who did not qualify as a small entity the previous year to advise them of the change and to provide information on how they can obtain the form if they qualify as a small entity in the current year. Until the revised process is in place, the NRC will continue to mail NRC Form 526 with each annual fee invoice issued to materials licensees.

Licensees who have questions about their status as a small entity or about the process for filing the NRC Form 526 should contact the NRC's license fee staff at 301–415–7554, or e-mail the fee staff at *fees@nrc.gov.*

3. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received 5 comments concerning the annual fees charged to NRC's uranium recovery class of licensees. While most of the commenters acknowledged the reduction in annual fees for the uranium recovery class compared to FY 2000, many stated that the reduction does not make up for an increase in total charges over the last two years and does not go far enough. Some commenters are concerned with what they believe is a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program, and the benefit derived from

that program. Several commenters indicate that sites that are on standby or awaiting approval of reclamation plans should not be subject to annual fees because they require minimal NRC oversight. Some commenters stated that the decision to cease operations, go into standby, or begin decommissioning is rarely at the licensee's discretion, but rather is based on the realities of the uranium market. Several commenters stated that the NRC must find an equitable way of dealing with the decreasing number of licensees in the uranium recovery area, which could result in the remaining few paying for the entire program.

Some commenters referred to the April 10, 2001, Commissioners' Briefing provided by the National Mining Association, where the status of the uranium recovery industry, the impacts of NRC's fees on the industry, and the potential for seeking fee relief were discussed. Several commenters supported an industry-wide effort to seek relief from NRC's fees through a petition for rulemaking or by pursuing legislative relief. Commenters claim that the fees NRC charges uranium recovery licensees threaten the viability of the industry, which is vital to the nation's long-term energy security.

Response. The NRC has responded to similar comments concerning the impact of its fees on the uranium recovery industry in several prior fee rulemakings. Most recently, the NRC responded to these concerns in the FY 2000 final rule (65 FR 36950, 36951; June 12, 2000). As explained there, the NRC recognizes that fees may result in a substantial financial hardship for the uranium recovery industry, particularly in light of the industry's economic status and the potential for a decreasing number of uranium recovery licensees. However, consistent with the OBRA–90 requirement that the annual fees must, to the maximum extent practicable, have a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for the uranium recovery class of licensees reflect the NRC's cost of its regulatory services to the class. The NRC determined the costs to be allocated to each class through an extensive review of each planned accomplishment in the major program areas.

As the NRC has stated since FY 1991 when the 100 percent fee recovery requirement was first implemented, the agency recognizes that assessing fees to recover these costs as required by OBRA–90 may result in adverse economic impacts on some licensees. However, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. It is largely for this reason that the NRC has heretofore not based the annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts it is required by law to consider.

The NRC provides reduced annual fees for licensees who qualify as small entities under NRC's size standards, based on a determination under the provisions of the Regulatory Flexibility Act that annual fees have a significant economic impact on a substantial number of small entities. The reduction in annual fees for qualifying small entity uranium recovery licensees is significant. For example, for FY 2000, an in-situ mill licensee paid a reduced annual fee of $400 based on their small entity status, a reduction of $26,850. Because OBRA–90 requires that the NRC recover most of its budget through fees, costs not recovered from licensees based on their small entity status, or for any other reason, are allocated to other licensees. The subsidy for small entities is recovered through the surcharge, with reactor licensees paying about 80 percent of the total surcharge costs.

A decrease in the number of licensees does not necessarily reduce the need for NRC's generic efforts and other activities recovered through part 171 annual fees. For example, the number of licensees does not affect the NRC's costs to establish a risk-informed, performance-based regulatory framework or to maintain the Emergency Response Center. However, the NRC budget process provides an on-going mechanism for assuring that its programs are carried out in the most efficient and effective manner. In FY 1999, budgeted costs of $5.8 million were allocated to the uranium recovery class, including $0.7 million in surcharge costs. In FY 2001, $4.3 million has been allocated to the uranium recovery class, including $0.4 million in surcharge costs. Thus, the budgeted costs for this class, including the allocated surcharge costs, have been reduced by 25 percent since the last rebaselining in FY 1999. After subtracting the estimated part 170 collections and other adjustments, the costs remaining to be recovered through annual fees assessed to the class for FY 2001 is $1.5 million, compared to $2.1 million for FY 1999, a reduction of approximately 29 percent as reflected in the reduced annual fees to be assessed uranium recovery licensees for FY 2001.

The NRC has no choice but to assess annual fees to NRC licensees to recover the budgeted costs not recovered through part 170 fees and other receipts. However, as stated in the proposed rule, to address fairness and equity concerns raised by the NRC related to assessing fees to NRC licensees to recover costs for activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to reduce the NRC's fee recovery requirement by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent by FY 2005. This results in a reduction of $9.3 million in the total fees to be assessed to NRC licensees in FY 2001, a reduction which is shared by all licensees, including uranium recovery licensees.

The NRC has previously considered whether licensees in a standby status or awaiting approval of their reclamation plans should be granted a full or partial exemption from annual fees based on their non-operating status. For example, the NRC addressed this issue in response to comments on the FY 1991 rule (56 FR 31461; July 10, 1991), and further elaborated on it in 1995 in response to a petition for rulemaking from the American Mining Congress (now the National Mining Association) (60 FR 20918; April 28, 1995). The Commission currently believes that the existing policy of assessing annual fees based on whether a licensee holds a valid NRC license that authorizes possession and use, whether or not the facility is actively operating or in a standby status, represents the fairest option available under current legislation. This policy is based on the basic premise that the benefit the NRC provides a licensee is the authority to use licensed material. Whether or not to exercise that authority is a business decision of the licensee.

Based on the fee recovery requirements of OBRA–90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would increase the annual fees assessed to the remaining licensees. Providing such fee relief would add to the effects of decreasing numbers of licensees on annual fees, which continues to be of concern to commenters. Licensees in a standby status continue to benefit from NRC's generic guidance and rules applicable to the uranium recovery class of licensees and therefore should continue to pay annual fees.

Although the comments indicate that annual fees are assessed to certain licensees because of a failure on NRC's part to approve their reclamation plans, this is not the case. The NRC waives the annual fee for those licensees who have

relinquished their authority to operate and have permanently ceased operations, as long as the notifications of such actions are filed by the dates provided in the fee regulations. The reclamation plans do not have to be approved by the NRC for the fee waiver to apply.

4. Quarterly Billing Schedule For Class I And Class II Licenses

Comment. Two commenters supported the NRC's proposal to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees, regardless of the annual fee amounts.

Response. The NRC is modifying § 171.19 in this final rule to establish a quarterly annual fee billing schedule for uranium mill licensees (Class I) and solution mining licensees (Class II). Because the annual fees for these licensees have been close to the $100,000 threshold for quarterly billing, slight changes in the annual fees have resulted in frequent changes in their billing schedules. This change will provide these licensees with a consistent, predictable schedule for paying their annual fees.

5. Annual Fees for Power Reactors in Decommissioning

Comment. The NRC received one comment concerning the spent fuel storage/reactor decommissioning annual fee. The commenter stated that the proposed 32 percent annual fee increase for this class of licensees is not equitable and places an undue burden on the licensees in the class. Comparing the proposed increased annual fee for the spent fuel storage/reactor decommissioning class to the proposed decreased annual fee for operating reactors, the commenter contends that the increase is an undue burden because the decommissioning plants do not generate revenue through the sale of electricity and have no guarantee of recovering additional costs by petitioning local public utility commissions.

The commenter said that the additional costs would have to be assumed by existing plant decommissioning funds, which could affect the resources available for performing plant decommissioning in a timely manner. The commenter believes that at a minimum the fees should be only incrementally increased by approximately six percent per year, corresponding with the NRC phased budget reductions. The commenter believes that this suggested approach would be consistent with the intent of OBRA–90, as amended.

Response. The rebaselined annual fees for FY 2001 reflect the budgeted costs for each class of licensees. Although NRC recognizes that there may be adverse economic impacts on those classes of licensees with annual fee increases, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class without increasing the fees elsewhere, and thereby creating adverse economic impacts for another class of licensees.

The increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since the last annual fee rebaselining in FY 1999. For example, compared to FY 1999, there were increases in budgeted costs allocated to the spent fuel storage/reactor decommissioning class for waste safety research, for spent fuel storage licensing and inspection activities, and for rulemaking. Recovering the costs associated with spent fuel storage and reactor decommissioning from operating power reactors, reactors in decommissioning if they have fuel on site, and those Part 72 spent fuel storage licensees who do not hold a part 50 license is consistent with the intent of OBRA–90 that NRC's resources be allocated among licensees or classes of licensees, so that the licensees who require the greatest expenditure of the NRC's resources will pay the greatest annual fee.

Because these costs are budgeted for activities related to the spent fuel storage/reactor decommissioning class, there is no basis to limit the fee increases that are necessary to recover the budgeted costs from the class. However, based on revised part 170 estimated collections for FY 2001, the annual fee in this final rule for each licensee in the spent fuel storage/reactor decommissioning class is $266,000, which is $9,000 less than the proposed annual fee of $275,000.

In addition to reactor licensees in decommissioning, operating reactors and part 72 licensees that do not hold a part 50 license will also be assessed the increased FY 2001 spent fuel storage/reactor decommissioning annual fee. The decrease in total FY 2001 annual fees for operating power reactors is due to reduced budgeted costs for the operating power reactor class compared to FY 1999.

6. Annual Fees for Fuel Facilities

Comment. One fuel facility licensee commented that the proposed fee increase for fuel facilities would result in a financial burden that counteracts the cost control and reduction efforts that are being implemented by licensees in the class in order to effectively compete in world markets. The commenter also indicated that the proposed rule did not provide the basis for the increase in fuel facility budgeted costs and therefore it was difficult to determine if they are fair and equitable. Another fuel facility licensee referenced its March 13, 2001, request for a downgrade of its license and a reduction in the annual fee, and its March 29, 2001, request for a license amendment to reflect certain discontinued operations for purposes of downgrading the license. The commenter stated that as a result of their request, the fee rule should reflect the downgrade of the license from Category 1.A.(1)(b) to Category 1.A.(2)(a) and the FY 2001 annual fee should be prorated accordingly.

Response. The rebaselined annual fees for FY 2001 have been established based on the budgeted costs allocated to each class of licensees, less the estimated Part 170 collections and other adjustments for each class. The FY 2001 annual fees decreased for many categories of licensees compared to FY 2000, and increased for others. The NRC recognizes that the FY 2001 annual fees may have an adverse impact on those classes of licensees with annual fee increases. However, the rebaselined fees represent a fair and equitable allocation of NRC's FY 2001 budgeted costs to the various classes of licensees. The work papers supporting the proposed rule and this final rule show in detail the allocation of the budgeted costs for each planned accomplishment within the NRC's major programs to the various classes of licensees, and how the fees are calculated. As the NRC stated in the proposed rule (66 FR 16982, March 28, 2001), the work papers for the proposed rule are available in ADAMS, and during the 30-day comment period they were also available in the PDR for review. As shown in the **ADDRESSES** section, the work papers for this final rule are also available in ADAMS, and will be available in the PDR for review for a period of 90 days from the date this final rule is published in the **Federal Register**.

Cost control measures that a class of licensees might take do not affect the amount of the budget that the NRC is required to recover from that class through annual fees. Similarly, as the NRC has indicated in several previous fee rulemakings, the NRC does not set fees based on factors such as size, ability to pay, or other economic factors. In order to meet the requirements of OBRA–90, the NRC is unable to reduce

the fees assessed to one class of licensees without increasing the fees assessed to other classes. Therefore, as stated previously, the NRC has only given consideration to the effects it is required to consider by law. As reflected in the Regulatory Flexibility Analysis, Appendix A to this final rule, the NRC has determined that a maximum annual fee for small entities strikes a balance between the fee recovery requirements of OBRA–90, as amended, and the requirement of the Regulatory Flexibility Act to consider means to reduce the impact of the fees on small entities.

In FY 1995, after notice and comment rulemaking, the NRC established the current methodology for determining annual fees for fuel facilities. This methodology results in the reasonable grouping of fuel facility licenses into fee categories according to the licensed operations and the level, scope, depth of coverage, and rigor of generic regulatory programmatic efforts. The programmatic efforts reflect the safety and safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). A matrix depicts the categorization of the fuel facility licenses based on these factors.

The NRC has modified the matrix based on the notification referenced by one commenter that, prior to March 31, 2001, it had permanently ceased certain licensed operations. The revised matrix reflects the licensee's cessation of conversion of uranium hexafluoride (UF_6) to uranium oxide (UO_2) and removal of the remaining UF_6 from the facility prior to March 31, 2001. The NRC has determined, however, that the reduced activities do not diminish the licensee's total safety and safeguards effort factors and the commensurate generic regulatory program to the extent that it will place the license in the next lower fee category. The NRC will respond separately to the specific issues raised in the commenter's March 13, 2001, letter requesting that the license be placed in a lower fee category.

The revised matrix results in a redistribution of the safety and safeguards costs among the fuel fabrication categories. Accordingly, the annual fees for licensees in the fuel facility categories in this final rule have changed from the amounts shown in the proposed rule. The final annual fees for the various fuel facility categories also reflect an increase in estimated Part 170 collections for the fuel facility class for FY 2001 compared to the proposed rule. The final annual fees for the various fuel facility categories are shown in § 171.31.

D. Other Issues

1. NRC's Budget

Comment. One commenter offered several suggestions for reducing NRC's budget and for more efficient use of NRC resources. The commenter indicates that the proposed rule does not account for a reduced number of regional initiative inspections. The commenter suggested that further improvements in inspection and assessment efficiency could be realized by NRC's participation and oversight of licensee self-assessments, rather than NRC conducting independent inspections. The commenter also suggested that the NRC review the scope and content of inspection procedures to make them further risk-informed, that the NRC eliminate resources oriented to minimally safety-significant areas, and that the NRC consider consolidating the regional offices in the near-term and eliminating them in the longer term.

Response. As stated in the response to the comment concerning information the NRC provided in support of the proposed and in response to similar comments on previous fee rules, the NRC's budgets and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenter's suggestions concerning NRC's budget and the use of NRC resources. The NRC's budgets are submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources necessary for NRC to carry out its statutory obligations. In compliance with OBRA–90, the fees are established to recover the required percentage of the approved budget.

However, it should be noted that the NRC's budget reflects its efforts to be effective and efficient. Since FY 1993, the NRC budget has been reduced by more than $25 million in current year dollars and by more than $140 million or 25 percent in constant dollars. Over this same timeframe the staffing of the NRC has been reduced by approximately 600 FTE or 18 percent. To achieve these reductions, the NRC has eliminated programs, improved processes, reduced overhead requirements, and implemented efficiencies and cost savings. The Commission continues to search vigorously for additional opportunities to streamline its operations and to achieve efficiencies.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2001 is $487.3 million, of which $21.6 million has been appropriated from the NWF. In addition, $3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. In the proposed rule, the total budget was shown as $487.4 million. However, a rescission reduced the total budget authority by approximately $75.0 thousand. This rescission did not affect the fee recovery portion of the budget and, therefore, the fee recovery amounts have not changed from the proposed rule. Based on the 98 percent fee recovery requirement, the NRC must collect approximately $453.3 million in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2001 is $6.3 million more than the amount estimated for recovery in FY 2000. However, the FY 2001 fee recovery amount is further reduced by a $3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published. This leaves approximately $450.2 million to be recovered in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $118.2 million will be recovered in FY 2001 from Part 170 fees and other offsetting receipts. The NRC also estimates a net adjustment for FY 2001 of approximately $0.4 million for payments received in FY 2001 for FY 2000 invoices. The remaining $332.0 million is to be recovered through the part 171 annual fees, compared to $341.0 million for FY 2000.

Table I summarizes the budget and fee recovery amounts for FY 2001.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2001

[Dollars in millions]

Total Budget Authority	$487.3
Less NWF	−21.6
Less General Fund	−3.2
Balance	$462.5

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2001—Continued

[Dollars in millions]

Fee Recovery Rate for FY 2001	×98.0%
Total Amount to be Recovered For FY 2001	$453.3
Less Carryover from FY 2000	−3.1
Amount to be Recovered Through Fees and Other Receipts	$450.2
Less Estimated Part 170 Fees and Other Receipts	−118.2
Part 171 Fee Collections Required	$332.0
Part 171 Billing Adjustments.	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	−3.6
Subtotal	−0.4
Adjusted Part 171 Collections Required	$331.6

The final FY 2001 fee rule is a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2001 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. For these licensees, payment will be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule will be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule will be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

In accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2001 final rule or future final rules to licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov.*

The NRC is amending 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

The NRC is revising the hourly rates used to calculate fees and is adjusting the 10 CFR part 170 fees based on the revised hourly rates and the results of the NRC's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101–578, Nov. 15, 1990, 104 Stat. 2838) (CFO Act). Additionally, the NRC is eliminating the fees currently assessed to Agreement State licensees who file revisions to the information submitted on their initial filing of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' and including the costs for these revisions in the application fees assessed for the initial Form 241. The NRC is also establishing an annual registration fee of $450 to be assessed for part 31 general licensees required to register certain types of generally licensed devices. These final revisions are further discussed below.

The final amendments are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2001 direct program full time equivalents (FTEs) and the FY 2001 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is $150 per hour ($266,997 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is $144 per hour ($255,563 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2000 final fee rule, the reactor and materials program rates were $144 and $143, respectively. The increases are primarily due to the Government-wide pay increase in FY 2001.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 2001 BUDGET AUTHORITY INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits	$107.8M	$31.3M
Overhead Salaries & Benefits, Program Travel and Other Support	56.1M	15.0M
Allocated Agency Management and Support	100.8M	28.5M
Subtotal	$264.7M	$74.8M
Less offsetting receipts	−0.1M	
Total Budget Included in Hourly Rate	$264.6M	$74.8M
Program Direct FTEs	991.0	292.7

TABLE II.—FY 2001 BUDGET AUTHORITY INCLUDED IN HOURLY RATES—Continued

	Reactor program	Materials program
Rate per Direct FTE	$266,997	$255,563
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$150	$144

As shown in Table II, dividing the $264.6 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (991.0) results in a rate for the reactor program of $266,997 per FTE for FY 2001. The Direct FTE Hourly Rate for the reactor program is $150 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($266,997) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' Similarly, dividing the $74.8 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (292.7) results in a rate of $255,563 per FTE for FY 2001. The Direct FTE Hourly Rate for the materials program is $144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($255,563) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or ''flat'' fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete materials licensing actions should be increased in some categories and decreased in others, as described below, to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 1999 (64 FR 31448; June 10, 1999). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1999.

In summary, the final licensing fees reflect an increase in average time for new license applications for seven of 33 materials fee categories included in the biennial review, a decrease in average time for five fee categories, and the same average time for the remaining 21 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§ 170.21 and 170.31, and decreased for two other fee categories.

The revised licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 2001. The amounts of the materials licensing ''flat'' fees are rounded as follows: fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing ''flat'' fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31. An additional change to Category 16 is discussed in item 3. below. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

3. Fees for Revisions to Initial Reciprocity Applications

The NRC has taken several actions in the past few years to streamline and stabilize fees assessed to materials user licensees subject to ''flat'' fees. These actions included elimination of the inspection, renewal, and amendment fees from part 170, and inclusion of the costs for these activities in the part 171 annual fees. Materials user licensees affected by these changes have responded favorably to the elimination of multiple types of individual fees.

The NRC is taking a similar streamlining action for certain submittals from Agreement State licensees operating in areas under NRC jurisdiction under the part 150 reciprocity provisions. Currently, a part 170 fee of $1,200 is charged for each initial filing of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' and an additional fee of $200 is charged for each revision to the information submitted on the initial NRC Form 241. Revisions are filed to request approval for work locations, radioactive materials, or work activities different from those submitted on the initial NRC Form 241. In FY 2000, only $23,000 was collected for 115 revisions.

The NRC has eliminated the revision fees and included the costs for processing them in the fee assessed for each initial reciprocity application. For those revisions filed on or after the effective date of this final rule, the reciprocity applicants will no longer be required to submit payments with their revision requests. In addition to the convenience for the reciprocity applicants, this will also eliminate the NRC's administrative burden of processing the revisions for fee collection purposes. This change plus the increase in the hourly rate results in an increase in the application fee, from $1,200 to $1,400. The costs of the reciprocity program will still be recovered from those receiving the benefit of the NRC's reciprocity activities. It is the NRC's belief that the nominal increase to the application fee and any potential inequities that might result because not all reciprocity licensees file revisions during the year are outweighed by the efficiencies to be gained by both the reciprocity applicants and the NRC in streamlining the process.

A conforming revision to 10 CFR 150.20(b)(2) has also been made to reflect this change.

4. Fees for General License Registrations

The NRC has established an application fee of $450 for registrations filed in accordance with 10 CFR 31.5 for certain generally licensed devices. The NRC published a proposed rule in the **Federal Register** on July 26, 1999 (64 FR 40295), stating its intent to amend current regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The proposed amendments

included adding explicit requirements for a registration process under 10 CFR 31.5 for certain generally licensed devices; establishing a registration fee; modifying reporting, record-keeping, and labeling requirements; and clarifying which provisions of the regulations apply to all general licenses for byproduct material. The NRC stated in the proposed rule that the registration fee would recover the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, processing and reviewing the registrations, and for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, would be exempt from the fee under § 170.11. Costs not recovered from this small segment of the general licensees registering devices would continue to be recovered from annual fees paid by current holders of specific licenses. The NRC also stated in the proposed rule that the requirement for the registration fee would be effective after the initial registration requests are sent for response under § 31.5(c). In this manner, the first round of registrations will be complete before the requirement for the registration fee goes into effect.

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 to explicitly require that certain general licensees register their generally licensed devices with the NRC each year and pay the appropriate registration fee. Therein the NRC stated that the final fee, estimated at approximately $440 to $450, would be established in the FY 2001 fee rulemaking based on that year's budgeted costs for the program, the new FTE rate, and the estimated number of general licensees required to register.

The NRC currently estimates that approximately 4300 general licensees will be required to register their generally licensed devices. The $450 registration fee is based on the estimated number of registrants, current resource estimates, and the FY 2001 FTE rate. The registration fee will be imposed beginning with the first re-registration of devices currently in use. The registration fee will be required for each annual re-registration of the devices and for all new registrations of devices acquired after the registration program is fully implemented.

Because this is a ''flat'' fee based on average cost, it will be reviewed biennially as required by the CFO Act. The registration fee established in this FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

5. Fee Waivers

To clarify the intent of the fee waiver provision for certain reports filed with the NRC for review and approval, the NRC is modifying the current criterion 3. of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to specifically state that the review and approval of the reports must support NRC's generic regulatory improvements or efforts. In addition, criteria 1., 2., and 3. of Footnote 4 to § 170.21 have been redesignated as criteria (a), (b), and (c).

In the recent past, several requests for part 170 fee exemptions have been filed by licensees and various organizations who submit topical reports or other documents to the NRC for review. Part 170 currently provides that fees will not be assessed for requests or reports submitted to the NRC in response to an NRC inquiry to resolve an identified safety, safeguards, or environmental issue; or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin; or as a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts. Many of the fee exemption requests have been denied because the submittals have not met the intent of the waiver provision. For example, several fee waiver requests were based on the industry's future use of the reports, rather than these reports being submitted, reviewed, and approved for the purpose of NRC's generic regulatory improvements.

In the statement of considerations for the FY 1994 fee rule (59 FR 36895; July 20, 1994), which incorporated this fee waiver provision, the NRC stated that it believed the costs for some requests or reports filed with the NRC are more appropriately captured in the part 171 annual fees rather than assessing specific fees under part 170. The statement of considerations continued to state that these reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations and resolution of safety issues applicable to a class of licensee.

In summary, the NRC is amending 10 CFR part 170 to—

1. Revise the material and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;
3. Eliminate fees for Agreement State licensees who submit revisions to their initial requests for reciprocity in States under NRC jurisdiction, and incorporate these costs into the initial reciprocity application fee;
4. Establish registration fees to be assessed for each registration or re-registration of generally licensed devices under 10 CFR 31.5, beginning with the first re-registration of those generally licensed devices currently in use; and
5. Clarify that the fee waiver provisions of the current criterion 3. of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 apply only to requests/reports submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts, and redesignate criteria 1., 2., and 3., of Footnote 4 to § 170.21 as criteria (a), (b), and (c).

B. Amendments to 10 CFR part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC is revising the annual fees for FY 2001. The NRC is also adopting its proposal to discontinue mailing NRC Form 526, ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR part 171'' with each materials license annual fee invoice. The amendments are as follows.

1. Annual Fees

The NRC is amending §§ 171.15 and 171.16 to establish rebaselined annual fees for FY 2001. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995) and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 1999. After carefully considering all factors, including the changes to the amount of the budget allocated to classes of licensees, and weighing the complex issues related to both fairness and

stability of fees, the Commission has determined that it is appropriate to rebaseline the annual fees this year. Rebaselining fees results in reduced annual fees for a majority of the categories of licenses and increased annual fees for other categories.

Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with fee increases, establishing new baseline annual fees this year results in a more precise relationship between annual fees and NRC costs of providing services. It thus constitutes one means to fairly and equitably allocate costs among the NRC's licensees.

The annual fees in §§ 171.15 and 171.16 are revised to recover approximately 98 percent of the NRC's FY 2001 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2001 is $331.6 million, compared to $341.0 million for FY 2000.

The FY 2001 annual fees reflect an increase for some categories of licensees and a decrease for others from the previous year. The decreases in annual fees range from approximately 2.2 percent for operating power reactor licensees (including the spent fuel storage/reactor decommissioning annual fee), to approximately 29.0 percent for uranium recovery licensees. The increases in annual fees range from approximately 2.6 percent for materials licenses authorizing distribution of radiopharmaceuticals, to approximately 165.2 percent for transportation quality assurance program approvals authorizing use only.

The annual fees in this final rule for operating power reactors, spent fuel storage/reactor decommissioning, and fuel facilities are less than the proposed annual fees based on the final estimated part 170 collections for FY 2001. In addition, the final annual fees for fuel facilities reflect a redistribution of budgeted costs among the fuel facility categories. This redistribution is explained in detail in Section III., Final Action.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs affecting the classes of licensees, the reduction in the fee recovery rate from 100 percent for FY 2000 to 98 percent for FY 2001, the estimated part 170 collections for the various classes of licensees, a $3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published, the increased hourly rates, decreases in the numbers of licensees for certain categories of licenses, and, for the materials user class, the results of the biennial review of Part 170 fees required by the CFO Act. The biennial review shows that the average number of professional hours to conduct inspections and to review new license applications for materials licenses increased for some fee categories, decreased for others, or remained the same. The average time to conduct inspections and to review new license applications for the materials user license fee categories serve as accurate measures of the complexity of the licenses and, therefore, are used to allocate the materials budget for rebaselining the annual fees. Increases in the average professional time for inspections and reviews of new license applications result in higher annual fees for the affected fee categories, assuming all else remains the same (e.g., no loss of licensees).

The increase in annual fees (from $2,300 to $6,100) for transportation quality assurance approvals authorizing use only, which have the largest percentage increase, is due in part to the allocation of budgeted costs for the enhanced participatory part 71 rulemaking, headquarters and regional allegation and enforcement follow-up activities, and the Office of Nuclear Material Safety and Safeguards' risk study activities. In addition, there has been a decrease in the amount of budgeted costs allocated for part 71 vendor inspections while the allocation of budgeted costs for quality assurance reviews remained about the same. The ratio of the budgeted costs for these activities is currently used to allocate the total annual fee amount for the transportation class, less the amount allocated to DOE for its certificates of compliance, between the quality assurance approvals authorizing use only and those that authorize use and fabrication/design. As a result of the decrease in budgeted costs for part 71 vendor inspections, a larger percentage of the total annual fee amount for the transportation class has been allocated to quality assurance approvals authorizing use only than in the past.

Table III below shows the rebaselined annual fees for FY 2001 for representative categories of licensees.

TABLE III.—REBASELINED ANNUAL FEES FOR FY 2001

Class of licensees	FY 2001 annual fee
Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$2,753,000.
Spent Fuel Storage/Reactor Decommissioning	266,000
Nonpower Reactors	74,000
High Enriched Uranium Fuel Facility	3,545,000
Low Enriched Uranium Fuel Facility	1,146,000
UF_6 Conversion Facility	509,000
Uranium Mills	94,300
Transportation:	
Users/Fabricators	62,500
Users Only	6,100
Typical Materials Users:	
Radiographers	12,500
Well Loggers	8,800
Gauge Users	2,400
Broad Scope Medical	24,200

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licensees, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the amendment to OBRA–90 that reduced the NRC's fee recovery requirement by 2 percent for FY 2001, from 100 percent to 98 percent of the NRC's budget authority, the total surcharge costs to be recovered through annual fees has been reduced by about $9.3 million. The total FY 2001 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table IV. All dollar amounts in the Table are rounded.

TABLE IV.—SURCHARGE COSTS

[Dollars in Millions]

Category of costs	FY 2001 Budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$6.0
b. Agreement State oversight	7.1
c. Low-level waste disposal generic activities	1.7

TABLE IV.—SURCHARGE COSTS—Continued

[Dollars in Millions]

Category of costs	FY 2001 Budgeted costs
d. Site decommissioning management plan activities not recovered under Part 170	7.3
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	8.1
b. Licensing and inspection activities associated with other Federal Agencies	3.9
c. Costs not recovered from small entities under 10 CFR 171.16(c)	5.6
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	14.4
b. Generic decommissioning/reclamation (except those related to power reactors)	3.4
Total surcharge costs	57.6
Less 2 percent of NRC's FY 2001 total budget (minus NWF and General Fund amounts)	−9.3
Total Surcharge Costs to be Recovered	$48.3

As shown in Table IV, the total surcharge cost allocated to the various classes of licensees for FY 2001 is $48.3 million. The NRC has continued to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licensees. The surcharge costs allocated to each class are included in the annual fee assessed to each licensee. The FY 2001 surcharge costs allocated to each class of licensees are shown in Table V.

TABLE V—ALLOCATION OF SURCHARGE

[All dollar amounts are in millions and are rounded]

	LLW surcharge		Non-LLW surcharge		Total surcharge amount
	Percent	Amount	Percent	Amount	
Operating Power Reactors	74	$1.3	79.1	$36.9	$38.2
Spent Fuel Storage/Reactor Decomm			9.2	4.3	4.3
Nonpower Reactors			0.1	0.0	0.0
Fuel Facilities	8	0.1	5.3	2.5	2.6
Materials Users	18	0.3	3.9	1.8	2.1
Transportation			1.2	0.5	0.5
Rare Earth Facilities			0.2	0.1	0.1
Uranium Recovery			1.0	0.4	0.4
Total Surcharge		1.7		46.6	48.3

The budgeted costs allocated to each class of licensees and the calculations of the rebaselined fees are described in A through H below. The work papers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licensee and how the fees are calculated. The work papers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address *http://www.gov/NRC/ADAMS/index.html.* For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

Because the FY 2001 fee rule is a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2001 will become effective 60 days after publication of the final rule in the **Federal Register.** The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2001 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the FY 2001 final rule will be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2000 rate in FY 2001. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2001 final rule will be billed for the annual fee at the FY 2001 rate during the anniversary month of the license, and payment will be due on the date of the invoice.

a. *Fuel Facilities.* The FY 2001 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licensees is approximately $17.4 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999), as modified for FY 2001 to reflect a change in programmatic efforts related to the low enriched uranium fuel facility category. In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from

a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

The matrix has been revised for this final rule based on a notification received in March 2001 from Westinghouse Electric Company, LLC (formerly CE Nuclear Power LLC), holder of License SNM–33, that it had permanently ceased certain licensed activities prior to March 31, 2001. The revised matrix reflects the licensee's cessation of conversion of uranium hexafluoride (UF_6) to uranium oxide (UO_2) and removal of the remaining UF_6 from the facility prior to March 31, 2001. Although the reduced activities do not diminish the licensee's total safety and safeguards effort factors and the commensurate generic regulatory program to the extent that it will place the license in the next lower fee category, it does result in a redistribution of the safety and safeguards costs among the fuel facility categories.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licensees are summarized in the table below.

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.5%)	76 (55.1%)
Enrichment	2	70 (25.7%)	34 (24.6%)
Low Enriched Uranium Fuel	4	85 (31.3%)	23 (16.7%)
UF_6 Conversion	1	8 (2.9%)	3 (2.2%)
Limited Operations Facility	1	12 (4.4%)	0 (0%)
Others	1	6 (2.2%)	2 (1.4%)

Applying these factors to the safety, safeguards, and surcharge components of the $17.4 million total annual fee amount for the fuel facility class results in the annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2001 annual fee
High Enriched Uranium Fuel	$3,545,000
Uranium Enrichment	2,208,000
Low Enriched Uranium	1,146,000
UF_6 Conversion	509,000
Limited Operations Facility	467,000
Others	340,000

b. *Uranium Recovery Facilities.* The FY 2001 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.5 million. Of this amount, $654,000 will be assessed to DOE to recover the costs associated with DOE sites under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining $864,000 will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The costs are allocated to the individual uranium recovery licensees in these categories based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999).

The methodology for establishing part 171 annual fees for uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licensees: conventional uranium mills (Class I facilities), solution mining uranium mills (Class II facilities), and mill tailings disposal facilities (11e(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents, etc.);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively

estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of uranium recovery licensees are as follows.

TABLE VIII.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Level of benefit			
	Number of facilities	Category weight	Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2310	33
Class II (in-situ mills)	[1] 6.5	645	4193	59
11e(2) disposal	1	475	475	7
11e(2) disposal incident to existing tailings sites	1	75	75	1

[1]The FY 2001 annual fee will be prorated 50 percent for Cogema Mining's License SUA–1341 based on its November 10, 2000, request that the license be amended for possession only.

Applying these factors to the $864,000 in budgeted costs to be recovered results in the following annual fees:

TABLE IX.—ANNUAL FEES FOR URANIUM RECOVERY LICENSES

Facility type	FY 2001 annual fee
Class I (conventional mills)	$94,300
Class II (in-situ mills)	79,000
11e(2) disposal	58,200
11e(2) disposal incidental to existing tailings sites	9,200

The FY 2001 annual fees for Class I and Class II facilities (conventional mills and in-situ mills), are below the $100,000 threshold currently established in § 171.19 for quarterly billing. Therefore, under the current requirements these licensees would be subject to annual fee billing based on the anniversary date of their license for FY 2001. In FY 1999 the reverse situation occurred for these licensees; i.e., in FY 1998 the annual fees were below the $100,000 quarterly billing threshold and the licensees were billed on the license anniversary date, but beginning in FY 1999 the licensees became subject to quarterly billing for the annual fees because the fees were over the $100,000 threshold. Because the annual fees for these licensees have been close to the $100,000 threshold, small changes to the annual fee amounts have resulted in frequent changes to their annual fee billing schedule. To provide stability in the billing schedule, the NRC is revising § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. This will provide these licensees with a consistent, predictable schedule for paying their annual fees. As provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2001 exceed the amount of the revised annual fee, the overpayment will be refunded.

c. *Power Reactors.* The approximately $258.7 million in budgeted costs to be recovered through FY 2001 annual fees assessed to operating power reactors are allocated uniformly to the 104 operating power reactors. This results in a FY 2001 annual fee of $2,487,000 per reactor. Additionally, each operating reactor will be assessed the spent fuel storage/reactor decommissioning annual fee, which for FY 2001 is $266,000. This results in a total FY 2001 combined annual fee of $2,753,000 for each operating power reactor.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2001, budgeted costs of approximately $32.2 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to Part 50 power reactors, except those reactors in decommissioning which do not have spent fuel on site, and to part 72 licensees who do not hold a part 50 license. The costs are divided equally among the 121 licensees, resulting in an FY 2001 annual fee of $266,000 per licensee.

e. *Non-power Reactors.* Approximately $296,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licensees for FY 2001. This amount is divided equally among the four non-power reactors subject to annual fees. This results in an FY 2001 annual fee of $74,000 for each licensee.

f. *Rare Earth Facilities.* The FY 2001 budgeted costs of approximately $89,600 for rare earth facilities to be recovered through annual fees is divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is an FY 2001 annual fee of $29,900 for each rare earth facility.

g. *Materials Users.* To equitably and fairly allocate the $23.1 million in FY 2001 budgeted costs to be recovered in annual fees assessed to the approximately 5000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows.

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs

The constant is the multiple necessary to recover approximately $15.1 million in general costs and is 0.96 for FY 2001. The inspection multiplier is the multiple necessary to recover approximately $5.7 million in inspection costs for FY 2001, and is 1.2 for FY 2001. The unique category costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 2001, unique costs of approximately $143,000 were identified for the medical development program, an amount attributable to medical licensees.

The annual fee assessed to each licensee also includes a share of the $1.8 million in surcharge costs allocated to the materials user class of licensees and, for certain categories of these licenses, a share of the approximately $300,000 in LLW surcharge costs allocated to the

class. The annual fee for each fee category is shown in § 171.16(d).

h. *Transportation.* Of the approximately $3.9 million in FY 2001 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately $1.1 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $2.8 million, approximately 26 percent is allocated to the 83 quality assurance plans authorizing use only and the 36 quality assurance plans authorizing use and design/fabrication. The remaining 74 percent is allocated only to the 36 quality assurance plans authorizing use and design/fabrication. This results in an FY 2001 annual fee of $6,100 for each of the holders of quality assurance plans that authorize use only, and an FY 2001 annual fee of $62,500 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees and does not believe that a change to the small entity fees is warranted for FY 2001. In FY 2000, the NRC revised the small entity fees for the first time since they were introduced in FY 1991 and FY 1992. The revision in FY 2000 was based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and on changes that had occurred in the fee structure for materials licensees over time (65 FR 36956, 36957). The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other materials licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

In the future the NRC plans to re-examine small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, at a maximum, annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur.

3. Other Amendments

The NRC currently sends an NRC Form 526, ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171,'' with each annual fee invoice issued to materials licensees. Although the instructions on the form state that it is to be filed only by those licensees who qualify as a small entity under NRC's size standards, the NRC has received many improperly filed forms. When contacted, many of these licensees have indicated they completed the form because it was enclosed with the annual fee invoice. In an effort to minimize the number of improperly filed forms, the NRC will phase out mailing the form with each annual fee invoice. Instead, licensees will be able to access NRC Form 526 on the NRC's external web site at *http://www.nrc.gov*. Those licensees that qualify as a ''small entity'' under the NRC size standards at 10 CFR Part 2.810 will be able to complete the form in accordance with the instructions provided and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 can be obtained either through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee invoice, by calling the NRC's fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*.

In summary, the NRC has—

1. Established new rebaselined annual fees for FY 2001;

2. Revised § 171.16(c)(2) to delete the sentence indicating that NRC will mail NRC Form 526 with each annual fee invoice.

3. Revised § 171.19 to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees; and

4. Determined that the small entity fees will be re-examined every two years, on the same schedule as the biennial review of fees required by the CFO's Act.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 98 percent of its budget authority in FY 2001 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association,*

Inc. v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount from 100 percent to 98 percent of the NRC's budget authority for FY 2001. To comply with this statutory requirement, and in accordance with § 171.13, the NRC is publishing the amount of the FY 2001 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 98 percent of the Commission's FY 2001 budget of $487.4 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 2001 appropriations language provides that $3.2 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the other Federal agencies and States be excluded from fee recovery.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 98 percent of its FY 2001 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2001. The final rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2001.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 150, 170 and 171.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

1. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68, Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

2. In § 150.20, paragraph (b)(2) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) * * *

(2) Shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

* * * * *

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

3. The authority citation for Part 170 is revised to read as follows:

Authority: sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

4. Section 170.2 is amended by adding paragraph (s) to read as follows:

§ 170.2 Scope.

* * * * *

(s) A holder of a general license granted by 10 CFR Part 31 who is required to register a device(s).

5. Section 170.3 is amended by revising the definitions of *Materials License* and *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued or granted by the NRC under the regulations in 10 CFR Parts 30, 31 through 36, 39, 40, 61, 70, 72, and 76.

* * * * *

Special Projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC—

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts.

* * * * *

6. In § 170.12, paragraph (a) is revised to read as follows:

§ 170.12 Payment of Fees.

(a) *Application and registration fees.* Each application or registration for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category before receiving the prescribed application fee. The application or registration fee(s) is charged whether the Commission approves the application or not. The application or registration fee(s) is also charged if the applicant withdraws the application or registration.

* * * * *

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities): $150 per hour

Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities): $144 per hour

8. In § 170.21, the introductory text, Category K, and footnotes 1, 2, 3, and 4 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
* * * * * * *	
K. Import and export licenses	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application-new license	$9,400
Amendment	$9,400
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application-new license	$5,500
Amendment	$5,500
3. Application for export of components requiring foreign government assurances only:	
Application-new license	$1,700
Amendment	$1,700
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances:	
Application-new license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review:	
Amendment	$220

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the final rule effective June 20, 1984 (and contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1985) and the final rule effective July 2, 1990 (and contained in the 10 CFR, parts 51 to 199, edition revised as of January 1, 1991), but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Fees will not be assessed for requests/reports submitted to the NRC—

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts.

9. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

Category of materials licenses and type of fees [1]	Fees [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only: Licensing and Inspection	Full Cost
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI): Licensing and inspection	Full Cost
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4] Application	$660
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4] Application	$1,300
E. Licenses or certificates for construction and operation of a uranium enrichment facility: Licensing and inspection	Full Cost
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode: Licensing and inspection	Full Cost
(2) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1): Licensing and inspection	Full Cost
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1): Licensing and inspection	Full Cost
B. Licenses which authorize the possession, use, and/or installation of source material for shielding: Application	$160
C. All other source material licenses: Application	$5,700
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application	$6,700
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution: Application	$2,200
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D: Application	$8,700
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4): Application	$2,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units): Application	$1,700
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes: Application	$3,400
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes: Application	$8,000
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter: Application	$2,300
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter: Application	$3,400
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: Application	$1,000
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter: Application	$590
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution: Application	$5,700
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution: Application	$2,500
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C: Application	$2,600

SCHEDULE OF MATERIALS FEES—Continued

Category of materials licenses and type of fees [1]	Fees [2 3]
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations: Application	$4,200
P. All other specific byproduct material licenses, except those in Categories 4A through 9D: Application	$1,300
Q. Registration of a device(s) generally licensed under part 31: Registration	$450
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material: Licensing and inspection	Full Cost
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: Application	$1,700
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material: Application	$2,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies: Application	$5,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies: Licensing	Full Cost
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material: Application	$11,500
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application	$6,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application	$4,500
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices: Application	$2,200
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities: Application	$330
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution: Application—each device	$5,400
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices: Application—each device	$5,400
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution: Application—each source	$1,600
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel: Application—each source	$550
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers: Licensing and inspections	Full Cost
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application	$650
Inspections	Full Cost
11. Review of standardized spent fuel facilities: Licensing and inspection	Full Cost
12. Special projects:[5]	
Approvals and preapplication/.	
Licensing activities	Full Cost
Inspections	Full Cost
13. A. Spent fuel storage cask Certificate of Compliance: Licensing	Full Cost
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter: Licensing and inspection	Full Cost
15. Import and Export licenses: Licenses issued under 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite:	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries:	
Application—new license	$9,400
Amendment	$9,400

SCHEDULE OF MATERIALS FEES—Continued

Category of materials licenses and type of fees [1]	Fees [2 3]
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country:	
Application—new license	$5,500
Amendment	$5,500
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act:	
Application—new license	$1,700
Amendment	$1,700
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures:	
Application—new license	$1,200
Amendment	$1,200
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments:	
Amendment	$220
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20: Application	$1,400

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the final rule effective June 20, 1984 (and contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1985) and the final rule effective July 2, 1990 (and contained in the 10 CFR, parts 51 to 199, edition revised as of January 1, 1991), but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] Fees will not be assessed for requests/reports submitted to the NRC—

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or re-analysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts.

10. Section 170.41 is revised to read as follows:

§ 170.41 Failure by applicant or licensee to pay prescribed fees.

If the Commission determines that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee. The Commission may issue an order with respect to licensed activities that the Commission determines to be appropriate or necessary to carry out the provisions of this part, parts 30, 31, 32 through 35, 40, 50, 61, 70, 71, 72, 73, and 76 of this chapter, and of the act.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

11. The authority citation for Part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

12. In § 171.5, the definition of *Materials License* is revised to read as follows:

§ 171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued or granted by the NRC under the regulations in 10 CFR parts 30, 31 through 36, 39, 40, 61, 70, 71, 72, and 76.

* * * * *

13. In § 171.15, paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2001 annual fee for each operating power reactor which must be collected by September 30, 2001, is $2,753,000.

(2) The FY 2001 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2001 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2001 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $266,000.

(2) The FY 2001 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2001 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2001 spent fuel storage/reactor decommissioning rebaselined annual fee are—

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2001 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licensees (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act).

(2) The total FY 2001 surcharge allocated to the operating power reactor class of licensees is $38.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2001 operating power reactor surcharge to be assessed to each operating power reactor is approximately $367,000. This amount is calculated by dividing the total operating power reactor surcharge ($38.2 million) by the number of operating power reactors (104).

(3) The FY 2001 surcharge allocated to the spent fuel storage/reactor decommissioning class of licensees is $4.3 million. The FY 2001 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $35,600. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2001 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor: $74,000
Test reactor: $74,000

14. In § 171.16, paragraphs (c), (d) and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides

the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in this paragraph. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at *http://www.nrc.gov.* Licensees who cannot access the NRC's external web site may obtain NRC Form 526 through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing, by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at <fees@nrc.gov>.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2001 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in this paragraph. The FY 2001 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2001 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$3,545,000
Nuclear Fuel Services SNM–124	3,545,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Westinghouse Electric Company LLC SNM-33	1,146,000
Global Nuclear Fuel—Americas, LLC SNM–1097	1,146,000
Framatome ANP Richland, Inc. SNM-1227	1,146,000
Westinghouse Electric—Columbia SNM-1107	1,146,000
(2) All other special nuclear materials licenses not included in Category 1A(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations: Framatome Cogema SNM–1168	467,000
(b) All Others: General Electric SNM–960	340,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	N/A[11]
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,400
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A(2)	3,300
E. Licenses or certificates for the operation of a uranium enrichment facility	2,208,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	509,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:.	
Class I facilities [4]	94,300
Class II facilities [4]	79,000
Other facilities [4]	29,900

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

Category of materials licenses	Annual fees [1 2 3]
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	58,200
(4) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	9,200
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	690
C. All other source material licenses	11,000
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	20,500
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,300
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D	12,300
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	3,900
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	5,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	20,900
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	3,200
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	4,600
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,100
K. Licenses issued under subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,400
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	10,000
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	4,400
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	$4,800
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,500
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,400
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	9,800

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

Category of materials licenses	Annual fees [1 2 3]
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,400
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,800
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries: A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	16,900
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	13,900
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	24,200
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	4,600
8. Civil defense: A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,100
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	5,800
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	5,800
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,700
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	590
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under 10 CFR part 71.	
Users and Fabricators	62,500
Users	6,100
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	306,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,107,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	654,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licensees and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2000, and permanently ceased licensed activities entirely by September 30, 2000. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See 10 CFR 171.15(c).

[12] See 10 CFR 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licensees (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and Site Decommissioning Management Plan (SDMP) activities); and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act).

15. In § 171.19, paragraphs (b) and (d) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) Annual fees in the amount of $100,000 or more and described in the **Federal Register** document issued under § 171.13, and annual fees for Class I and Class II uranium recovery licensees must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for the previous fiscal year was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for the current fiscal year is $100,000 or greater (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the revised annual fee for the current fiscal year, less any payments received for the current fiscal year based on the anniversary date billing process.

* * * * *

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000, except those for Class I and Class II uranium recovery licensees, are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

* * * * *

Dated at Rockville, Maryland, this 31st day of May, 2001.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix will not appear in the code of **Federal Register**.

Appendix A to this Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount for FY 2001 to 98 percent of the NRC's budget. Certain NRC costs related to reviews and assistance provided to other Federal agencies and States were excluded from the fee recovery requirement for FY 2001 by the Energy and Water Development Appropriations Act. The amount to be recovered for FY 2001 is approximately $453.3 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there were a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished.

After carefully considering all factors, including the changes to the amount of the budget allocated to classes of licensees, and weighing the complex issues related to both fairness and stability of fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees in FY 2001. This rebaselining results in reduced annual fees for a majority of the categories of

licenses, and increased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2001 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous proposed fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees for FY 2000) have requested small entity certification in the past.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''mom and pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business, or, at the very least, make it hard to survive.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees for materials licenses were first established in 1991, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA as it developed each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States—Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000 and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result of the re-analysis, the maximum small entity annual fee was increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-

examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2001. The revision to the small entity fees in FY 2000 was the first change to the fees since they were introduced in FY 1991 and FY 1992. The revised fees were based on on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time. The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

The NRC has declined to adopt the suggestion of one commenter on the FY 2001 proposed fee rule that the NRC establish additional tiers of annual fees for small entities to further reduce the license fee burden on smaller entities. Reductions in the fees for small entities must be paid by other NRC licensees in order to meet the requirements of OBRA–90, as amended, that NRC must recover most of its budget through fees. While establishing more tiers would provide additional fee relief for some small entities, it would result in an increase in the small entity subsidy other licensees pay. For FY 2000, approximately 35 percent of the small entities qualifying for reduced annual fees qualified for the lower tier small entity fee. The NRC believes that maintaining a single lower tier annual fee for small entities with relatively low gross annual receipts of less than $350,000, for small governmental jurisdictions with a population of less than 20,000, and for manufacturing entities that have an average of less than 35 employees continues to provide a further reduction of the impact of the annual fees to a significant number of small entities.

In the future the NRC plans to re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, at a maximum, annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur. Therefore, the NRC plans to re-examine the small entity fees in FY 2003.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 98 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees, reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 2000 fee rule remain valid for FY 2001.

Attachment 1 to Appendix A—Nuclear Regulatory Commission Small, Entity Compliance Guide, Fiscal Year 2001

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under SBREFA. Therefore, in compliance with the law, this compliance guide has been prepared to assist NRC material licensees in complying with the FY 2001 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2001 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR part 171'' to qualify for the reduced annual fee. Effective with the final FY 2001 fee rule, the NRC will phase out sending NRC Form 526 with each materials license annual fee invoice. This form can be accessed on the NRC's external web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''Planning & Financial Management'' and then selecting ''NRC License Fee Program'' and under ''Forms'' selecting NRC Form 526. Licensees who cannot access the NRC's external web site may obtain NRC Form 526 through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organization*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration regulations.

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Effective with the final FY 2001 fee rule, the NRC is phasing out mailing NRC Form 526 with each annual fee invoice issued to materials licensees. Instead, licensees can access this form on the NRC's external web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''Planning & Financial Management'' and then selecting ''NRC License Fee Program'' and under ''Forms'' selecting NRC Form 526. Those licensees that qualify as a ''small entity'' under the NRC size standards at 10 CFR 2.810 would be able to complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. Licensees who cannot access the NRC's external web site may obtain NRC Form 526 through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov.*

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: The term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the ''Amount Billed Represents 50% Proration.'' This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. *Licensees will not be issued a new invoice for the reduced amount.* The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy'' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov,* or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 01–14856 Filed 6–13–01; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Thursday,
June 14, 2001

Part IV

Environmental Protection Agency

40 CFR Parts 60 and 62

Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[AD–FRL–6995–3]

RIN 2060–AJ46

Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 6, 2000, EPA adopted emission guidelines for existing small municipal waste combustion (MWC) units. Existing small MWC units are those units on which construction was commenced on or before August 30, 1999. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing small MWC units subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans are due from States with small MWC units subject to the emission guidelines on December 6, 2001. If a State or Tribe with existing small MWC units does not submit an approvable plan within 2 years after promulgation of the emission guidelines (December 6, 2002), sections 111(d) and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for small MWC units located in that State or Tribal jurisdiction. This action proposes a Federal plan to implement emission guidelines for small MWC units located in States and Indian country without EPA approved and effective State or Tribal plans. This Federal plan, when it is finalized, will be an interim action because on the effective date of an approved State or Tribal plan, the Federal plan will no longer apply to small MWC units covered by the State or Tribal plan.

DATES: *Comments.* Comments on the proposed small MWC Federal plan must be received on or before August 13, 2001.

Public hearing. A public hearing will be held if requests to speak are received by June 29, 2001. For additional information on the public hearing and requesting to speak, see the **SUPPLEMENTARY INFORMATION** section of this preamble. The hearing would take place approximately 30 days after June 14, 2001 and would begin at 10:00 a.m.

ADDRESSES: *Comments.* Submit comments (in duplicate, if possible) to: The Air and Radiation Docket and Information Center (MC–6102), Attention: Docket No. A–2000–39 (Federal plan for small municipal waste combustion units), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments and data may be filed electronically by following the instructions under the **SUPPLEMENTARY INFORMATION** section of this preamble.

Public Hearing. If EPA receives requests to speak, the hearing would take place in Research Triangle Park, North Carolina.

Docket. Docket No. A–2000–39 contains the supporting information for this proposal. Docket Nos. A–89–08, A–90–45, and A–98–18 contain the supporting information for the EPA's promulgation of emission guidelines for existing small MWC units. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–7548. The docket is located in Room M–1500, Waterside Mall (ground floor, central mall). The fax number for the Center is (202) 260–4000 and the E-mail address is ''A-and-R-Docket@epa.gov''. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker at (919) 541–5420, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: banker.lalit@epa.gov. For information regarding implementation of this Federal plan, contact the appropriate Regional Office (table 1) as shown in **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Comment Information. Comments may be submitted electronically via electronic mail (e-mail) or on disk. Electronic comments on this proposed rule may be filed via e-mail at most Federal Depository Libraries. Please submit E-mail comments to: ''A-and-R-Docket@epa.gov''. Electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file avoiding the use of special characters or encryption, if possible. Comments and data will also be accepted on disks or as an e-mail attachment in WordPerfect 5.1, 6.1, or Corel 8.0 file format or ASCII file format. All comments and data for this proposal, whether in paper form or electronic forms such as through e-mail or on diskette, must be identified by Docket No. A–2000–39.

Persons wishing to submit proprietary information for consideration must clearly distinguish such information from other comments by clearly labeling it ''Confidential Business Information'' (CBI). Submit CBI directly to the following address, and not the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Mr. Roberto Morales, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality is made with the submission, the submission may be made available to the public without further notice. No confidential business information should be submitted through e-mail.

Public Hearing. If timely requests to speak at a public hearing are received by June 29, 2001, a public hearing would be held in Research Triangle Park, NC. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed Federal plan. If you wish to speak at a public hearing, you should notify Ms. Christine Adams at (919) 541–5590.

Background Information. A list of combustion related rules is available on the Combustion Group website on the EPA Technology Transfer Network website (TTN Web) at http://www.epa.gov/ttn/uatw/combust/list.html. You may obtain **Federal Register** notices, supporting information, and docket indices for these combustion related rules.

Regional Office Contacts. For information regarding the implementation of the small MWC Federal plan, contact the appropriate EPA Regional Office as shown in table 1.

TABLE 1.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Bldg. (CAP), 1 Congress Street, Suite 1100, Boston, MA 02114–2023	(617) 918–1659	(617) 918–1505
Ted Gardella, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Air Program Branch/25th Floor, 290 Broadway, New York, NY 10007–1866	(212) 637–3892	
James B. Topsale, U.S. EPA, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 1650 Arch Street Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2124
Scott Davis, U.S. EPA, Region IV, (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Atlanta Federal Center APTMD/12th Floor 61 Forsyth Street, SW, Atlanta, GA 30303–8960	(404) 562–9127	(404) 562–9095
Douglas Aburano (AR–18J)	(312) 353–6960	(312) 886–0617
Charles Hatten (AR–18J)	(312) 886–6031	(312) 886–0617
John Paskevicz (AR–18H), U.S. EPA, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd. Chicago, IL 60604–3507	(312) 886–6084	(312) 886–5824
Kenneth Boyce, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7259	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 901 N. 5th Street, Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 300, Denver, CO 80202–2466	(303) 312–6440	(303) 312–6064
Mae Wang, U.S. EPA, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada) 75 Hawthorne Street, San Francisco, CA 94105	(415) 744–1200	(415) 744–1076
Tracy Oliver, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave. Seattle, WA 98101	(206) 553–1388	(206) 553–0110

Regulated Entities. Entities regulated by this action are existing small MWC units with capacities to combust 35 to 250 tons per day of municipal solid waste. The promulgation of this Federal plan would affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/ local/ tribal governments.	562213; 92411	4953; 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to be regulated by this Federal plan. This small MWC Federal plan would primarily impact facilities in North American Industrial Classification System (NAICS) codes 562213 and 92411, formerly Standard Industrial Classification (SIC) codes 4953 and 9511, respectively. Not all facilities classified under these codes will be affected. To determine whether a facility will be regulated by this Federal plan, carefully examine the applicability criteria in §§ 62.15010 through 62.15035 of the proposed Federal plan. If you have any questions regarding the applicability of this action to your small MWC unit contact the Regional Office listed in Table 1.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. Background of MWC Regulations
II. What Are the Required Elements of the Proposed Small MWC Federal Plan?
A. Legal Authority and Enforcement Mechanism
B. Inventory of Affected MWC Units
C. Inventory of Emissions
D. Emission Limits
E. Compliance Schedules and Increments of Progress
F. Record of Public Hearings
G. Testing, Monitoring, Recordkeeping, and Reporting
H. Progress Reports
III. Affected Facilities
A. Which MWC Units Will be Affected by the Small MWC Federal Plan?
B. How do I Determine If My Small MWC Unit Is Covered by an Approved and Currently Effective State or Tribal Plan?
IV. Summary of the Proposed Small MWC Federal Plan
A. What Are the Subcategories of Small MWC Units?
B. What Does the Federal Plan Require?
C. What Is the Compliance Schedule?
D. How Did EPA Determine the Compliance Schedule?
E. How Do the Federal Plan Compliance Dates Interact With the State Plan Compliance Dates?
V. Implications for Closed Units, Units That Plan To Close, and Units That Plan To De-Rate
A. Dismantled Units
B. Units That Have Ceased Operation
C. Units That Will Cease Operation Within 1 Year of the Effective Date of the Federal Plan
D. Units That Will Cease Operation Later Than 1 Year After the Effective Date of the Federal Plan
E. Units That Will Cease Operation and Plan To Restart After the Applicable Final Compliance Date in the Federal Plan
F. Units That Plan To De-rate
VI. Implementation of the Federal Plan and Delegation
A. Background of Authority
B. Delegation of the Federal Plan and Retained Authorities
C. Mechanisms for Transferring Authority
VII. Title V Operating Permits
VIII. Units Subject to the Federal Plan and New Source Performance Standards

IX. Amendment to Subpart A of 40 CFR Part 62
X. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13132—Federalism
C. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments
D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act

I. Background of MWC Regulations

On December 6, 2000, EPA promulgated emission guidelines for existing small municipal waste combustion units (40 CFR part 60, subpart BBBB). Existing small MWC units are those units on which construction was commenced on or before August 30, 1999. States with existing small MWC units subject to the emission guidelines are required to submit to EPA a plan that implements and enforces the subpart BBBB emission guidelines within 1 year after promulgation of the emission guidelines, or by December 6, 2001. Section 129(b)(3) of the CAA requires EPA to develop, implement, and enforce a Federal plan for small MWC units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 6, 2002. This action proposes a Federal plan for small MWC units that are not covered by an EPA approved and effective State or Tribal plan. The EPA intends to make this small MWC Federal plan effective December 6, 2002. The elements of the Federal plan are summarized in section II of this preamble.

On December 19, 1995, EPA promulgated emission guidelines (40 CFR part 60, subpart Cb) for large and small MWC units. In 1997, the U.S. Court of Appeals for the D.C. Circuit vacated the emission guidelines as they applied to small MWC units (Davis County Solid Waste Management and Recovery District v. EPA, 108 F. 3d 1454, D.C. Cir.1997). States or Tribes with existing large MWC units subject to the subpart Cb emission guidelines were required to submit to EPA a State or Tribal plan for those large units by December 19, 1996. To regulate large MWC units in areas without approved and currently effective State or Tribal plans, EPA promulgated a Federal plan for large units (40 CFR part 62, subpart FFF) on November 12, 1998. The subpart FFF Federal plan and previously submitted State plans apply to only large MWC units. A separate Federal plan and separate State plans must be prepared to implement the subpart BBBB emission guidelines for small MWC units.

II. What Are The Required Elements of the Proposed Small MWC Federal Plan?

Sections 111(d) and 129 of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the MWC emission guidelines. Subparts B and BBBB of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being proposed in lieu of State plans, it includes the same essential elements: (1) Identification of legal authority; (2) identification of mechanisms for implementation; (3) inventory of affected facilities; (4) emission inventory; (5) emission limits; (6) compliance schedules; (7) public hearing requirements; (8) reporting and recordkeeping requirements; and (9) public progress reports. Each State plan element is summarized below as it relates to this proposed small MWC Federal plan. Table 2 lists each element and identifies where it is located or codified.

TABLE 2.—REQUIRED ELEMENTS OF THE SMALL MWC FEDERAL PLAN

Required element of the small MWC Federal plan	Location
Legal authority and enforcement mechanism	Section 129(b)(3) of the CAA
Inventory of Affected MWC Units	Docket A–2000–39
Inventory of Emissions	Docket A–2000–39
Emission Limits	40 CFR 62.15155 through 62.15165
Compliance Schedules	40 CFR 62.15040 through 62.15095
Record of Public Hearings	Docket A–2000–39
Testing, Monitoring, Recordkeeping, and Reporting	40 CFR 62.15170 through 62.15360
Progress Reports	Section II.H of this preamble

A. Legal Authority and Enforcement Mechanism

A State or Tribal plan must demonstrate that the State or Tribe has the legal authority to adopt and implement the emission guidelines. (See 40 CFR 60.26.) In its plan, the State or Tribe must identify the enforcement mechanism for implementing the emission guidelines, such as a State or Tribal rule.

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides the EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA require the EPA to develop a Federal plan for States that do not submit approvable State plans.

2. EPA's Legal Authority in Indian Country

Section 301(a) provides EPA with the authority to administer Federal programs in Indian country. Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or is not administratively feasible. See section VI of this preamble for a more detailed discussion of EPA's authority to administer the Federal plan for small MWC units in Indian country.

The EPA is proposing this Federal regulation under the legal authority of the CAA to implement the emission guidelines in those States and areas of Indian country that do not have an EPA approved and effective plan. As discussed in section VI of this document, implementation and enforcement of the Federal plan may be delegated to State or Tribal agencies when requested by a State or Tribal agency, and when EPA determines that such delegation is appropriate.

B. Inventory of Affected MWC Units

As a required element, a State plan must include a complete source inventory of small MWC units affected by the emission guidelines. Consistent

with the requirement for State plans to include an inventory of small MWC units, Docket No. A–2000–39 contains an inventory of small MWC units that may be covered by this proposed MWC Federal plan. The inventory includes all small MWC units because State plans have not been submitted yet. The inventory is contained in a memorandum entitled ''Inventory and Emission Estimates for Small Municipal Waste Combustor Units Covered by the Proposed Section 111(d)/129 Federal Plan.'' The memorandum serves both the small MWC unit inventory requirement and the small MWC unit emission inventory requirement, which will be discussed in the following section. The inventory is based on information available to EPA during development of the 2000 emission guidelines.

The list of small MWC units in the docket does not determine whether your combustion unit is covered by the proposed small MWC Federal plan. Sources subject to the small MWC Federal plan are not limited to the sources listed in docket A–2000–39. The Federal plan is likely to apply to only a subset of the units listed in the inventory because State plans covering some of these units will likely be approved and become effective before the Federal plan becomes effective. See §§ 62.15010 through 62.15035 of the proposed subpart JJJ to determine whether your combustion unit is covered.

C. Inventory of Emissions

As a required element, a State plan must include an emission inventory for MWC units subject to the emission guidelines. The pollutants to be inventoried include dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), nitrogen oxides (NO_x), carbon monoxide (CO), and sulfur dioxide (SO_2). For this proposal, EPA has estimated the emissions from each small MWC unit that may be covered by the Federal plan for all pollutants regulated by the Federal plan. Pollutant emissions are expressed in megagrams per year (Mg/yr) for most pollutants and grams per year (g/yr) for dioxins. The emission inventory is based on information known about the combustor and uses emission factors contained in ''Compilation of Air Pollutant Emission Factors'' (AP–42). Refer to the emission estimates memorandum in Docket No. A–2000–39 for the complete emissions inventory and details on the calculations.

D. Emission Limits

As a required element, a State plan must include emission limits. Section 129(b)(2) requires these emission limits to be ''at least as protective as'' those in the emission guidelines. The emission limits in this proposed small MWC Federal plan are the same as those contained in the emission guidelines (40 CFR part 60, subpart BBBB). See Tables 2 through 5 of subpart JJJ.

Operator Training and Certification. The emission guidelines require American Society of Mechanical Engineers (ASME) or a comparable State program for operator certification for chief facility operators and shift supervisors, and an EPA or comparable State MWC operator training course for chief facility operators. In the Federal plan, ASME operator certification and the EPA MWC operator training course will be required. However, because State plans may be submitted after promulgation of the Federal plan, the proposed Federal plan includes the opportunity for States to submit a comparable State program for operator certification and comparable State MWC training courses if the State expects this information to be submitted as part of the State plan. If States submit this information to EPA before November 14, 2001, EPA intends to allow State certification and State operator training courses in the promulgated Federal plan for those States.

E. Compliance Schedules and Increments of Progress

As a required element, a State plan must include compliance schedules for retrofitting controls to comply with the emission limits specified in the emission guidelines. Because this proposed MWC Federal plan is implemented in lieu of State plans, the compliance schedule includes the same increments of progress as required in a State plan. The Federal plan increments of progress are consistent with the State plan requirements in 40 CFR 60.24 of subpart B and subpart BBBB. These increments of progress are required for compliance schedules that are longer than 12 months. The increments of progress in the proposed Federal plan (and any approved State plan) are the primary mechanism for ensuring progress toward final compliance. Each increment of progress has a specified date for achievement.

This proposed Federal plan includes five increments of progress for Class I units and two increments of progress for Class II units. A Class I small MWC unit has the capacity to combust 35 to less than or equal to 250 tons per day of municipal solid waste and is located at a MWC plant with an aggregate plant capacity of greater than 250 tons per day. A Class II small MWC unit is a MWC unit with the capacity to combust 35 to less than or equal to 250 tons per day of municipal solid waste and is located at a MWC plant with an aggregate plant capacity less than or equal to 250 tons per day.

The increments of progress to be measured for Class I units are: (1) Submitting a final control plan, (2) awarding contracts for control systems or process modifications or orders for purchase of components, (3) beginning on-site construction or installation of the air pollution control device(s) or process changes, (4) completing on-site construction or installation of the air pollution control device(s) or process changes, and (5) final compliance. For Class II units, dates for only the first and last increments are specified.

The MWC owner or operator is responsible for meeting each of the increments of progress for each MWC unit no later than the applicable compliance date. The owner or operator must notify EPA as each increment of progress is achieved (or missed). The notification must identify the increment and the date the achieved increment was met (or missed). For an increment achieved late, the notification must identify the increment and the date the increment was ultimately achieved. If the increment was not achieved, the reasons must be included in your notification.

The owner or operator must sign the notification and mail the (post-marked) notification to the applicable EPA Regional Office within 10 business days of the increment date specified in the Federal plan. (See table 1 under the ''Supplementary Information'' section of this document for a list of Regional Offices.) The definition of each increment of progress follows:

Submit a Final Control Plan (Class I and II units). To meet this increment, the owner or operator of each small MWC unit must submit a final control plan describing the air pollution control device(s) or process changes that will be employed so that each small MWC unit complies with the emission limits and other requirements.

Award Contract (Class I units only). To award a contract means the MWC owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the owner or operator may award a number of contracts to complete the retrofit. To meet this

increment of progress, the MWC owner or operator must award a contract or contracts to initiate and complete on-site construction, initiate and complete on-site installation of emission control equipment, and/or incorporate process changes. The owner or operator must mail a copy of the contract(s) to EPA within 10 business days of entering into the contract(s).

Initiate On-site Construction (Class I units only). To initiate on-site construction, installation of air pollution control device(s), or process changes means to initiate on-site construction and/or installation of emission control equipment and initiate the process changes outlined in the final control plan.

Complete On-site Construction (Class I units only). To complete on-site construction means that all necessary air pollution control device(s) or process changes identified in the final control plan are in place, on site, and ready for operation on the MWC unit.

Final Compliance (Class I and II units). To be in final compliance means to incorporate all process changes or complete retrofit construction as designed in the final control plan. The owner or operator must connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line all necessary process changes or air pollution control equipment are operating as designed. Within 180 days after the date the facility is required to achieve final compliance, the initial performance test must be conducted. On or after the date the initial performance test is completed or is required to be completed, whichever is earlier, no pollutant may be discharged into the atmosphere from an affected facility in excess of the applicable emission limits.

F. Record of Public Hearings

As a required element of a State plan, a State must include opportunity for public participation in developing, adopting, and implementing the State plan. If requested, a public hearing will be held for this small MWC Federal plan in Research Triangle Park, NC. (See the **DATES** section of this preamble.) The hearing record will appear in Docket No. A–2000–39. Written public comments also are solicited. (See the **ADDRESSES** section of this document.) The EPA will review and consider the oral and written comments in developing the final small MWC Federal plan.

G. Testing, Monitoring, Recordkeeping, and Reporting

As a required element, a State plan must include the testing, monitoring, and recordkeeping and reporting requirements in 40 CFR part 60, subpart BBBB. The proposed small MWC Federal plan includes the same provisions.

H. Progress Reports

As a required element of a State plan, a State must submit to EPA annual reports on progress in the implementation of the emission guidelines. Emissions data will be reported to the Aerometric Emissions Information Retrieval System Facility Subsystem as specified in 40 CFR part 60, appendix D. If a State or Tribe has been delegated authority to implement and enforce the proposed Federal plan, the State or Tribe will submit annual progress reports to EPA, as required by 40 CFR 60.25(e) of subpart B. These reports can be combined with the State Implementation Plan report required by 40 CFR 51.32 of subpart Q, in order to avoid duplicative reporting. Each progress report must include compliance status, enforcement actions, information whether increments of progress have been met, identification of sources that have ceased operation or started operation, updated emission inventory and compliance information, and copies of technical reports on any performance testing and monitoring. For MWC units in States where authority has not been delegated, EPA intends to prepare annual progress reports.

III. Affected Facilities

A. Which MWC Units Will Be Affected by the Small MWC Federal Plan?

This Federal plan will affect existing small MWC units that are not regulated by an EPA approved and effective State or Tribal plan. In this proposed Federal plan, a small MWC unit is defined as any MWC unit with a combustion design capacity of 35 to 250 tons per day of municipal solid waste (MSW) that commenced construction on or before August 30, 1999. Each small MWC unit will be subject to this Federal plan if any of the following is true on the effective date of the Federal plan:

(1) An applicable State or Tribal plan has not become effective;[1]

(2) An applicable State or Tribal plan was in effect but was subsequently vacated in whole or in part; or

(3) An applicable State or Tribal plan was in effect but was subsequently revised such that it is no longer as protective as the emission guidelines.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to a small MWC unit covered by such plan. An approved State or Tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart BBBB.

If a State or Tribe submits a State or Tribal plan and that State or Tribal plan is approved and becomes effective before the Federal plan becomes effective, the MWC Federal plan will not apply to small MWC units covered by that State or Tribal plan. Furthermore, promulgation of this MWC Federal plan does not preclude a State or Tribe from submitting a State or Tribal plan later. The EPA encourages States and Tribes to continue to submit State or Tribal plans for approval after the promulgation of the Federal plan. If a State or Tribe submits a State or Tribal plan after promulgation of the small MWC Federal plan, EPA will review and approve or disapprove the plan. Upon the effective date of EPA's approval of the State or Tribal plan, the Federal plan will no longer apply, except those Federal plan provisions that may have been incorporated by reference under the section 111(d)/129 State or Tribal plan, or delegated to the State by EPA.

B. How Do I Determine If my Small MWC Unit Is Covered by an EPA Approved and Currently Effective State or Tribal Plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval of section 111(d)/129 State or Tribal plans for designated pollutants and designated facilities in each State or area of Indian Country. However, part 62 is updated only once a year. Thus, if part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office (Table 1) to determine if approval occurred since publication of the most recent version of part 62.

At the time of this proposal, no States have submitted State plans. State plans

[1] The effective date of a State or Tribal plan from EPA's perspective (a State and Tribal may have an earlier effective date) is 30 days after the State or Tribal plan final approval is published in the **Federal Register** if the final approval is via the regular regulatory procedure of proposal with opportunity for comment followed by promulgation. If the approval is by direct final rulemaking, the effective date of the State or Tribal plan is 60 days after the approval is published in the **Federal Register**, if no adverse comments are received.

are due December 6, 2001 and EPA expects States to submit State plans before that date.

IV. Summary of the Proposed Small MWC Federal Plan

The proposed small MWC Federal plan contains the same subcategories, emission limits, and other requirements as the emission guidelines promulgated on December 6, 2000 (65 FR 76378). Refer to the attached regulation, 40 CFR part 62, subpart JJJ for the entire set of requirements. The major requirements are summarized in the following sections.

A. What Are the Subcategories of Small MWC Units?

Within this proposed Federal plan, the small MWC unit population is subcategorized based on aggregate capacity of the plant where the individual small MWC unit is located. The resulting subcategories are as follows: Class I units are small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW; Class II units are small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

B. What Does the Federal Plan Require?

The proposed Federal plan, which will implement the emission guidelines, includes emission limits, operating practice requirements, operator training and certification requirements, and compliance and performance testing requirements. The proposed Federal plan contains emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. The emission limits for Class I and Class II small MWC units are listed in Tables 2 through 5 of the proposal subpart JJJ. In addition to emission limits, EPA is proposing guidelines for unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the required good combustion practices. The EPA is also proposing requirements for the control of fugitive ash emissions.

C. What Is the Compliance Schedule?

Class I and Class II small MWC units will be required to follow the generic compliance schedule in table 1 of proposed subpart JJJ, unless the State or owner/operator chooses to submit a site-specific compliance schedule. Under the generic compliance schedule, Class I units would be required to reach final compliance by November 6, 2005. Class II units would be required to reach final compliance by May 6, 2005.

The proposed Federal plan includes two options for establishing the compliance schedule. Under both options the increment dates are defined and are enforceable. The Federal plan could function with only a generic compliance schedule, but in order to provide flexibility, this proposal includes an alternative. As described in section II.E of this preamble and consistent with the emission guidelines, Class I units are required to meet five increments of progress and Class II units are required to meet two increments of progress.

The compliance schedule for facilities affected by this small MWC Federal plan can be established by option 1 (generic compliance schedule proposed by EPA) or option 2 (site-specific compliance schedule consistent with the draft State plan).

In cases where option 2 has not been exercised, the owner or operator of an affected facility will be subject to option 1 (generic schedule). However, if the State or the MWC owner or operator submits a schedule that EPA approves (option 2), the owner or operator will be subject to that alternative schedule. Under option 2, a State or an MWC owner operator will be required to submit a site-specific compliance schedule to EPA prior to November 14, 2001. Under option 2, EPA will review the schedule and approved schedules will be incorporated into the final Federal plan. The two options are discussed below.

Option 1. Generic Compliance Schedule. Option 1 is the generic default alternative. For MWC units covered by the Federal plan where State plans or compliance schedules have not been submitted, EPA is proposing a generic compliance schedule and increments of progress. Under option 1, a generic compliance schedule will apply to each Class I or Class II small MWC unit.

Option 2. Site-specific Compliance Schedules. Under option 2, a State or an MWC owner or operator may submit to EPA a site-specific compliance schedule as negotiated between the State and an MWC owner or operator to EPA before November 14, 2001. The State or MWC owner or operator can submit alternative dates for increments 2, 3, 4, and 5 for Class I units and an alternative increment 5 date for Class II units. The increment 1 date will be the same as option 1. The increment 5 final compliance date for Class I and Class II units cannot be later than December 6, 2005. States should submit the schedules to their respective Regional office contacts listed in Table 1 for Regional contacts.

The EPA recognizes that Class I units may need flexibility for the award contract date, the start construction date, and the finish construction date given facility-specific retrofit considerations and constraints. Also, there may be some unique site-specific circumstances where a Class I or Class II unit cannot complete retrofit by the generic schedule increment compliance date. Subpart B requires compliance as expeditiously as practicable, and section 129 specifies that the compliance date can be no later than 5 years after promulgation of the emission guidelines. Therefore, the site-specific final compliance date can be no later than December 6, 2005. Following review and approval of these site-specific schedules, EPA will add them to the Federal plan at promulgation. Offering this flexibility assures the Federal plan is fully consistent with State plans that are approved after the Federal plan is promulgated. For example, in some cases the State may have negotiated a retrofit schedule with the MWC owner or operator, determined what retrofit schedule is feasible for specific MWC units, held public hearings, and considered public comments in establishing the schedule.

The increment 1 date for Class I and Class II units under both options is the same. For several reasons, EPA believes that requiring owners or operators to submit a final control plan by August 6, 2003 for Class I units and September 6, 2003 for Class II units provides adequate time to prepare a final control plan: (1) Owners and operators have known about this requirement since 1995; (2) owners and operators have over 1 year to prepare the final control plan upon publication of this notice; and (3) the final control plan does not require detailed drawings or plans.

In summary, the proposed MWC Federal plan includes two options for defining the increment dates. The EPA believes the options maximize flexibility and increase regulatory efficiency. The EPA included a similar approach in the large MWC unit Federal plan. Commenters on the large MWC unit Federal plan supported EPA's approach. The EPA believes that this approach also makes sense for owners or operators of small MWC units.

D. How Did EPA Determine the Compliance Schedule?

The EPA determined the proposed Class II generic compliance schedule based on two case studies of retrofits at small MWC units at plants that have capacities of less than 250 tons per day.

Both plants retrofitted an acid gas/fabric filter/carbon injection system that can meet the emission limits for Class II units in the proposed small MWC Federal plan. The EPA also contacted a vendor of modular MWC units and add-on air pollution control equipment to obtain additional information on retrofit schedules for Class II units. The schedule is 6 months shorter than the schedule promulgated for large MWC units and proposed for Class I small MWC units because most Class II units can use control devices assembed from modular control components that do not need as much site-specific design, fabrication, and installation time. Memorandums that provide detail on the case studies, the discussion with the MWC vendor, and the basis of the Class I and Class II generic compliance schedules are located in Docket A–2000–39, items II–B–1 through II–B–5.

The proposed Class I generic compliance schedule is the same as the generic compliance schedule in the large MWC Federal plan. The generic compliance schedule for large MWC units is based on retrofit studies of large MWC units at three MWC plants (see Docket A–97–45, II–A–1 through II–A–4). The EPA is proposing the same compliance schedule for Class I MWC units as large MWC units on the basis of similarities in size and retrofit requirements. Class I small MWC units will need the same technology as large MWC units to meet the emission limits in the respective Federal plans (see Docket A–2000–39, item II–B–1).

For Class I units, the compliance schedule for dioxin and mercury depends on the date of the MWC unit's construction. The emission guidelines require Class I small MWC units that commenced construction, reconstruction, or modification after June 26, 1987 to achieve compliance with the mercury and dioxin limits within 1 year after State plan approval (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required, whichever is later). The EPA is, therefore, proposing to require compliance with the mercury and dioxin limits within 1 year after the effective date of the MWC Federal plan, or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required, whichever is later. Final compliance must be achieved no later than the applicable final compliance date in the Federal plan, even if the date ''1 year after permit issuance'' exceeds the applicable final compliance date in the Federal plan.

E. How Do the Federal Plan Compliance Dates Interact With the State Plan Compliance Dates?

Before the Federal plan is in effect, a State may submit a State plan to EPA containing variable compliance dates. Although the increment dates can vary, they are subject to EPA's review and the final compliance date cannot be later than December 6, 2005.

After the Federal plan is in effect, a State may submit a State plan to EPA or receive approval for a State plan. However, if submitted or approved after the Federal plan is in effect, the compliance schedule dates in the State plan must be no later than the applicable generic compliance schedule dates in the promulgated Federal plan. The EPA is proposing and taking comment on EPA's position that State plans that are submitted to EPA after the Federal plan is in effect must contain the same or earlier incremental and final compliance dates as the Federal plan.

V. Implications for Closed Units, Units That Plan To Close, and Units That Plan To De-Rate

The emission guidelines (40 CFR part 60, subpart BBBB) require small MWC units to comply with the emission limits or cease operation within 3 years following approval of a State plan, but no later than 5 years after publication of the final emission guidelines (40 CFR part 60, subpart BBBB) in the **Federal Register**. The Federal plan requires owners or operators of a small MWC unit to either: (1) Come into compliance with the plan within 1 year after the effective date of the plan; or (2) meet increments of progress and come into compliance by the applicable final compliance date in the Federal plan. This section describes how this Federal plan addresses various categories of closed small MWC units and de-rated small MWC units, including:

- Dismantled small MWC units;
- Small MWC units that have ceased operation;
- Small MWC units that will cease operation rather than comply with the Federal plan;
- Small MWC units that will cease operation and plan to restart after the applicable final compliance date in the Federal plan; and
- Small MWC units that will de-rate (reduce capacity).

A. Dismantled Units

Units that are partially or fully dismantled are not required to be included in the small MWC unit inventory that is an element of a State plan or this Federal plan. Small MWC units are partially or fully dismantled if they have been physically altered so they cannot operate. Dismantled units cannot be restarted without extensive work; and if they were restarted, they would be considered a new unit and would be subject to the new source performance standard (40 CFR part 60, subpart AAAA) rather than to the State or Federal plan for existing units.

B. Units That Have Ceased Operation

Small MWC units that are known to have ceased operation (but are not known to be dismantled) are included in the inventory element of this proposed Federal plan. Such units must also be identified in any State plans submitted to EPA. If the owner or operator of these inactive small MWC units plans to restart these units before the applicable final compliance date in the Federal plan, the units would be required to achieve the same compliance schedule required for other small MWC units. In order to assure compliance by the required date, the owner or operator of units that have ceased operation, but who plans to restart the units before the applicable final compliance date in the Federal plan, must submit a final control plan and the units must comply with the increments of progress on the same generic schedule as other small MWC units subject to this Federal plan. (See section II.E for a discussion of compliance schedules and increments of progress.)

If inactive small MWC units will not be restarted until after the applicable final compliance date in the Federal plan, a control plan is not needed. However, the proposed Federal plan specifies that any units that have ceased operation and are planned to be restarted after the applicable final compliance date in the Federal plan, must complete retrofit and comply with the emission limits and operational requirements immediately upon restarting. Performance testing to demonstrate compliance will be required within 180 days after restarting. The dates for increments of progress that lead to final compliance (e.g., awarding contracts, initiating on-site construction, completing on-site construction) will not need to be specified for units that have ceased operation and plan to restart after the applicable final compliance date in the Federal plan, because these activities must occur before restart while the units are closed and have no emissions. If a unit is operated after the applicable final compliance date in the Federal plan without complying, it will be a violation of the Federal plan.

C. Units That Will Cease Operation Within 1 Year of the Effective Date of the Federal Plan

The owner or operator of currently operating small MWC units subject to this Federal plan who will cease operation of the units rather than comply with the emission limits will be required to notify EPA at the time that final control plans are due. The owner operator will specify whether the small MWC units will cease operation within 1 year or at a later date. If the owner or operator notifies EPA that the small MWC units will cease operation within 1 year of the effective date of this Federal plan, the owner or operator will not be required to enter into a legally enforceable cease operation agreement. However, if the owner or operator does not cease operation of the units by the date 1 year after the effective date, it will be a violation of the Federal plan.

D. Units That Will Cease Operation Later Than 1 Year After the Effective Date of the Federal Plan

The owner or operator of a small MWC unit that will cease operations more than 1 year after the effective date of the Federal plan will be required to notify EPA at the time the final control plan is due that the owner or operator will cease operation of the unit. The owner or operator of such a small MWC unit also will need to enter into a legally enforceable cease operation agreement with EPA by the date the final control plan is due. The cease operation agreement will include the date that operation will cease. The owner or operator of a Class I MWC unit that is ceasing operation more than 1 year after the effective date of this Federal plan will also submit data for dioxins/furans emission tests conducted during or after 1990 by the date the final control plan is due for your Class I MWC unit according to the schedule in Table 1 or Table 9 of subpart JJJ (see § 62.15095). The requirement to submit data for dioxins/furans emission tests is consistent with subpart BBBB. The cease operation agreement ensures that the small MWC unit will cease operation by an agreed-upon enforceable date. In all cases, this date will be no later than the applicable final compliance date in the Federal plan.

E. Units That Will Cease Operation and Plan To Restart After the Applicable Final Compliance Date in the Federal Plan

Small MWC units covered by this Federal plan that will cease operation within 1 year of the effective date of the Federal plan can be restarted after the applicable final compliance date in the Federal plan if the units achieve compliance upon restarting. The proposed Federal plan specifies that when a small MWC unit restarts after the applicable final compliance date in the Federal plan, it must comply with the Federal plan emission limits and operational requirements upon restarting. There will be no need to establish and meet specific dates for the remaining increments of progress (i.e., awarding contracts, initiating on-site construction, completing on-site construction, and final compliance) because these increments must be completed while the unit is closed and there are no emissions. The proposed Federal plan specifies that the unit must achieve final compliance with the Federal plan emission limits and operating requirements as soon as it is restarted. The performance test to demonstrate compliance will be required within 180 days after restarting.

F. Units That Plan To De-rate

The proposed Federal plan will allow the owner or operator of a small MWC unit to de-rate the capacity of a small MWC unit to below 35 tons per day. Therefore, the small MWC unit will no longer be subject to the small MWC Federal plan. De-rating means a permanent change that physically reduces the capacity of the small MWC unit to less than 35 tons per day of MSW. De-rating cannot be accomplished through a permit provision, nor can it be self-imposed operating restrictions such as limiting steam flow or the waste charge rate. De-rating must be a permanent physical restriction.

The owner or operator that plans to de-rate a small MWC unit would de-rate the unit on the same schedule and increments that the small MWC unit has to follow, if it were to be retrofitted to meet the emission limits. For example, the owner or operator of a Class II small MWC unit that is subject to the proposed generic compliance schedule will need to submit a plan describing the specific physical changes and schedule for accomplishing the de-rating on the date the final control plan is due. The owner or operator will need to complete the de-rating by the final compliance date for Class II units. Once the small MWC unit physically is unable to combust 35 tons per day or more, it will no longer be subject to the small MWC Federal plan.

VI. Implementation of the Federal plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates small MWC units in a State or Tribal area that does not have a EPA-approved plan currently in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after promulgation of the Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian Tribes are the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy (''Policy for Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA, dated November

4, 1984), reaffirmed in a 1994 memorandum (''EPA Indian Policy,'' signed by Carol M. Browner, Administrator of EPA, dated March 14, 1994).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See generally* ''Good Practices Manual for Delegation of NSPS and NESHAP'' (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State. The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement between the State or Tribe and EPA will set forth the terms and conditions of the delegation, the effective date of the agreement, and will also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office will publish an approval notice in the **Federal Register**, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer authority to a State or Tribe certain authorities which could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to State, Tribal or local agencies: approval of alternative non-opacity emission standards, approval of alternative opacity standard, approval of major alternatives to test methods, approval of major alternatives to monitoring, waiver of recordkeeping, and approval of exemption to operating practice requirements in § 62.15145(e)(5).

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) When EPA approves a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA may delegate to a State or Tribe the authority to implement the Federal plan. Both of these options are described in more detail below.

1. State or Tribe Submits a Plan After Small MWC Units Located in the Area Are Subject to the Federal Plan

After small MWC units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the small MWC units proposed to be covered in the State or Tribal plan will remain subject to the Federal plan until a State or Tribal plan covering those small MWC units is approved and effective.

Upon the effective date of a State or Tribal plan, the Federal plan will no longer apply to small MWC units covered by such a plan and the State or Tribal agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or Tribal agencies the authority to implement the Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State agencies to agree to undertake, on EPA's behalf, the administrative and substantive role in implementing the Federal plan to the extent EPA decides it is appropriate and where authorized by State law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, small MWC inspections, and preparation of draft notices of violation and enforcement. Enforcement authority can be delegated to State and Tribal agencies, but EPA always retains Federal enforcement authority. The EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule (TAR) issued on February 12, 1998 (63 FR 7254) provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of a program they will adopt. Consistent with the approach of the TAR, EPA may choose to delegate a partial Federal plan (i.e., to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where authorized by Tribal law. Both States, or Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, EPA recognizes that Tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to EPA.

VII. Title V Operating Permits

Sources subject to this small MWC Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including small MWC units) subject to standards and regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under section 129 or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later.[2] The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (See, e.g., the final Federal plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the

[2] As of today's proposal, all areas in the country are covered by title V programs, including the Outer Continental Shelf. See 40 CFR 55.6. As a result, the relevant section 129(e) date for small MWC units is 36 months following promulgation of 40 CFR part 60, subpart BBBB (December 6, 2003).

CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority. Therefore, a title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.15400(c) and 40 CFR 70.5(a)(2) and 71.5(a)(2). The above interpretation is important because in the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and have the permit issued in a very short period of time after becoming subject to a title V program.[3]

Consequently, if an owner or operator of a small MWC unit is required to obtain a title V permit for the first time by virtue of being subject to this Federal plan, the owner or operator must submit a complete title V permit application by not later than 36 months after promulgation of 40 CFR part 60, subpart BBBB (December 6, 2003).

The above permit application deadline, however, reflects the latest possible date by which complete applications for existing small MWC units can be submitted in order for such applications to be considered timely. It is important to note that if an earlier application deadline applies to an existing small MWC unit, then this deadline must be met in order for the unit to be in compliance with section 502(a). To determine when an application is due for an existing small MWC unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA. As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.[4] For example, if an existing small MWC unit becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of the Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, i.e., not later than 36 months after the promulgation of subpart BBBB or not later than 12 months after the effective date of this Federal plan, may apply to an existing small MWC unit if it is subject to title V for more than one reason. For example, an existing small MWC unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). Additionally, an existing small MWC unit may already be subject to title V if it is subject to some other earlier promulgated standard under section 111 or 112 of the CAA. *See* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If your unit is not subject to an earlier permit application deadline, a complete title V permit application for an existing small MWC unit must be submitted not later than 36 months after promulgation of subpart BBBB (December 6, 2003). For any existing small MWC unit subject to the requirements of this Federal plan and not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective. For any existing small MWC unit subject to the requirements of an EPA approved and effective section 111(d)/129 State plan for small MWC units and not subject to an earlier application deadline, this final application deadline applies regardless of when the EPA approved section 111(d)/129 State plan is effective.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement the title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an owner or operator of an existing small MWC unit is already subject to title V by virtue of some requirement other than this Federal plan and already possesses a title V permit with a remaining term of 3 or more years on the effective date of this Federal plan, then the owner or operator will receive from the permitting authority a notice of intent to reopen the title V permit to include the requirements of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f) or 71.7(f). An owner or operator of an existing small MWC unit with a title V permit having a remaining term of less than 3 years on the effective date of this Federal plan need not have the title V permit reopened, as a matter of Federal law, to include the Federal plan requirements.[5] However, the owner or operator remains subject to, and must act in compliance with, these Federal plan requirements and all other applicable requirements to which the source is subject. See 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

VIII. Units Subject to the Federal Plan and New Source Performance Standards

This section describes the relationship between the Federal plan and the three NSPS in terms of applicability and emission limits. The MWC emission guidelines apply and this proposed Federal plan will apply to MWC units 35 tons per day or more and less than or equal to 250 tons per day in combustion capacity that commenced construction before August 30, 1999. There are also three new source

[3] For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines applicable to a section 129 source, that source would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. The later such a Federal plan becomes effective, the less time a source would have to complete the permitting process. Moreover, to read section 129(e) as inconsistent with section 503(d) and 40 CFR 70.7(b) and 71.7(b) would be in conflict with the requirements of section 503(c), which require sources to submit title V applications not later than 12 months after becoming subject to a title V permits program. Such a reading could require some section 129 sources to have been issued final title V permits in potentially much less time than allotted for non-section 129 sources to submit their title V applications.

[4] If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

[5] *See* CAA section 502(b)(6); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Permitting authorities are required to reopen title V permits to incorporate additional applicable requirements when 3 or more years remain on a major part 70 or part 71 source's permit term. Reopenings required by 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i) must be completed not later than 18 months after promulgation of the applicable requirement. Owners or operators of small MWC units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

performance standards (NSPS) that apply to MWC units.

The first NSPS for MWC units, 40 CFR part 60 subpart E, was promulgated in 1971. It applies to incinerators combusting more than 45 Mg per day (50 tons per day) of MSW that were constructed or modified after August 17, 1971. The only pollutant regulated by subpart E is particulate matter (PM), and the PM limit is higher than the limit in the proposed Federal plan. Thus, small MWC units complying with the Federal plan PM limit would also comply with the subpart E NSPS emission limit for PM.

The second NSPS, subpart Ea, was promulgated on February 11, 1991 and revised on December 19, 1995. This NSPS applies to MWC units with capacities to combust greater than 250 tons per day, and therefore, will not apply to units subject to this small MWC Federal plan (MWC units with design combustion capacity less than or equal to 250 tons per day).

The third NSPS, subpart AAAA, applies to small MWC units that: 1) commence construction after August 30, 1999, or 2) commence modification or reconstruction 6 months after promulgation of subpart AAAA. There is no overlap between the proposed Federal plan and the subpart AAAA NSPS—sources are not subject to both rules.

IX. Amendments to Subpart A of 40 CFR Part 62

The EPA is amending part 62 to clarify that the part 60 general provisions apply to State and Federal plans. The part 60 general provisions apply to the emission guidelines; however, the emission guidelines are not implemented and enforced until a State or Federal plan is developed and codified in part 62. Because part 62 does not specifically state that the part 60 general provisions apply, EPA is amending part 62 to clarify that they apply to State and Federal plans.

The general provisions of part 60 and its appendices contain important addresses, definitions, testing and monitoring requirements, and incorporations by reference. In addition, the general provisions allow owners or operators to apply to the Administrator for flexibility in demonstrating compliance. For example, owners and operators may apply to the Administrator for approval of alternative or equivalent test methods, alternative reporting, or alternative monitoring requirements. The amendment to part 62 contained in this rulemaking also clarifies that the part 60 general provisions apply except where special provisions set forth under an applicable subpart of part 62 supersede any conflicting provisions.

X. Administrative Requirements

This section addresses the following administrative requirements: Federalism; Consultation and Coordination with Indian Tribal Governments; Protection of Children from Environmental Health Risks and Safety Rules; Unfunded Mandates Reform Act; Regulatory Flexibility Act/ Small Business Regulatory Enforcement Fairness Act of 1996; Paperwork Reduction Act; and National Technology Transfer and Advancement Act. Many of these administrative requirements were addressed in the preamble to the small MWC emission guidelines (65 FR 76378). Since this proposed Federal plan would merely implement the emission guidelines promulgated on December 6, 2000, and does not impose any new requirements, many of the administrative requirements refer to the administrative requirements in the preamble to the small MWC emission guidelines.

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant,'' and therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed Federal plan is not a ''significant regulatory action.'' The Federal plan proposed today is projected to have an impact of approximately $68 million annually (Docket No. A–98–18). Therefore, it has been determined that this proposed Federal plan is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed Federal plan does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The States have the primary responsibility for negotiating compliance schedules and incorporating the emission limits into a State plan. Since sources are only covered by a Federal plan if an EPA approved and currently effective State plan is not in place, the Federal plan does not add substantial additional costs. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed Federal plan.

C. 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 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, 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.''

This proposed Federal plan does not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed Federal plan.

D. 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, EPA 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed Federal plan is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because it is based on technology performance and not on health and safety risks.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or 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, or 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.

The EPA has determined that this Federal plan does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The proposed Federal plan merely implements the small MWC emission guidelines and does not impose any new requirements. The Environmental Impact Assessment (EIA) for the small municipal waste combustor emission guidelines (Docket No. A–98–18) shows that the total annual costs of the emission guidelines is about $68 million per year (in 1997 dollars), starting on the fifth year after the emission guidelines are promulgated. The proposed Federal plan will apply to only a small subset of the units considered in the EIA for the emission guidelines. Thus, this proposed Federal plan is not subject to the requirements of sections 202 and 205 of the UMRA. Although the emission guidelines were not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of the UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with the UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995). Because the emission guidelines are equivalent to the 1995 emission guidelines, no additional consultations were necessary during the reestablishment of emission guidelines for small MWC units.

F. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The Regulatory Flexibility Act (RFA) generally requires Federal agencies 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 the emission guidelines on small entities, a small entity is defined as: (1) A small business in this industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed Federal plan on small entities, I certify that this action will not have a significant economic impact on a substandard number of small entities. The EPA expects State plans to affect most small MWC units before the final small MWC Federal plan is promulgated. As State plans are submitted and become effective, the Federal plan no longer applies. Therefore, the impact of this proposed Federal plan is expected to be less than the impact identified in developing the small MWC emission guidelines.

EPA's analysis indicates eight existing small MWC units (operated by one small business and seven small governments) would be subject to the emission guidelines. In the analysis for the MWC units that are considered small entities, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for governments. The average estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small government entities and 39 percent for the one small business. Among the seven potentially affected government entities, the maximum compliance cost was 0.25 percent.

Although this proposed Federal plan will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of the emission guidelines and this proposed Federal plan on small entities by establishing different requirements for Class I and Class II MWC units and establishing provisions for less frequent testing for small Class II units. In addition, EPA involved representatives of small entities in the development of the emission guidelines. For a summary of the actions that EPA took to involve small entities and their representatives in the development of the emission guidelines, refer to the discussion of the Unfunded Mandates Reform Act in section VIII.E above.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements in the emission guidelines under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and has assigned OMB control number 2060–0424.

The information will be used to ensure that the small MWC unit Federal plan requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to identify small MWC units that might not be in compliance with the small MWC unit Federal plan. Based on reported information, the implementing agency will decide which small MWC units should be inspected and what records or processes should be inspected. Records that owners and operators of small MWC units maintain indicate whether personnel are operating and maintaining control equipment properly.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The emission guidelines are projected to affect approximately 90 small MWC units located at 41 plants. The estimated average annual burden for industry for the first 3 years after implementation of the emission guidelines would be 1,297 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 773 hours with a cost of $30,869 (including travel expenses) per year. The proposed Federal plan will apply to only a small subset of the units expected to be affected by the emission guidelines.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information collection requirments contained in this proposed Federal plan.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed Federal plan involves technical standards. The EPA proposes in this plan to use EPA Methods 1, 3, 3A, 5, 5D, 9, 10, 22, 23, 26, 26A, 29, and Performance Specifications (PS) 1, 2, 3, and 4A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 9, 22, PS 3, and PS 4A. The search and review results have been documented and are placed in the docket No. A–2000–39 for this proposed plan.

Two voluntary consensus standards were identified as applicable and EPA proposes to use them in this plan. One voluntary consensus standard was identified as applicable to PS 1. The standard ASTM D6216 (1998), ''Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications,'' has been incorporated by reference into PS 1. The PS 1 rule was published in the **Federal Register** on August 10, 2000.

Another voluntary consensus standard, ASTM D4536–96 ''Particulate (Matter) Modified High Volume,'' is being proposed as an alternative to the sampling equipment and procedures in Methods 5 or 17 in conducting emissions testing of positive pressure fabric filter control devices. The ASTM D4536–96 equipment and procedures would be used in conjunction with the sample traverse and calculations as described in Method 5D for this application. We invite comments on whether including this ASTM standard method is appropriate for this or other applications.

Three voluntary consensus standards have already been incorporated by reference into § 60.17. One consensus standard by the American Society of Mechanical Engineers (ASME) was identified for potential use in this plan for the measurement of MWC unit load level (steam output). The EPA believes this standard is practical to use in this plan as the method to measure MWC unit load. The EPA has already incorporated by reference (IBR) ''ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code

4.1—1964 (R1991)'' in 60.17 paragraph (h)(1), (h)(2), and (h)(3).

A second consensus standard by ASME was identified for potential use in this plan for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes this standard is practical to use for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA has already incorporated by reference (IBR) ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)'' in § 60.17 paragraph (h)(1), (h)(2), and (h)(3).

A third consensus standard by ASME (QRO–1–1994) was identified for potential use for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes this standard is practical to use in the emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME. The EPA has already IBR (QRO–1–1994) in § 60.17 paragraph (h)(1), (h)(2), and (h)(3).

In addition to the voluntary consensus standards EPA proposes to use in this plan, this search for emission measurement procedures identified 21 other voluntary consensus standards. The EPA determined that 17 of these 21 standards were impractical alternatives to EPA test methods/performance specifications for the purposes of this proposed Federal plan. Therefore, EPA does not propose to adopt these standards today. The reasons for this determination for the 17 methods are discussed below.

The European standard EN 1911–1,2,3 (1998), ''Stationary Source Emissions-Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text,'' is impractical as an alternative to EPA Methods 26 and 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26 or 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Methods 26 and 26A use an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

Three standards: ASTM D4358–94 (1999), ''Standard Test Method for Lead and Chromium in Air Particulate Filter Samples of Lead Chromate Type Pigment Dusts by Atomic Absorption Spectroscopy;'' ASTM E1741–95 (1995), ''Standard Practice for Preparation of Airborne Particulate Lead Samples Collected During Abatement and Construction Activities for Subsequent Analysis by Atomic Spectrometry;'' and ASTM E1979–98 (1998), ''Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead,'' are impractical as alternatives to EPA Methods 12 and 29 in this proposed Federal plan. These ASTM standards do not require the use of glass fiber filters as in EPA Method 12 and require the use of significantly different digestion procedures that appear to be more mild than the EPA Method 12 digestion procedure. For these reasons, these ASTM standards cannot be considered equivalent to EPA Method 12. Also, the subject ASTM standards do not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, they cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas these three ASTM standards require cellulose filters and other probable nonglass fiber media which cannot be considered equivalent to EPA Method 29.

The following nine methods are impractical alternatives to EPA test methods/performance specifications for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1, 2, 3B, and 4; ASME C00031 or PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' for EPA Method 3; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration,'' for EPA Method 3A; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Method 3A; CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Method 3A; CAN/CSA Z223.21–M1978, ''Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry,'' for EPA Methods 10 and 10A; European Committee for Standardization (CEN) EN 1948–3 (1997), ''Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification,'' for EPA Method 23; ISO 7935:1992, ''Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Performance Characteristics of Automated Measuring Methods,'' for EPA Performance Specification 2 (sulfur dioxide portion only); and ISO 10849:1996, ''Determination of the Mass Concentration of Nitrogen Oxides—Performance Characteristics of Automated Measuring Systems,'' for EPA Performance Specification 2 (nitrogen oxide portion only).

The following four methods are impractical alternatives to EPA test methods for the purposes of this plan because they lack sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC–38–80 R85 or C00049, ''Determination of the Concentration of Particulate Matter in Gas Streams,'' for EPA Method 5; ASTM D3685/D3685M–98, ''Test Methods for Sampling and Determination of Particulate Matter in Stack Gases,'' for EPA Method 5; ISO 9096:1992, ''Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,'' for EPA Method 5; and CAN/CSA Z223.26–M1987, ''Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method,'' for EPA Method 29.

The following four of the 21 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed plan because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 1 (and possibly 2); ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; PREN 13211 (1998), ''Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,'' for EPA Methods 101, 101A, 29 (portion for mercury only); and ASTM Z6590Z, ''Manual Method for Both Speciated and Elemental Mercury,'' for EPA Methods 101A and 29 (portion for mercury only). While we are not proposing to include these four voluntary consensus standards in

today's proposal, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements proposed in this Federal plan and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this plan should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

Tables 6, 7, and 8 of Subpart JJJ list the EPA testing methods/performance specifications included in the emission Federal Plan Requirements for Small Waste Combustion Units. Under § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods/performance specifications.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

40 CFR Part 62

Environmental protection, Air pollution control, Municipal waste combustion.

Dated: June 5, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

2. Section 60.17 is amended by revising paragraphs (h)(1) through (h)(3) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994. Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a), 60.54b(b), 62.15130(a), 62.15130(c)(2) of this chapter.

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 62.15265(a)(3) of this chapter.

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 62.15265(a)(4) of this chapter.

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

4. Amend § 62.02 by revising paragraph (b) to read as follows:

§ 62.02 Introduction.

* * * * *

(b)(1) If a State does not submit a complete, approvable plan, the Administrator may then promulgate a substitute plan or part of a plan. The promulgated provision, plus the approved parts of the State plan, constitute the applicable plan for purposes of the act.

(2) The part 60 subpart A of this chapter general provisions and appendices to part 60 apply to part 62, except as follows: 40 CFR 60.7(a)(1), 60.7(a)(3), and 60.8(a) and where special provisions set forth under the applicable subpart of this part shall apply instead of any conflicting provisions.

* * * * *

5. Amend § 62.13 by adding paragraphs (d) and (e) to read as follows:

§ 62.13 Federal plans.

* * * * *

(d) Commercial and industrial solid waste incineration units Federal plan. [Reserved]

(e) The substantive requirements of the small municipal waste combustion unit Federal plan are contained in subpart JJJ of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

6. Amend part 62 by adding subpart JJJ to read as follows:

Subpart JJJ—Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

Introduction

Sec.
62.15000 What is the purpose of this subpart?
62.15005 What are the principal components of this subpart?

Applicability of this Subpart

62.15010 Is my municipal waste combustion unit covered by this subpart?
62.15015 Can my small municipal waste combustion unit be covered by both a State plan and this subpart?
62.15020 Can my small municipal waste combustion unit be exempt from this subpart?
62.15025 How do I determine if my small municipal waste combustion unit is covered by an approved and currently effective State or Tribal plan?
62.15030 What are my obligations under this subpart if I reduce my small municipal waste combustion unit's combustion capacity to less than 35 tons per day?
62.15035 Is my small municipal waste combustion unit subject to different requirements based on plant capacity?

Compliance Schedule and Increments of Progress

62.15040 What are the requirements for meeting increments of progress and achieving final compliance?
62.15045 When must I complete each increment of progress?
62.15050 What must I include in the notifications of achievement of my increments of progress?
62.15055 When must I submit the notifications of achievement of increments of progress?
62.15060 What if I do not meet an increment of progress?
62.15065 How do I comply with the increment of progress for submittal of a final control plan?
62.15070 How do I comply with the increment of progress for awarding contracts?
62.15075 How do I comply with the increment of progress for initiating onsite construction?
62.15080 How do I comply with the increment of progress for completing onsite construction?
62.15085 How do I comply with the increment of progress for achieving final compliance?
62.15090 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?
62.15095 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

Good Combustion Practices: Operator Training

62.15100 What types of training must I do?
62.15105 Who must complete the operator training course? By when?
62.15110 Who must complete the plant-specific training course?
62.15115 What plant-specific training must I provide?
62.15120 What information must I include in the plant-specific operating manual?
62.15125 Where must I keep the plant-specific operating manual?

Good Combustion Practices: Operator Certification

62.15130 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?
62.15135 After the required date for operator certification, who may operate the municipal waste combustion unit?
62.15140 What if all the certified operators must be temporarily offsite?

Good Combustion Practices: Operating Requirements

62.15145 What are the operating practice requirements for my municipal waste combustion unit?
62.15150 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

Emission Limits

62.15155 What pollutants are regulated by this subpart?
62.15160 What emission limits must I meet?
62.15165 What happens to the emission limits during periods of startup, shutdown, and malfunction?

Continuous Emission Monitoring

62.15170 What types of continuous emission monitoring must I perform?
62.15175 What continuous emission monitoring systems must I install for gaseous pollutants?
62.15180 How are the data from the continuous emission monitoring systems used?
62.15185 How do I make sure my continuous emission monitoring systems are operating correctly?
62.15190 Am I exempt from any 40 CFR Part 60 appendix B or appendix F requirements to evaluate continuous emission monitoring systems?
62.15195 What is my schedule for evaluating continuous emission monitoring systems?
62.15200 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?
62.15205 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is this requirement enforceable?
62.15210 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?
62.15215 What is required for my continuous opacity monitoring system and how are the data used?
62.15220 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?
62.15225 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Stack Testing

62.15230 What types of stack tests must I conduct?
62.15235 How are the stack test data used?
62.15240 What schedule must I follow for the stack testing?
62.15245 What test methods must I use to stack test?
62.15250 May I conduct stack testing less often?
62.15255 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

Other Monitoring Requirements

62.15260 Must I meet other requirements for continuous monitoring?
62.15265 How do I monitor the load of my municipal waste combustion unit?
62.15270 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?
62.15275 How do I monitor the injection rate of activated carbon?
62.15280 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is this requirement enforceable?

Recordkeeping

62.15285 What records must I keep?
62.15290 Where must I keep my records and for how long?
62.15295 What records must I keep for operator training and certification?
62.15300 What records must I keep for stack tests?
62.15305 What records must I keep for continuously monitored pollutants or parameters?
62.15310 What records must I keep for municipal waste combustion units that use activated carbon?

Reporting

62.15315 What reports must I submit and in what form?
62.15320 What are the appropriate units of measurement for reporting my data?
62.15325 When must I submit the initial report?
62.15330 What must I include in the initial report?
62.15335 When must I submit the annual report?
62.15340 What must I include in the annual report?
62.15345 What must I do if I am out of compliance with these standards?
62.15350 If a semiannual report is required, when must I submit it?
62.15355 What must I include in the semiannual out-of-compliance reports?
62.15360 Can reporting dates be changed?

Air Curtain Incinerators That Burn 100 Percent Yard Waste

62.15365 What is an air curtain incinerator?
62.15370 What is yard waste?
62.15375 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?
62.15380 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?
62.15385 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

Equations

62.15390 What equations must I use?

Title V Requirements

62.15395 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?
62.15400 When must I submit a title V permit application for my existing small MWC unit?

Delegation of Authority

62.15405 What authorities are retained by the Administrator?

Definitions

62.15410 What definitions must I know?

Tables

Table 1 of Subpart JJJ—Generic Compliance Schedules and Increments of Progress
Table 2 of Subpart JJJ—Class I Emission Limits For Existing Small Municipal Waste Combustion Units
Table 3 of Subpart JJJ—Class I Nitrogen Oxides Emission Limits For Existing Small Municipal Waste Combustion Units
Table 4 of Subpart JJJ—Class II Emission Limits For Existing Small Municipal Waste Combustion Units
Table 5 of Subpart JJJ—Carbon Monoxide Emission Limits For Existing Small Municipal Waste Combustion Units
Table 6 of Subpart JJJ—Requirements for Validating Continuous Emission Monitoring Systems (CEMS)
Table 7 of Subpart JJJ—Requirements for Continuous Emission Monitoring Systems (CEMS)
Table 8 of Subpart JJJ—Requirements for Stack Tests
Table 9 of Subpart JJJ—Site-specific Compliance Schedules and Increments of Progress

Subpart JJJ—Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

Introduction

§ 62.15000 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from existing small municipal waste combustion units that are not covered by an EPA approved and currently effective State plan. The pollutants addressed by these emission requirements are listed in tables 2, 3, 4, and 5 of this subpart. These emission requirements are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, *you* means the owner or operator of a small municipal waste combustion unit.

§ 62.15005 What are the principal components of this subpart?

This subpart contains five major components:

(a) Increments of progress toward compliance.

(b) Good combustion practices.

(1) Operator training.

(2) Operator certification.

(3) Operating requirements.

(c) Emission limits.

(d) Monitoring and stack testing.

(e) Recordkeeping and reporting.

Applicability of This Subpart

§ 62.15010 Is my municipal waste combustion unit covered by this subpart?

(a) This subpart applies to your small municipal waste combustion unit if the unit meets the criteria in paragraphs (a)(1) and (a)(2) and the criteria in either paragraph (a)(3) or (a)(4) of this section:

(1) Your municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste or refuse-derived fuel but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(2) Your municipal waste combustion unit commenced construction on or before August 30, 1999.

(3) Your municipal waste combustion unit is not regulated by an EPA approved and currently effective State or Tribal plan.

(4) Your municipal waste combustion unit is located in any State whose approved State plan is subsequently vacated in whole or in part, or the municipal waste combustion unit is located in Indian country if the approved Tribal plan for that area is subsequently vacated in whole or in part.

(b) If you make a change to your municipal waste combustion unit that meets the definition of modification or reconstruction after June 6, 2001, your municipal waste combustion unit becomes subject to subpart AAAA of 40 CFR part 60 (New Source Performance Standards for Small Municipal Waste Combustion Units) and this subpart no longer applies to your unit.

(c) If you make physical or operational changes to your existing municipal waste combustion unit primarily to comply with this subpart, then subpart AAAA of 40 CFR part 60 (New Source Performance Standards for Small Municipal Waste Combustion Units) does not apply to your unit. Such changes do not constitute modifications or reconstructions under subpart AAAA of 40 CFR part 60.

(d) Upon approval of the State or Tribal plan, this subpart will no longer apply, except for the provisions of this subpart that may have been incorporated by reference under the State or Tribal plan, or delegated to the State by the Administrator.

§ 62.15015 Can my small municipal waste combustion unit be covered by both a State plan and this subpart?

(a) If your municipal waste combustion unit is located in a State that has a State plan that has not been approved by the EPA or has not become effective, then this subpart applies and the State plan would not apply to your municipal waste combustion unit. However, the State could enforce the requirements of a State regulation while your municipal waste combustion unit is still subject to this subpart.

(b) After the State plan is approved by the EPA and becomes effective, your municipal waste combustion unit is no longer subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.15020 Can my small municipal waste combustion unit be exempt from this subpart?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* Your unit is exempt from this subpart if four requirements are met:

(1) Your municipal waste combustion unit is subject to a federally enforceable permit limiting municipal solid waste combustion to less than 11 tons per day.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You submit to the Administrator a copy of the federally enforceable permit.

(4) You keep daily records of the amount of municipal solid waste combusted.

(b) *Small power production units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You submit to the Administrator documentation that the unit qualifies for this exemption.

(c) *Cogeneration units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You submit to the Administrator documentation that the unit qualifies for this exemption.

(d) *Municipal waste combustion units that combust only tires.* Your unit is exempt from this subpart if three requirements are met:

(1) Your municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator documentation that the unit qualifies for this exemption.

(e) *Hazardous waste combustion units.* Your unit is exempt from this subpart if the unit has received a permit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* Your unit is exempt from this subpart if the unit combusts waste mainly to recover metals. Primary and secondary smelters may qualify for this exemption.

(g) *Cofired units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You record the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* Your unit is exempt from this subpart if four requirements are met:

(1) Your pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under ''Definitions'' (§ 62.15405).

(2) You record the weight, each quarter, of plastics, rubber, and rubber tires processed.

(3) You record the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) You keep the name and address of the purchaser of the feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber*

recycling plants. Your unit is exempt from this subpart if two requirements are met:

(1) Your unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(2) Your unit does not combust any other municipal solid waste.

(j) *Cement kilns.* Your unit is exempt from this subpart if your cement kiln combusts municipal solid waste.

(k) *Air curtain incinerators.* If your air curtain incinerator (see § 62.15405 for definition) combusts 100 percent yard waste, then you must meet only the requirements under ''Air Curtain Incinerators That Burn 100 Percent Yard Waste'' (§§ 62.15365 through 62.15385).

§ 62.15025 How do I determine if my small municipal waste combustion unit is covered by an approved and currently effective State or Tribal Plan?

This part (40 CFR part 62) contains a list of all States and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans in effect. However, this part is only updated once per year. Thus, if this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if approval has occurred since publication of the most recent version of this part.

§ 62.15030 What are my obligations under this subpart if I reduce my small municipal waste combustion unit's combustion capacity to less than 35 tons per day?

If you reduce your small municipal waste combustion unit's combustion capacity to less than 35 tons per day by the final compliance date, you must comply only with the following requirements:

(a) You must submit a final control plan according to the schedule in table 1 of this subpart and comply with § 62.15065(b).

(b) The final control plan must, at a minimum, include two items:

(1) A description of the physical changes that will be made to accomplish the reduction in combustion capacity. A permit restriction or a change in the method of operation does not qualify as a reduction in combustion capacity.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified under § 62.15390(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

(c) You must complete the physical changes to accomplish the reduction in combustion capacity by the final compliance date specified in table 1 of this subpart.

(d) If you comply with all of the requirements specified in paragraphs (a),(b), and (c) of this section, you are no longer subject to this subpart.

(e) You must comply with the requirements specified in § 62.15395 and § 62.15400 regarding title V permitting. If you comply with all of the requirements specified in paragraphs (a), (b), and (c) of this section, you are no longer subject to title V permitting requirements as a result of this subpart. You will remain subject to title V permitting requirements, however, if you are subject as a result of one or more of the applicability criteria in 40 CFR 70.3(a) and (b) or 71.3(a) and (b).

§ 62.15035 Is my small municipal waste combustion unit subject to different requirements based on plant capacity?

This subpart specifies different requirements for different subcategories of municipal waste combustion units. These two subcategories are based on aggregate capacity of the municipal waste combustion plant as defined in paragraphs (a) and (b) of this section.

(a) *Class I units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 62.15410 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) *Class II units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity of no more than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 62.15410 for specification of which units at a plant are included in the aggregate capacity calculation.)

Compliance Schedule and Increments of Progress

§ 62.15040 What are the requirements for meeting increments of progress and achieving final compliance?

(a) *Class I units.* If you plan to achieve compliance more than 1 year following the effective date of this subpart and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet five increments of progress:

(1) Submit a final control plan.

(2) Submit a notification of retrofit contract award.

(3) Initiate onsite construction.

(4) Complete onsite construction.

(5) Achieve final compliance.

(b) *Class II units.* If you plan to achieve compliance more than 1 year following the effective date of this subpart and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet two increments of progress:

(1) Submit a final control plan.

(2) Achieve final compliance.

§ 62.15045 When must I complete each increment of progress?

(a) You must complete each increment of progress according to the compliance schedule in table 1 of this subpart for Class I and II units. If your Class I or Class II unit is listed in table 9 of this subpart, then you must complete each increment of progress according to the schedule in table 9 of this subpart. (See § 62.15410 for definitions of classes.)

(b) For Class I units (see definition in § 62.15410) that must meet the five increments of progress, you must submit dioxins/furans stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 62.15245 and you must submit the stack test results when the final control plan is due for your Class I MWC unit according to the schedule in table 1 or table 9 of this subpart.

§ 62.15050 What must I include in the notifications of achievement of my increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with the increment of progress (§§ 62.15065 through 62.15085).

(c) The notification must be signed by the owner or operator of the municipal waste combustion unit.

§ 62.15055 When must I submit the notifications of achievement of increments of progress?

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§ 62.15060 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the specified date in table 1 of this subpart for achieving that increment of progress. This notification must inform the Administrator that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports each subsequent month until the increment of progress is met.

§ 62.15065 How do I comply with the increment of progress for submittal of a final control plan?

For your final control plan increment of progress, you must complete two items:

(a) Submit the final control plan describing the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart. If you plan to reduce your small municipal waste combustion unit's combustion capacity to less than 35 tons per day by the final compliance date see § 62.15030.

(b) You must maintain an onsite copy of the final control plan.

§ 62.15070 How do I comply with the increment of progress for awarding contracts?

You must submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the copy of the contracts with the notification that this increment of progress has been achieved. You do not need to include documents incorporated by reference or the attachments to the contracts.

§ 62.15075 How do I comply with the increment of progress for initiating onsite construction?

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

§ 62.15080 How do I comply with the increment of progress for completing onsite construction?

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

§ 62.15085 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete two items:

(a) Complete all process changes and complete retrofit construction as specified in the final control plan.

(b) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

§ 62.15090 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

(a) If you close your municipal waste combustion unit but will reopen it prior to the applicable final compliance date in table 1 of this subpart, you must meet the increments of progress specified in § 62.15040.

(b) If you close your municipal waste combustion unit but restart it after the applicable final compliance date in table 1 of this subpart, you must complete the emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

§ 62.15095 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

(a) If you plan to close your municipal waste combustion unit rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of this subpart, you must enter into a legally binding closure agreement with the Administrator by the date your final control plan is due. The agreement must include two items.

(1) The date by which operation will cease. The closure date can be no later than the applicable final compliance date in table 1 of this subpart.

(2) For Class I units only, dioxins/furans stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 62.15245.

Good Combustion Practices: Operator Training

§ 62.15100 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 62.15105 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) These employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of this subpart.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in paragraph (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(d) You may request that the EPA Administrator waive the requirement in paragraph (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

§ 62.15110 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

§ 62.15115 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after the effective date of this subpart.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) One year after the effective date of this subpart.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 62.15120 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable standards in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit within the standards contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 62.15125 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Good Combustion Practices: Operator Certification

§ 62.15130 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of 40 CFR part 60)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class I units, 12 months after the effective date of this subpart. For Class II units, 18 months after the effective date of this subpart.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of 40 CFR part 60)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class I units, 12 months after the effective date of this subpart. For Class II units, 18 months after the effective date of this subpart.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 62.15135 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 62.15140 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor is away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include this information in the annual report as specified under § 62.15340(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are

taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Good Combustion Practices: Operating Requirements

§ 62.15145 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under ''Definitions'' (§ 62.15410).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under ''Definitions'' (§ 62.15410).

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using the appropriate equation in § 62.15390.

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 62.15150 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Emission Limits

§ 62.15155 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

§ 62.15160 What emission limits must I meet?

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the four tables of this section:

(1) For Class I units, see tables 2 and 3 of this subpart.

(2) For Class II units, see table 4 of this subpart.

(3) For carbon monoxide emission limits for both classes of units, see table 5 of this subpart.

(b) If your Class I municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxins/furans and mercury emission limits specified in table 2 of this subpart as applicable by the later of the following two dates:

(1) One year after the effective date of this subpart.

(2) One year after the issuance of a revised construction or operating permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than November 6, 2005, even if the date one year after the issuance of a revised construction or operating permit is later than November 6, 2005.

§ 62.15165 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under § 60.11(d) of subpart A of 40 CFR part 60 apply.

Continuous Emission Monitoring

§ 62.15170 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 62.15175 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring system for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13 of subpart A of 40 CFR part 60.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each

location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in § 62.15200.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install a continuous emission monitoring system for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the Administrator for approval to use an alternative monitoring method under § 60.13(i) of subpart A of 40 CFR part 60.

§ 62.15180 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in tables 2, 3, 4, and 5 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 62.15235.

§ 62.15185 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in table 6 of this subpart. Collect these data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of 40 CFR part 60. Table 7 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of 40 CFR part 60 for each continuous emission monitoring system. These procedures include daily calibration drift and quarterly accuracy determinations.

§ 62.15190 Am I exempt from any 40 CFR part 60 appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of 40 CFR part 60 (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of 40 CFR part 60 (relative accuracy test audit).

§ 62.15195 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of 40 CFR part 60.

§ 62.15200 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring system. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3A or 3B in Appendix A of 40 CFR part 60 to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B to determine the relationship between oxygen and carbon dioxide.

§ 62.15205 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is this requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) of subpart A of 40 CFR part 60 requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 62.15340(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 62.15210.

§ 62.15210 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

(a) Use the equation in § 62.15390(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19 in Appendix A of 40 CFR part 60, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use

EPA Reference Method 19, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 62.15215 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13 of subpart A 40 CFR part 60.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of 40 CFR part 60. Complete this evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9, as specified in § 62.15245, to determine compliance with the applicable opacity limit in tables 2 or 4 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

§ 62.15220 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in table 8 of this subpart.

§ 62.15225 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Refer to table 8 of this subpart. It shows alternate methods for collecting data when these systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Stack Testing

§ 62.15230 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 62.15235 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in tables 2 and 4 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 62.15180.

§ 62.15240 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 62.15230 by 180 days after your final compliance date.

(b) Conduct annual stack tests for these pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

§ 62.15245 What test methods must I use to stack test?

(a) Follow table 8 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all these pollutants consist of at least three test runs, as specified in § 60.8 (Performance Tests) of subpart A of 40 CFR part 60. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in tables 2 and 4 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 62.15175.

(d) Use the equations in § 62.15390(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in table 6 of this subpart for other required equations.

(e) You can apply to the Administrator for approval under § 60.8(b) of subpart A of 40 CFR part 60 to

(1) Use a reference method with minor changes in methodology;

(2) Use an equivalent method;

(3) Use an alternative method the results of which the Administrator has determined are adequate for demonstrating compliance;

(4) Waive the requirement for a performance test because you have demonstrated by other means that you are in compliance; or

(5) use a shorter sampling time or smaller sampling volume.

§ 62.15250 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In this case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every third year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. This provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all these municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years. In this case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. This provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it

must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxins/furans emission levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 62.15255 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 13-month testing schedules specified in §§ 62.15240(b) and 62.15250(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Other Monitoring Requirements

§ 62.15260 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

§ 62.15265 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms per hour (or pounds per hour).

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in ''American Society of Mechanical Engineers (ASME PTC 4.1—1964): Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991),'' section 4 (incorporated by reference in § 60.17 of subpart A of 40 CFR part 60).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters'', 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17 of subpart A of 40 CFR part 60).

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 62.15270 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 62.15275 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 62.15280 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is this requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement and you must notify the Administrator according to § 62.15340(e).

Recordkeeping

§ 62.15285 What records must I keep?

You must keep four types of records:

(a) Operator training and certification.

(b) Stack tests.

(c) Continuously monitored pollutants and parameters.

(d) Carbon feed rate.

§ 62.15290 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 62.15295 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours but for 2 weeks or less and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When all certified chief facility operators and certified shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause these people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 62.15300 What records must I keep for stack tests?

For stack tests required under § 62.15230, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in tables 2 or 4 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxins/furans emissions.

(d) The calendar date of each record.

§ 62.15305 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutants or parameter levels recorded in paragraph (b) of this section or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 62.15205 and 62.15280. Record these dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of 40 CFR part 60. Keep these records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you chose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 62.15200.

(h) *Records of calendar dates.* Include the calendar date on each record.

§ 62.15310 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate (in kilograms or pounds per hour) during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using the appropriate equation in § 62.15390(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 62.15280.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

Reporting

§ 62.15315 What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 62.15325, 62.15335, and 62.15350. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 62.15330, 62.15340, and 62.15355 onsite for 5 years.

§ 62.15320 What are the appropriate units of measurement for reporting my data?

See tables 2, 3, 4 and 5 of this subpart for appropriate units of measurement.

§ 62.15325 When must I submit the initial report?

As specified in § 60.7(c) of subpart A of 40 CFR part 60, submit your initial report by 180 days after your final compliance date.

§ 62.15330 What must I include in the initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 62.15305(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in tables 2 or 4 of this subpart):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of 40 CFR part 60 in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in § 62.15310(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 62.15200.

§ 62.15335 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. (As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permits requirements of 40 CFR parts 70 and 71.)

§ 62.15340 What must I include in the annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 62.15300(a):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) A list of the highest average emission levels recorded, in the appropriate units. List these values for five pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base this value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 62.15305(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.

(2) The lowest 8-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using the appropriate equation in § 62.15390(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit. (5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year if you are eligible for alternative scheduling (§ 62.15250(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 62.15250(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year. This summary gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 62.15200.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

§ 62.15345 What must I do if I am out of compliance with these standards?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 62.15350 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 62.15355 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.

(3) Concentration of carbon monoxide emissions.

(4) Load level of your municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.

(6) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

(b) If the results of your annual stack tests (as recorded in § 62.15300(a)) show emissions above the limits specified in table 2 or 4 of this subpart as applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is

less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in § 62.15310(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.

(ii) Reasons for these occurrences of low carbon feed rates.

(iii) The corrective actions you have taken to meet the carbon feed rate requirement.

(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.

(ii) Required quarterly usage of carbon.

(iii) Reasons for not meeting the required quarterly usage of carbon.

(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.

(v) The calendar date.

§ 62.15360 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) in subpart A of 40 CFR part 60 for procedures to seek approval to change your reporting date.

Air Curtain Incinerators That Burn 100 Percent Yard Waste

§ 62.15365 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

§ 62.15370 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in § 62.15405.

(b) Clean wood that is exempt from the definition of ''municipal solid waste'' in § 62.15405 of this subpart.

§ 62.15375 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

If your air curtain incinerator combusts 100 percent yard waste, you must meet only the emission limits in this section.

(a) By 180 days after your final compliance date, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 62.15380 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 in Appendix A of 40 CFR part 60 to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 of subpart A of 40 CFR part 60.

(c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

§ 62.15385 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 62.15390(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c) in subpart A of 40 CFR part 60).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 62.15390 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:

$$C_{7\%} = C_{unc} * (13.9) * \left(1/\left(20.9 - CO_2\right)\right) \qquad \text{(Eq. 1)}$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.

C_{unc} = uncorrected pollutant concentration.

CO_2 = concentration of oxygen (%).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using equation 2 of this section:

$$\%P_{Hg} = \left(E_i - E_o\right) * \left(100 / E_i\right) \qquad \text{(Eq. 2)}$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using equation 3 of this section:

$$\%P_{HCl} = \left(E_i - E_o\right) * \left(100/E_i\right) \qquad \text{(Eq. 3)}$$

Where

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the capacity of the municipal waste combustion unit based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on this maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate this maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 or 5 of this section for plant basis or unit basis:

(1) Plant basis.

$$C = \sum_{i=1}^{n} f_i * h_i \qquad \text{(Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h \qquad \text{(Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Title V Requirements

§ 62.15395 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

Yes. If you are subject to this subpart on the effective date of this subpart or any time thereafter, you are required to apply for and obtain a title V operating permit.

§ 62.15400 When must I submit a title V permit application for my existing small MWC unit?

(a) You must submit a complete title V permit application within 12 months of when your source first becomes subject to a title V permitting program. *See* 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b), and 71.5(a)(1). As provided in section 503(c) of the Clean Air Act, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

(b) If your existing small MWC unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR Part 60, subpart BBBB, or by the effective date of the applicable State, Tribal, or Federal operating permits program, whichever is later. For any existing small MWC unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan, or the relevant EPA approved State or Tribal plan, is effective.

(c) A ''complete'' title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clear Air Act and 40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. *See* sections 503(d) and 502(a); 40 CFR 70.7(b) and 71.7(b).

Delegation of Authority

§ 62.15405 What authorities are retained by the Administrator?

These authorities are retained by the EPA Administrator and not transferred to the State upon delegation of authority to the State to implement and enforce this subpart.

(a) Approval of alternative non-opacity emission standard;

(b) Approval of alternative opacity standard;

(c) Approval of major alternatives to test methods;

(d) Approval of major alternatives to monitoring;

(e) Waiver of recordkeeping; and

(f) approval of exemption to operating practice requirements in § 62.15145(e)(5).

Definitions

§ 62.15410 What definitions must I know?

Terms used but not defined in this section are defined in the Clean Air Act and in subparts A and B of 40 CFR part 60.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days (or 366 consecutive days in leap years) starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of

the operation of a municipal waste combustion unit. This person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Class II units mean small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) ''Yard waste'', which is defined in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of municipal solid waste in this section.

Cofired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a cofired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Contract means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

De-rate means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 35 tons per day of municipal solid waste. A permit restriction or a changes in the method of operation does not qualify as de-rating.

Dioxins/furans mean tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Effective date of State plan approval means the effective date that the EPA approves the State plan. The **Federal Register** specifies this date in the notice that announces EPA's approval of the State plan.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

EPA-approved State plan means a State plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60 subpart B to implement and enforce 40 CFR part 60, subpart BBBB. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4 a.m.

(2) 4 a.m. to 8 a.m.

(3) 8 a.m. to 12:00 noon.

(4) 12:00 noon to 4 p.m.

(5) 4 p.m. to 8 p.m.

(6) 8 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this subpart.

Medical/infectious waste means any waste meeting the definition of medical/infectious waste contained in 40 CFR 60.51c of subpart Ec.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. This includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed later than June 6, 2001, and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which standards have been established under section 129 or section 111 of the Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in this determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under ''Applicability of State Plans'' (§ 62.15010(a)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of 40 CFR part 60.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define these municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under § 62.15020(h) and (i). Municipal waste combustion units do not include cement kilns that combust municipal solid waste as specified under § 62.15020(j). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured by EPA Reference Method 5 in Appendix A of 40 CFR part 60 and the procedures specified in § 62.15245.

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). These materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. These feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste.

The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins on or after June 6, 2001.

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate these costs, see the definition of ''municipal waste combustion unit'' in this section.

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20 °C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B, that implements and enforces 40 CFR part 60, subpart BBBB.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 in Appendix A of 40 CFR part 60 and the procedures specified in § 62.15245.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60 subpart BBBB.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in this section.

(2) Clean wood that is exempt from the definition of ''municipal solid waste'' in this section.

BILLILNG CODE 6560–50–U

Table 1 of Subpart JJJ — Generic Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
1. Class I units[a,b]	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
2. Class II units [c]	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:

1. One year after the effective date of this subpart.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than the Class I final compliance date, even if the date one year after the issuance of a revised construction or operation permit exceeds the Class I final compliance date.

[c] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §62.15410 for definitions.

Table 2 of Subpart JJJ — Class I Emission Limits for Existing Small Municipal Waste Combustion Units[a]

For these pollutants	You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
1. Organics			
Dioxins/furans (total mass basis)	30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or- 60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system	3-run average (minimum run duration is 4 hours)	Stack test
2. Metals			
Cadmium	0.040 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate Matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

Table 2 of Subpart JJJ — Class I Emission Limits For Existing Small Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
3. Acid gases			
Hydrogen Chloride	31 parts per million by dry volume -or- 95 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test
Sulfur Dioxide	31 parts per million by dry volume -or - 75 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
4. Other			
Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

Table 3 of Subpart JJJ — Class I Nitrogen Oxides Emission Limits for Existing Small Municipal Waste Combustion Units[a,b,c]

Municipal Waste Combustion Technology	Limits for Class I Municipal Waste Combustion Units
1. Mass burn waterwall	200 parts per million by dry volume
2. Mass burn rotary waterwall	170 parts per million by dry volume
3. Refuse-derived fuel	250 parts per million by dry volume
4. Fluidized bed	220 parts per million by dry volume
5. Mass burn refractory	350 parts per million by dry volume
6. Modular excess air	190 parts per million by dry volume
7. Modular starved air	380 parts per million by dry volume

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] Nitrogen oxides limits are corrected to 7 percent oxygen, dry basis.

[c] All limits are 24-hour daily block arithmetic average concentration. Compliance is determined for Class I units by continuous emission monitoring systems.

Table 4 of Subpart JJJ — Class II Emission Limits for Existing Small Municipal Waste Combustion Units[a]

For these pollutants		You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
1. Organics				
	Dioxins/furans (total mass basis)	125 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
2. Metals				
	Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
	Opacity	10 percent	Thirty 6-minute averages	Stack test
	Particulate Matter	70 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
3. Acid gases				
	Hydrogen Chloride	250 parts per million by volume -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test

[a] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) measured at 7 percent oxygen.

Table 4 of Subpart JJJ — Class II Emission Limits for Existing Municipal Small Waste Combustion Units[a] (Continued)

For these pollutants		You must meet these emission limits[b]	Using these averaging times	And determine compliance by these methods
3. Acid gases				
	Nitrogen Oxides	500 parts per million by dry volume	See footnote c	See footnote c
	Sulfur Dioxide	77 parts per million by dry volume -or - 50 percent reduction of potential sulfur dioxides emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
4. Other				
	Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See §62.15410 for definitions.

[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

[c] No monitoring, testing, recordkeeping or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.

Table 5 of Subpart JJJ — Carbon Monoxide Emission Limits for Existing Small Municipal Waste Combustion Units

For these municipal waste combustion units	You must meet the carbon monoxide limits[a]	Using these averaging times[b]
1. Fluidized bed	100 parts per million by dry volume	4-hour
2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour[c]
3. Mass burn rotary refractory	100 parts per million by dry volume	4-hour
4. Mass burn rotary waterwall	250 parts per million by dry volume	24-hour
5. Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
6. Mixed fuel-fired, (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
7. Modular starved-air and excess air	50 parts per million by dry volume	4-hour
8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	200 parts per million by dry volume	24-hour daily
9. Stoker, refuse-derived fuel	200 parts per million by dry volume	24-hour daily

[a] All emission limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.

[b] Block averages, arithmetic mean. See §62.15410 for definitions.

[c] 24-hour block average, geometric mean.

Table 6 of Subpart JJJ — Requirements for Validating Continuous Emission Monitoring Systems (CEMS)

For these continuous monitoring systems	Use these methods to validate pollutant concentration levels[a]	Use these methods to measure oxygen (or carbon dioxide)[a]
1. Nitrogen oxides (Class I units only)[b]	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
2. Sulfur dioxide	Method 6 or 6C	Method 3 or 3A
3. Carbon monoxide	Method 10, 10A, or 10B	Method 3 or 3A

[a] Methods are in Appendix A of 40 CFR part 60.

[b] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.

Table 7 of Subpart JJJ — Requirements for Continuous Emission Monitoring Systems (CEMS)[a]

For these pollutants	Use these span values for your CEMS	Use these performance specifications for your CEMS (from appendix B in 40 CFR part 60)	If needed to meet minimum data requirements, use these alternate methods to collect data
1. Opacity	100 percent opacity	P.S. 1	Method 9
2. Nitrogen oxides (Class I units only)	**Control device outlet:** 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 7E
3. Sulfur dioxide	**Inlet to control device:** 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit **Control device outlet:** 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 6C
4. Carbon monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
5. Oxygen or carbon dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

[a] Methods are in Appendix A of 40 CFR part 60.

Table 8 of Subpart JJJ — Requirements for Stack Tests

To measure these pollutants	Use these methods to determine the sampling location[a]	Use these methods to measure pollutant concentration[a]	Also note the following additional information
1. Organics			
Dioxins/furans	Method 1	Method 23[b]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
2. Metals			
Cadmium	Method 1	Method 29[b]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[b]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[b]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Method 9	Method 9	Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages).
Particulate matter	Method 1	Method 5 or 29[b]	The minimum sample volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14 °C. The minimum sampling time is 1 hour.

[a] Mehods are in Appendix A of 40 CFR part 60.
[b] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B.
[c] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 8 of Subpart JJJ — Federal Plan Requirements for Stack Tests (Continued)

To measure these pollutants	Use these methods to determine the sampling location[a]	Use these methods to measure pollutant concentration[a]	Also note the following additional information
3. Acid gases[c]			
Hydrogen chloride	Method 1	Method 26 or 26A[b]	Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load.
4. Other[c]			
Fugitive ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 9 of Subpart JJJ — Site-specific Compliance Schedules and Increments of Progress

Class I[a,b] units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
To be determined	August 6, 2003	To be determined	To be determined	To be determined	To be determined

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See §62.15410 for definitions.
[b] For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:
1. One year after the effective date of this subpart.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than the Class I final compliance date, even if the date one year after the issuance of a revised construction or operation permit exceeds the Class I final compliance date.

[FR Doc. 01–14619 Filed 6–13–01; 8:45 am]
BILLING CODE 6560–50–C

Federal Register

Thursday,
June 14, 2001

Part V

Department of Education

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On May 18, 2001, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities Program was published in the **Federal Register** (66 FR 27808). Under Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities Program (CFDA No. 84.326) priority on page 27808, in column 3, third sentence, in the section on Eligible Applicants inadvertently stated the authority citation for entities eligible to apply on behalf of an SEA or Freely Associated State as being section 661(b)(1)(A) of IDEA. The third sentence is corrected to read ''An entity eligible to apply for funding under Section 661(b)(1) of IDEA may apply on behalf of an SEA or a Freely Associated State * * *''.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra_Sturdivant@ed.gov

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact persons 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 the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

Program Authority: 20 U.S.C. 1485.

Dated: June 7, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitative Research.

[FR Doc. 01–14941 Filed 6–13–01; 8:45 am]

BILLING CODE 4000–01–U

Reader Aids

Federal Register

Vol. 66, No. 115

Thursday, June 14, 2001

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service for notification of recently enacted Public Laws. To subscribe, send E-mail to

listserv@listserv.gsa.gov

with the text message:

subscribe PUBLAWS-L your name

Use listserv@www.gsa.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

29661–29894 1
29895–30056 4
30057–30286 5
30287–30628 6
30629–30800 7
30801–31106 8
31107–31374 11
31375–31834 12
31835–32206 13
32207–32528 14

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
11 30340

3 CFR

Proclamations:
7208 (See Proc. 7445) 30053
7214 (See Proc. 7445) 30053
7445 30053
7446 30287
7447 31367
7448 31371
7449 31375
7450 32205

Executive Orders:
13035 (Amended by EO 13215) 30285
13092 (see EO 13215) 30285
13113 (see EO 13215) 30285
13125 (Amended by EO 13216) 31373
13159 (See notice of June 11, 2001) 32207
13200 (see EO 13215) 30285
13215 30285
13216 31373

Administrative Orders:
Notices:
Notice of June 11, 2001 32207
Presidential Determinations:
No. 2001–16 of June 1, 2001 30631
No. 2001–17 of June 1, 2001 30633
Memorandums:
Memorandum of May 30, 2001 30629
Memorandum of May 31, 2001 31833
Memorandum of June 5, 2001 30799

5 CFR

330 29895
332 29895
351 29895
353 29895
1201 30635

7 CFR

2 31107
272 29661
273 29661
301 32209
319 32210
360 32213
932 30289
985 30291
993 30642
1482 30801

Proposed Rules:
301 32268
319 29735
981 31850
1030 31185
1944 29739

8 CFR

100 29661
103 ..... 29661, 29682, 32138
214 31107
236 29661
245a 29661
274a 29661
248 31107
299 ..... 29661, 29682, 31107
310 32138
320 32138
322 32138
334 32138
337 32138
338 32138
341 32138

9 CFR

94 ..... 29686, 29897, 29899

Proposed Rules:
93 29921

10 CFR

150 32452
170 32452
171 32452

Proposed Rules:
2 29741
1008 32272

12 CFR

8 29890
32 31114

Proposed Rules:
Ch. V 31186

13 CFR

107 30646
115 30803
121 ..... 30646, 32416

14 CFR

23 30649
39 ..... 29689, 29900, 30296, 30300, 30302, 30305, 30307, 31121, 31124, 31129, 31131, 31135, 31141, 31143, 31525, 31527, 31835, 31836, 31837
61 31145
63 31145

65 31145
71 29691
91 30310
95 30057
97 ....29691, 29693
108 31145
121 ....29888, 30310, 31145, 31146
125 30310
135 ....30310, 31145, 31146

Proposed Rules:
39 ....30093, 30095, 30099, 30101, 30103, 30105, 30107, 30109, 30112, 30114, 30341, 30343, 30345, 31189, 31192, 31194, 31566, 31569, 32276
71 ....30117, 30118, 30119, 30120, 30654, 31196

15 CFR
902 30651

Proposed Rules:
922 30828

16 CFR

Proposed Rules:
1115 30655

17 CFR
200 31839
270 30311
275 30311
450 29888

19 CFR
206 32217

21 CFR
5 30992
101 30311
173 31840
606 ....31165, 31146
607 31146
610 31146
630 31165
640 31146
660 31146
809 31146

22 CFR
51 29904

24 CFR
982 30566

Proposed Rules:
206 30262
982 32198

25 CFR
151 31976

26 CFR

Proposed Rules:
1 ....31197, 31850, 32279
5c 31850
5f 31850
18 31850
31 32279
301 ....31850, 32279

27 CFR
9 29695
46 32218
70 32218
270 32218
275 32218
290 32218
296 32218

28 CFR

Proposed Rules:
16 29921

29 CFR
4902 32221

30 CFR
926 31530

Proposed Rules:
206 30121
210 30121
216 30121
218 30121
920 31571
926 ....29741, 29744,
934 30347

31 CFR

Proposed Rules:
210 29746

32 CFR
989 ....31177, 31976

33 CFR
100 ....30313, 30314, 30316, 30805
117 30806
165 ....29699, 29907, 30059, 30061, 30317, 30319, 31841, 32222, 32223
207 ....30063, 31277

Proposed Rules:
100 31868
165 ....31870, 31872, 32280

36 CFR
242 31533

Proposed Rules:
13 32282
1202 30134

37 CFR
252 29700
257 29700

Proposed Rules:
1 30828
2 30828

38 CFR
21 ....32225, 32226
36 32230

Proposed Rules:
46 30141

39 CFR
20 29704
111 30064
551 31822

40 CFR
9 ....30806, 30807, 31086
52 ....29705, 30815, 31086, 31544, 31545, 31548, 31550, 31552, 31554, 32231
60 31177
63 30818
75 31842
141 31086
142 31086
180 ....29705, 30065, 30073, 30321, 30325, 30334, 30822
197 32074
271 29712
300 32235
435 30807

Proposed Rules:
52 ....30145, 30656, 30829, 31197, 31199, 31573, 31574, 31575, 32287
60 32484
62 32484
70 31575
72 31978
75 31978
78 31978
81 31873
97 31978
261 30349
63 30830
86 30830
271 29746
300 ....31580, 31582, 32287

42 CFR
410 32172
412 32172
413 32172
431 31178
433 31178
435 31178
436 31178
457 31178
485 32172

44 CFR
64 31178
65 ....31181, 31183

Proposed Rules:
59 32293
64 32293

46 CFR
1 31842
110 29908
111 29908

47 CFR
1 29722
2 29722
15 31556
24 29911
25 31557
36 30080
54 ....30080, 30334
64 30334
73 ....29723, 29724, 29725, 29726, 30090, 30091, 30092, 30335, 30826, 31560, 31561, 32242
87 29722
90 30335
101 29722

Proposed Rules:
15 31585
17 ....30853, 30860
20 31878
22 31589
24 31589
25 30361
73 ....29747, 30365, 30366, 31596, 31597, 32296
95 31598
622 30866
660 ....30867, 30869

48 CFR
1803 29726
1811 29727
1830 29727
1832 29728
1852 29726

Proposed Rules:
801 30659
806 30659
812 30659
837 30659
852 30659
873 30659

49 CFR
40 32248
393 30335

Proposed Rules:
171 32420
173 32420
174 32420
175 32420
176 32420
177 32420
178 32420
571 ....29747, 30366, 31883

50 CFR
17 32250
20 32264
21 32264
100 31533
600 29922
622 29924
635 ....30651, 31844
648 ....29729, 31184
660 ....29729, 31561
679 ....31845, 31849

Proposed Rules:
17 ....30148, 30368, 30372, 31760, 32052
20 32297
223 ....31600, 31603, 32304, 32305
224 ....32304, 32305
300 32310
622 ....31608, 31609, 32312
648 30149
679 30396

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 14, 2001

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Mangoes from Philippines; published 6-14-01

DEFENSE DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Educational Assistance Test Program; increased allowances; published 6-14-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

State and local operating permits programs; interim approval requirements; published 5-15-01

Air quality implementation plans; approval and promulgation; various States:

Texas; published 5-15-01

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telecomunications Act of 1996—

Local competition provisions; intercarrier compensation for ISP-bound traffic; published 5-15-01

Flight information services:

Advanced digital communications; published 5-15-01

Radio stations; table of assignments:

Arkansas and Louisiana; published 4-11-01

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Mid-continent light goose population reduction; published 6-14-01

INTERNATIONAL TRADE COMMISSION

Practice and procedure:

Investigations relating to global and bilateral safeguards actions, market disruption, and review of relief actions—

Confidential business information disclosure; published 6-14-01

POSTAL SERVICE

Domestic Mail Manual:

Bound printed matters; attachments and enclosures; eligibility requirements; published 6-5-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 5-10-01

McDonnell Douglas; published 5-10-01

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:

Tobacco products and cigarette papers and tubes—

Regulations recodification; published 6-14-01

VETERANS AFFAIRS DEPARTMENT

Organization, functions, and authority delegations:

Portfolio Loan Sevicing Contractor; published 6-14-01

Vocational rehabilitation and education:

Veterans education—

Educational Assistance Test Program; increased allowances; published 6-14-01

Montgomery GI Bill-Active Duty; rates payable increase; published 6-14-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tobacco inspection:

Permissive inspection and certification; fees and charges; comments due by 6-22-01; published 5-23-01

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Cattle from Australia and New Zealand; testing exemption; comments due by 6-19-01; published 4-20-01

Hearing; comments due by 6-19-01; published 6-4-01

Cattle, imported; tuberculosis testing requirements; comments due by 6-19-01; published 4-20-01

Horses from Iceland; exemption from dourine, glanders, equine piroplasmosis, and equine infectious anemia testing during quarantine period; comments due by 6-18-01; published 4-18-01

Plant-related quarantine, domestic:

Karnal bunt; comments due by 6-19-01; published 4-20-01

Plant-related quarantine, foreign:

Artificially dwarfed plants; importation; comments due by 6-19-01; published 4-20-01

Unshu oranges from Japan; comments due by 6-18-01; published 4-18-01

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric and telecommunications loans:

Audits; management letter requirements; comments due by 6-20-01; published 5-21-01

Generally Accepted Government Auditing Standards; amendments; comments due by 6-20-01; published 5-21-01

COMMERCE DEPARTMENT

International Trade Administration

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 6-22-01; published 5-23-01

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic zone—

Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; Steller sea lion protection measures; comments due by 6-22-01; published 5-15-01

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 6-19-01; published 6-4-01

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 6-19-01; published 5-30-01

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Modernization Act; implementation:

Securities brokers or dealers; registration as futures commission merchant or introducing broker; comments due by 6-18-01; published 5-17-01

Securities:

Market capitalization and dollar value of average daily trading volume, method of determining; narrow-based security index definition application; comments due by 6-18-01; published 5-17-01

ENERGY DEPARTMENT

Research misconduct; Federal policy; agency implementation; meetings; comments due by 6-20-01; published 4-18-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

West Virginia; comments due by 6-22-01; published 5-23-01

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 6-20-01; published 5-21-01

Delaware; comments due by 6-18-01; published 5-17-01

Kentucky and Indiana; comments due by 6-18-01; published 5-17-01

Maryland; comments due by 6-21-01; published 5-22-01

Pennsylvania; comments due by 6-20-01; published 5-21-01

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
California; comments due by 6-18-01; published 5-18-01
Hazardous waste management system:
Hazardous waste manifest system modification; comments due by 6-21-01; published 5-22-01
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01
National priorities list update; comments due by 6-21-01; published 5-22-01

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Tariffs—
Competitive local exchange carriers; access charge reform; comments due by 6-20-01; published 5-21-01
Radio stations; table of assignments:
Florida; comments due by 6-18-01; published 5-15-01
Various states; comments due by 6-18-01; published 5-15-01

FEDERAL MARITIME COMMISSION
Practice and procedure:
Alternative dispute resolution; comments due by 6-20-01; published 5-21-01

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs and biological products:
Prescription drug products; labeling requirements; comments due by 6-22-01; published 3-30-01

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Low income housing:
Housing assistance payments (Section 8)—
Temporary Assistance for Needy Families Program; annual income requirements; comments due by 6-19-01; published 4-20-01

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Yellow-billed cuckoo; comments due by 6-20-01; published 6-5-01

INTERIOR DEPARTMENT
Watches, watch movements, and jewelry:
Duty-exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 6-22-01; published 5-23-01

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Transfers and licenses covering extended renewal term; notices of termination; comments due by 6-18-01; published 5-3-01

SECURITIES AND EXCHANGE COMMISSION
Securities:
Market capitalization and dollar value of average daily trading volume, method of determining; narrow-based security index definition application; comments due by 6-18-01; published 5-17-01

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
San Diego Bay, CA; security zone; comments due by 6-21-01; published 4-23-01

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 6-18-01; published 4-18-01
Boeing; comments due by 6-19-01; published 4-20-01
Bombardier; comments due by 6-22-01; published 5-23-01
Raytheon; comments due by 6-18-01; published 5-4-01

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—
Accessible pedestrian signals; supporting information and guidance; comments due by 6-18-01; published 5-17-01

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Civil monetary penalties; inflation adjustment; comments due by 6-18-01; published 5-18-01

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcoholic beverages:
Wine; labeling and advertising—
Counoise and St. Laurent; new grape variety names; comments due by 6-18-01; published 4-17-01

TREASURY DEPARTMENT
Customs Service
Articles conditionally free, subject to reduced rates, etc.:
Wool products; limited refund of duties; comments due by 6-22-01; published 4-23-01

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Benefits entitlement, written and oral information or statements affecting; comments due by 6-19-01; published 4-20-01

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. 1836/P.L. 107–16

Economic Growth and Tax Relief Reconciliation Act of 2001 (June 7, 2001; 115 Stat. 38)

Last List June 8, 2001

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to http://hydra.gsa.gov/archives/publaws-l.html or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.