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Presidential Documents

Title 3—

The President

Proclamation 7507 of November 29, 2001

National Diabetes Month, 2001

By the President of the United States of America

A Proclamation

During the past century, we have made significant progress in our fight against disease. Through public health campaigns and aggressive research, we have eliminated polio in the United States, reduced the harm of influenza outbreaks, and developed revolutionary new medications that provide relief and healing from many chronic and acute illnesses. However, effective treatments and cures to numerous other illnesses remain elusive and demand our continued attention and resources. One of the most prevalent and difficult of these is diabetes, which currently afflicts more than 16 million Americans.

Diabetes can cause blindness, renal disease, severe nerve damage, heart disease, strokes, and even death. This year approximately 800,000 men, women, and children in the United States will develop diabetes, and health officials estimate that it will be a contributing factor in almost 200,000 deaths. The total economic cost for providing medical treatment for diabetes patients and for disability and deaths related to the disease is approximately $100 billion a year. More troubling are statistics indicating that more than 5 million Americans are unaware of their diabetic condition, seriously jeopardizing their long-term health and well-being. An additional 10 million citizens are at high-risk of developing type 2 diabetes due largely to physical inactivity, obesity, and poor diet.

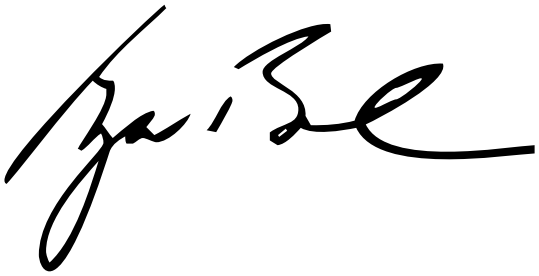
Recent scientific findings demonstrate that modest, consistent exercise and a healthy diet can curtail the risk of type 2 diabetes in individuals by nearly 60 percent. This information provides great hope in our efforts to reduce the incidence of diabetes and creates a renewed sense of urgency to ensure that all Americans are aware of practical steps that can be taken to reduce their risk for diabetes.

My Administration is strongly committed to fighting diabetes both by working in cooperation with dedicated staff and volunteers of private organizations to develop strong public education programs and by increased Federal funding for medical research. The Centers for Disease Control and Prevention and the National Institutes of Health (NIH) have established the National Diabetes Education Program (NDEP) to help familiarize Americans with the risks of diabetes and what can be done to minimize its complications. The NDEP will also offer practical information about preventing the cardiovascular complications of diabetes through the campaign, ''Be Smart About Your Heart: The ABCs of Diabetes.'' Medical research is providing exciting advances in our prevention and treatment strategies for diabetes, and my fiscal year 2002 budget reflects a significant increase in funding to continue the valuable diabetes research programs at the NIH.

I am confident that our Nation's health care professionals, nurses, scientists, educators, and volunteers will continue to provide quality care to those who currently suffer from diabetes, and, through their work, we will one day find a cure for this terrible disease. On the observance of National Diabetes Month, we honor those who are working diligently to advance our knowledge and understanding of diabetes. We also recognize the value of educating ourselves about health risks and the importance of healthy lifestyle habits.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001 as National Diabetes Month. I call on all Americans to increase their awareness of the risk factors and symptoms related to diabetes and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–30145
Filed 12–3–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7508 of November 29, 2001

National Hospice Month, 2001

By the President of the United States of America

A Proclamation

Each year, approximately 700,000 terminally ill patients and their families rely on the invaluable end-of-life care provided by the 3,100 hospice programs located in the United States. Hospice care allows a terminally ill individual to receive professional medical services, pain management therapy, and emotional and spiritual support, without having to enter a hospital. This focus on the patient's quality of life during his or her last illness can make the best of the most challenging of situations.

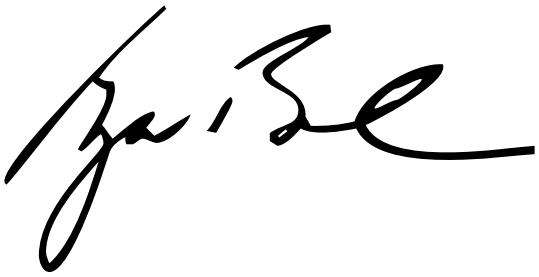
Hospices create a compassionate atmosphere where patients will be able to die with dignity, preferably in their home environment, surrounded and supported by loved ones, familiar friends, and committed caregivers. Professional and compassionate hospice staff and volunteers, including physicians, nurses, social workers, therapists, and clergy, provide comprehensive care and attend to the particular needs and wishes of each patient. Family members and friends also receive counseling and bereavement care that help them cope with the impending loss of their loved one.

Individuals and groups in the private and public sectors are working together to strengthen and expand hospice programs and to promote their services as a positive alternative for terminally ill patients. Today, hospice care is a full partner in our Nation's health care system, furthering our efforts to provide medical services in more compassionate and cost-effective ways. More important, providing high-quality hospice care reaffirms our belief in the essential dignity of every person, regardless of age, health, or social status, and that every stage of human life deserves to be treated with the utmost respect and care. My Administration remains committed to supporting health care programs like hospice that encourage quality medical care and frequent doctor-patient interaction.

With the observance of National Hospice Month, we recognize those who serve in our Nation's hospices, often as caregivers in the homes of hospice patients. Caring for a terminally ill patient can be emotionally painful, physically exhausting, and financially difficult. I call on all Americans to honor the professionals and volunteers who dedicate their lives to aiding the terminally ill through hospices. And we should use this observance as an opportunity to encourage and help those who take on the challenge of caring for a terminally ill patient in their home or in a hospice facility.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001 as National Hospice Month. I encourage Americans to increase their awareness of the importance and availability of hospice service and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–30146
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Presidential Documents

Proclamation 7509 of November 29, 2001

National Drunk and Drugged Driving Prevention Month, 2001

By the President of the United States of America

A Proclamation

Each December we turn our attention to the problem of drunk driving by observing National Drunk and Drugged Driving Prevention Month. Though the holidays bring joy in celebrations with family and friends, they also bring a tragic increase in the incidence of impaired driving. This season, I ask each American to avoid driving while they are under the influence of alcohol or drugs, to help stop others from driving in an impaired condition, and to increase community awareness about these issues.

Despite many efforts by States, communities, and citizen groups to stop drunk and drugged driving, many Americans mistakenly continue to view impaired driving as acceptable conduct. After years of gradual improvement, fatalities in alcohol-related crashes rose by 4 percent from 1999 to 2000. The National Highway Traffic Safety Administration estimates that last year alcohol was involved in 40 percent of fatal crashes and in 8 percent of all crashes.

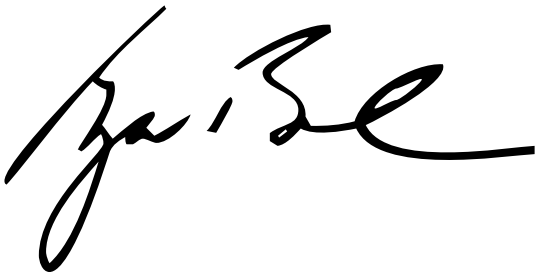
Every person should reaffirm his or her personal responsibility to drive free of the influence of alcohol or drugs and to prevent others from driving under the influence of them. We must promote practices such as designating a sober driver, stopping impaired family members and friends from getting behind the wheel, reporting impaired drivers to law enforcement officials, and teaching our young people safe, alcohol- and drug-free driving behavior.

We should also promote coordinated public policies and citizen campaigns against drunk and drugged driving in our communities. One example is the Department of Transportation's *You Drink & Drive, You Lose* campaign. This national coalition of community and law enforcement organizations will increase public awareness of the hazards of impaired driving. Their message warns of the criminal penalties for impaired driving, including imprisonment and the loss of license, vehicle, time from work, and money in fines and court costs.

As we celebrate the joyous holiday season, we can help save lives by preventing impaired driving. In order to ensure the safety of our roads for all travelers, we must continue to fight drunk and drugged driving throughout the year.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2001 as National Drunk and Drugged Driving Prevention Month. I call upon State and community leaders to join the National Holiday Lifesavers Mobilization, sponsored by the You Drink & Drive, You Lose campaign, on December 21–23, 2001. I also urge all Americans to remember the hazards of impaired driving and to become involved in fighting this dangerous problem.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Rules and Regulations

Federal Register

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–062–1]

Change in Disease Status of the Czech Republic Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding the Czech Republic to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in that region. The Czech Republic is currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in the Czech Republic and meat, meat products, and certain other products of ruminants that have been in the Czech Republic. This action is necessary in order to update the disease status of the Czech Republic regarding bovine spongiform encephalopathy.

DATES: This interim rule was effective June 8, 2001. We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by February 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–062–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–062–1'' on the subject line.

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. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE). BSE is a neurological disease of cattle and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. In § 94.18, paragraph (a)(1) lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraph (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Currently, the Czech Republic is among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on June 8, 2001, a case of BSE was confirmed in a native-born animal in the Czech Republic. Therefore, in order to update the disease status of this region regarding BSE, we are amending the regulations by removing the Czech Republic from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding the Czech Republic to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the

importation of ruminants that have been in the Czech Republic and on the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in the Czech Republic. We are making these amendments effective retroactively to June 8, 2001, which is the date that BSE was confirmed in a native-born animal in that region.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of the Czech Republic regarding BSE. 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. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). 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 under Executive Order 12866.

We are amending the regulations by adding the Czech Republic to the list of regions where BSE exists because the disease has been detected in native-born animals in that region. The Czech Republic is currently listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of the Czech Republic regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in the Czech Republic.

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 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 retroactive effect to June 8, 2001; 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 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT- AND -MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the words ''the Czech Republic,''.

b. In paragraph (a)(2), by removing the words ''the Czech Republic,''.

Done in Washington, DC, this 28th day of November 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30001 Filed 12–3–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 01–21]

RIN 1557–AB92

Operating Subsidiaries of Federal Branches and Agencies

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to typographical errors in the final rule that the OCC published in the **Federal Register** on September 26, 2001 (66 FR 49093). The final rule provides that a Federal branch or agency may establish, acquire, or maintain an operating subsidiary in generally the same manner that a national bank may acquire or establish an operating subsidiary.

EFFECTIVE DATE: October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Martha Clarke, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 01–24005 published on September 26, 2001, (66 FR 49093) make the following corrections:

1. On page 49097, in the second column, in amendatory instruction 1, the authority citation for part 5 is corrected to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*

§ 5.34 [Corrected]

2. On page 49097, in the third column, in §5.34(d)(2), in the fourth line, remove the word ''by''.

3. On page 49097, in the third column, in § 5.34(d)(3)(ii), remove the word ''AGENCY:'' and add, in its place, ''agency''.

Dated: November 26, 2001.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel, Comptroller of the Currency.

[FR Doc. 01–29898 Filed 12–3–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–38–AD; Amendment 39–12529; AD 2001–24–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–C20 Series Turboshaft and 250–B17 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) that was sent previously to all known U.S. owners and operators of Rolls-Royce Corporation (formerly Allison Engine Company) models 250–C20, –C20B, –C20F, –C20R, –C20R/1, –C20R/2, –C20S, and –C20W turboshaft engines, and 250–B17, –B17C, –B17D, –B17E, –B17F, –B17F/1, and –B17F/2 turboprop engines by individual letters. That action required replacement of any helical torquemeter gearshaft assembly with 100 hours or less time-since-new (TSN) with a serviceable helical torquemeter gearshaft assembly, before further flight. That amendment was prompted by a report of uncontained release of power turbine blades and disk fragments caused by engine overspeed, resulting in an uncommanded engine shutdown, engine fire, and damage to the aircraft. This amendment requires the same replacement, and adds engine model –250–C20J to the applicability section of this AD. The actions specified by this AD are intended to prevent uncontained release of power turbine blades and disk fragments caused by engine overspeed, resulting in an uncommanded engine shutdown, engine fire, and damage to the aircraft.

DATES: Effective December 19, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On October 3, 2001, the Federal Aviation Administration (FAA) issued Emergency Airworthiness Directive (AD) 2001–20–51, applicable to Rolls-Royce Corporation (formerly Allison Engine Company) models 250–C20, –C20B, –C20F, –C20R, –C20R/1, –C20R/2, –C20S, and –C20W turboshaft engines, and 250–B17, –B17C, –B17D, –B17E, –B17F, –B17F/1, and –B17F/2 turboprop engines, which requires replacement of any helical torquemeter gearshaft assembly with 100 hours or less time-since-new (TSN) with a serviceable helical torquemeter gearshaft assembly, before further flight. That action was prompted by a report of uncontained release of power turbine blades and disk fragments caused by engine overspeed, resulting in an uncommanded engine shutdown, engine fire, and damage to the aircraft. This condition, if not corrected, could result in uncontained release of power turbine blades and disk fragments caused by engine overspeed, resulting in an uncommanded engine shutdown, engine fire, and damage to the aircraft. Since that Emergency AD was issued, it has been found that engine model 250–C20J was inadvertantly omitted from emergency AD 2001–20–51, and is added to the applicability section of this AD.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued emergency AD 2001–20–51 to prevent uncontained release of power turbine blades and disk fragments caused by engine overspeed, resulting in an uncommanded engine shutdown, engine fire, and damage to the aircraft. This AD requires replacement of any helical torquemeter gearshaft assembly with 100 hours or less time-since-new (TSN) with a serviceable helical torquemeter gearshaft assembly, before further flight.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunuty for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–38.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to

correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–24–12 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–12529. Docket No. 2001–NE–38–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) models 250–C20, –C20B, –C20F, –C20J, –C20R, –C20R/1, –C20R/2, –C20S, and –C20W turboshaft engines, and 250–B17, –B17C, –B17D, –B17E, –B17F, –B17F/1, and –B17F/2 turboprop engines. These engines are used on, but not limited to Aerospatiale AS355; Agusta A109; A109A, A109C; Bell 206B, 206L, 206LT; Enstrom TH28; McDonnell Douglas 500C, 500D, 500E, 520N; Rogerson-Hiller FH1100; Schweizer TH330; Soloy Conversions Bell 47/47G, Hiller UH–12; American Jet Industries/Cessna 402, 414; and ASTA/GAF Nomad N–22 aircraft.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent uncontained release of power turbine blades and disk fragments caused by engine overspeed, resulting in an uncommanded engine shutdown, engine fire, and damage to the aircraft, do the following:

(a) Before further flight, remove helical torquemeter gearshaft assemblies part numbers (P/N's) 23035299 and 23038191 that have accumulated 100 hours or less time-since-new (TSN). Replace with a serviceable helical torquemeter gearshaft assembly.

(b) After the receipt of this AD, do not install any helical torquemeter gearshaft assembly P/N 23035299 or 23038191 that has accumulated 100 hours or less TSN.

Definition

(c) For the purposes of this AD, the following helical torquemeter gearshaft assemblies are considered serviceable parts:

(1) P/N's 23035299 and 23038191 that have greater than 100 hours TSN.

(2) An assembly with a P/N other than P/N's 23035299 and 23038191.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

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

Effective Date of This AD

(f) This amendment becomes effective December 19, 2001.

Issued in Burlington, Massachusetts, on November 27, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–29950 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Diclazuril

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of the approved diclazuril Type A medicated article to make Type B and Type C medicated feeds used for prevention of coccidiosis in growing turkeys. Also, tolerances for diclazuril residues in turkey liver, muscle, and skin with adherent fat are being established.

DATES: This rule is effective December 4, 2001.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed a supplement to NADA 140–951 that provides for use of CLINACOX (0.2 percent diclazuril) Type A medicated article to make Type B and Type C medicated turkey feeds used for the prevention of coccidiosis caused by *Eimeria adenoeides*, *E. gallopavonis*, and *E. meleagrimitis*. The NADA is approved as of September 21, 2001, and the regulations are being amended in §§ 556.175 and 558.198 (21 CFR 556.175 and 558.198) to reflect the approval. In addition, § 556.175 is being redesignated as § 556.185 to place it in alphabetical order in 21 CFR part 556. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning September 21, 2001, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

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

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Food.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.175 [Redesignated as § 556.185]

2. Section 556.175 is redesignated as § 556.185 and is amended by revising paragraph (b)(1) and by adding paragraph (b)(2) to read as follows:

§ 556.185 Diclazuril.

* * * * *

(b) *Tolerances*—(1) *Chickens*—(i) *Liver*. The tolerance for parent diclazuril (the marker residue) is 3 parts per million (ppm).

(ii) *Muscle*. The tolerance for parent diclazuril (the marker residue) is 0.5 ppm.

(iii) *Skin/fat*. The tolerance for parent diclazuril (the marker residue) is 1 ppm.

(2) *Turkeys*—(i) *Liver*. The tolerance for parent diclazuril (the marker residue) is 3 ppm.

(ii) *Muscle*. The tolerance for parent diclazuril (the marker residue) is 0.5 ppm.

(iii) *Skin/fat*. The tolerance for parent diclazuril (the marker residue) is 1 ppm.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.198 is amended in paragraph (b) by removing ''556.175'' and by adding in its place ''556.185''; and in paragraph (d)(1) by adding a heading and by revising the introductory text, and by adding paragraph (d)(2) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) *Conditions of use*—(1) *Chickens*. For chickens it is used as follows:

* * * * *

(2) *Turkeys*. For turkeys it is used as follows:

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
(i) 0.91 (1 ppm)		Growing turkeys: For the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis* and *E. meleagrimitis*..	Feed continuously as the sole ration. Do not feed to breeding turkeys. Not for use in hens producing eggs for human consumption..	000061
(ii) [Reserved]				

Dated: November 9, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–29983 Filed 12–3–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–037–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Utah regulatory program (hereafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or ''the Act''). Utah proposed changes to definitions and engineering and hydrology provisions in its rules about subsidence control plans, subsidence control, and water replacement. Utah intended to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 4, 2001.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division; telephone: (303) 844–1424; e-mail address: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, '' * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah

program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You also can find later actions concerning Utah's program and program amendments 30 CFR 944.15 and 944.30.

II. Submission of the Proposed Amendment

By letter dated March 20, 1998 (administrative record number UT–1103), Utah sent to us an amendment to its program (SPATS No. UT–037–FOR, administrative record number 1105) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to a June 5, 1996, letter (administrative record number UT–1083) that we sent to the State in accordance with 30 CFR 732.17(c).

Changes to the Utah Administrative Rules (Utah Admin. R.) that the State proposed included: Adding definitions for ''material damage,'' ''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' ''replacement of water supply,'' and ''State-appropriated water supply'' at Utah Admin R. 645–100–200; adding requirements at Utah Admin. R. 645–301–525.100 through –525.130 for pre-subsidence surveys; removing existing requirements for subsidence control plans at Utah Admin. R. 645–301–525 through –525.170; recodifying rules at Utah Admin. R. 645–301–525.200 through –525.240 pertaining to protected areas; removing existing requirements for subsidence control at Utah Admin. R. 645–301–525.200 through –525.232; adding requirements at Utah Admin. R. 645–301–525.300 through –525.490 for subsidence control and subsidence control plans; adding requirements for subsidence damage repair at Utah Admin. R. 645–301–525.500 through –525.530; adding a rebuttable presumption of causation by subsidence at Utah Admin. R. 645–301–525.540 through –525.545; adding provisions at Utah Admin. R. 645–301–525.550 for adjusting bond amounts for subsidence damage; recodifying rules at Utah Admin. R. 645–301–525.600 and 645–301–525.700 that require compliance with approved subsidence control plans and public notice of proposed mining, respectively; removing existing provisions for surveys of renewable resource lands at Utah Admin. R. 645–301–724.600; adding a provision at Utah Admin. R. 645–301–728.350 for finding whether underground coal mining and reclamation activities might contaminate, diminish or interrupt State-appropriated water; and adding a requirement at Utah Admin. R. 645–301–731.530 for replacing State-appropriated water supplies that are contaminated, diminished, or interrupted by underground coal mining activities.

We announced receipt of the proposed amendment in the April 8, 1998, **Federal Register** (63 FR 17138). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (administrative record number UT–1108). We did not hold a public hearing or meeting because nobody requested one. The public comment period ended on May 8, 1998. We received comments from two law firms on behalf of a special service district, a water conservancy district, an irrigation company, and a water users association. We also received comments from a mining association, the State Historic Preservation Officer, and two Federal agencies.

During our review of the amendment, we identified a concern relating to Utah's use of the undefined term ''underground mining activities'' at proposed Utah Admin. R. 645–301–731.530, which is entitled ''State-appropriated water supply.'' We discussed our concern with Utah in telephone conversations on April 29 and May 11, 1998 (administrative record numbers UT–1111 and UT–1113, respectively).

Utah formally responded in a letter dated May 13, 1998, that its use of the undefined term was an oversight (administrative record number UT–1115). In the same letter, the State committed to replacing the undefined term ''underground mining activities'' with its defined term ''underground coal mining and reclamation activities'' in its rules, though its May 13 letter was sufficient to revise the proposed amendment. Based on Utah's response, we decided that reopening the comment period was not necessary and continued our review of the amendment. Utah promulgated a rule that includes the defined term on September 30, 1998 (Utah Division of Administrative Rules (DAR) file number 21334).

We completed our review of the amendment and the comments we received and identified five topics of concern. Two of those topics involved pre-subsidence surveys and contents of subsidence control plans. They appeared to require changes in Utah's proposed rules. The remaining three topics required additional clarification from Utah on the scope of the terms ''State-appropriated water'' and ''State-appropriated water supply,'' the scope of water replacement with respect to ''developed'' water supplies, and of the proposed definition of ''replacement of water supply.'' We notified Utah of our concerns in a letter dated October 1, 1998 (administrative record number UT–1125).

In a letter dated July 8, 1999 (administrative record number UT–1131), Utah notified us that the Huntington-Cleveland Irrigation Company filed a civil action in the State's Seventh Judicial District Court challenging the proposed water replacement rules included in this amendment. At Utah's request, we suspended our review of the amendment while the State addressed the legal and technical issues involved in that litigation.

On December 22, 1999, we suspended certain Federal regulations pertaining to subsidence in relation to underground mining as a result of the April 27, 1999, decision of the U.S. Court of Appeals for the District of Columbia in *National Mining Association v. Babbitt*, 173 F.3d 906 (1999). We suspended the part of 30 CFR 784.20(a)(3) that required a pre-subsidence survey of certain structures within an angle of draw unless the permit applicant was denied access to do such a survey by the structure owner(s). We also suspended 30 CFR 817.121(c)(4) (i) through (iv) in their entirety. Those regulations established an angle of draw and created a rebuttable presumption that subsidence damage to structures protected under section 2504 of the Energy Policy Act of 1992 (Pub.L. 102–486, 106 Stat. 2776; hereafter ''EPAct''), and section 720 of SMCRA (as revised by EPAct) within an area defined by an angle of draw was caused by the underground mining operation. We notified Utah of the suspension by electronic mail on December 22, 1999, and included the December 22, 1999, **Federal Register** notice of that suspension with our message (64 FR 71652; administrative record number 1132).

In a letter dated September 1, 2000 (administrative record number UT–1144), Utah asked us to resume our review of the amendment, noting that litigation of the proposed water replacement rules would continue. The State also committed to respond to our October 1, 1998, issue letter.

Utah responded to our October 1, 1998, letter with a letter dated October 31, 2000 (administrative record number 1145). The State revised two proposed rules in its amendment and provided additional clarification on three topics. However, the State's response showed

that it did not revise its proposed amendment in light of our December 22, 1999, suspension of 30 CFR 784.20(a)(3) and 817.121(c)(4) (i) through (iv). We discussed this with Utah in a telephone conversation on November 8, 2000 (administrative record number 1146), at which time the State agreed to consider whether it would revise its amendment in light of our suspension of those Federal regulations. A follow-up telephone conversation of November 21, 2000 (administrative record number UT–1148), confirmed that Utah wanted us to review the amendment as originally submitted on March 20, 1998, corrected on May 13, 1998, and addressed in its October 31, 2000, response to our issue letter without further revisions related to our suspension of the Federal regulations.

We announced receipt of revisions to the amendment in the February 20, 2001, **Federal Register** (66 FR 10866; administrative record number UT–1157). In the same document, we reopened the public comment period for 15 days to provide for review of the changes and additional information Utah included in its October 31, 2000, response letter. The extended comment period closed on March 7, 2001.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 731.17. We are approving the amendment as described below.

A. Minor Revisions to Utah's Administrative Rules

Utah proposed minor recodification changes to the following previously approved rules (with the counterpart Federal regulations shown in parentheses):

Utah Admin. R. 645–301–525.240 through –525.270, areas protected from underground mining and subsidence, recodified as 645–301–525.200 through –525.240 (30 CFR 817.121(d) through (g));

Utah Admin. R. 645–301–525.220, compliance with approved subsidence control plan, recodified as 645–301–525.600 (30 CFR 817.121(a)(3)(b)); and

Utah Admin. R. 645–301–525.300, public notice of proposed mining, recodified as 645–301–525.700 (30 CFR 817.122).

Because these changes are minor and non-substantive in nature, we find that they will not make Utah's rules less effective than the corresponding Federal regulations.

B. Revisions to Utah's Administrative Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Utah proposed revisions to the following rules containing language that is the same as, or similar to, the corresponding Federal regulations (which are listed in parentheses):

Utah Admin. R. 645–100–200, addition of new definitions of ''material damage'' and ''occupied residential dwelling and structures related thereto'' (30 CFR 701.5);

Utah Admin. R. 645–301–525.300 through –525.313, addition of new subsidence control provisions for preventing or minimizing damage, replacing existing Utah Admin. R. 645–301–525.200 and –525.210, which are removed (30 CFR 817.121(a)(1) through (a)(3));

Utah Admin. R. 645–301–525.410, new requirement for a description in the subsidence control plan of the coal removal method, replacing the existing provision at Utah Admin. R. 645–301–525.110, which is removed (30 CFR 784.20(b)(1));

Utah Admin. R. 645–301–525.420, new requirement for a map to be in the subsidence control plan showing underground workings where planned subsidence is expected and identifying areas where subsidence will be minimized and where subsidence-related damage will be minimized and corrected (30 CFR 784.20(b)(2));

Utah Admin. R. 645–301–525.430, new requirement for a description to be in the subsidence control plan of physical conditions affecting subsidence, replacing existing Utah Admin. R. 645–301–525.120, which is removed (30 CFR 784.20(b)(3));

Utah Admin. R. 645–301–525.440, new requirement for a description to be in the subsidence control plan of subsidence monitoring to be done, replacing existing Utah Admin. R. 645–301–525.140, which is removed (30 CFR 784.20(b)(4));

Utah Admin. R. 645–301–525.450 through –525.460, new requirement for a description to be in the subsidence control plan of subsidence control measures, replacing existing Utah Admin. R. 645–301–525.130 through –525.134 and Utah Admin. R. 645–301–525.150, which are removed (30 CFR 784.29(b)(5) through (b)(6));

Utah Admin. R. 645–301–525.470, new requirement for a description to be in the subsidence control plan of methods to minimize damage from planned subsidence (30 CFR 784.20(b)(7));

Utah Admin. R. 645–301–525.500, new section heading added for repair of damage, replacing the existing introductory statement at Utah Admin. R. 645–301–525.230, which is removed (30 CFR 817.121(c));

Utah Admin. R. 645–301–525.510, new rule requiring repair of subsidence damage to surface lands, replacing existing Utah Admin. R. 645–301–525.231, which is removed (30 CFR 817.121(c)(1));

Utah Admin. R. 645–301–525.520, new rule requiring repair of, or compensation for, subsidence damage to non-commercial buildings and related structures, replacing, in part, existing Utah Admin. R. 645–301–525.232, which is removed (30 CFR 817.121(c)(2)); and

Utah Admin. R. 645–301–525.545, new provision added for information to be considered in determining the cause of damage (30 CFR 817.121(c)(4)(v)).

Because these rules contain language that has the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations. We also find that they satisfy item numbers B.2 and B.4 in their entirety, and C.3, D.2, and D.3 in part, of our June 5, 1996, 30 CFR part 732 letter.

C. Revisions to Utah's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Utah Admin. R. 645–100–200, Definition of ''Non-commercial Building''

Utah proposed to add the definition of ''non-commercial building'' at Utah Admin. R. 645–100–200 as follows:

> Non-commercial Building means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined at R645–100–200. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

Utah's proposed definition and the Federal definition of ''non-commercial building'' reference definitions of the terms ''community or institutional building'' and ''public building.'' The definition of ''public building'' at Utah Admin. R. 645–100–200 is virtually identical to the Federal definition of ''public building'' at 30 CFR 761.5. Utah's definition of ''community or institutional building'' at Utah Admin. R. 645–100–200 differs slightly from the Federal definition of that term. Utah's version includes the phrase ''* * * functions including, but not limited to * * *'' in the second clause of the sentence in which building functions

are described. By including this phrase, Utah's definition includes community or institutional buildings within the scope of non-commercial buildings if they function as educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facilities and those serving other unnamed functions as well. Structures included in the Federal definition of ''community or institutional buildings'' are limited to those serving the functions specifically listed.

The effect of this difference is to extend the protections against material damage caused by subsidence provided by Utah Admin. R. 645–301–525.100 through –525.700 to potentially more structures than encompassed by the Federal definition. Essentially, under Utah's proposed definition: More buildings may be subject to pre-subsidence surveys; permittees may be required to prevent or minimize subsidence-related damage to more buildings; subsidence control plans may have to describe methods to be used to minimize damage to more buildings from planned subsidence; and more buildings may be subject to provisions for repair or compensation for subsidence-related damage.

We note that part of the Federal regulation at 30 CFR 784.20(a)(3) concerning pre-subsidence surveys is suspended and that 30 CFR 817.121(c)(4)(i) through (iv) concerning the rebuttable presumption of causation by subsidence are suspended in their entirety. In part, Utah's proposed definition invokes subsidence protections in its rules the Federal counterparts to which are among the suspended regulations. That does not, however, make Utah's proposed definition inconsistent with SMCRA or less effective than the Federal regulations. Section 505(b) of SMCRA specifically states ''Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.'' This final rule describes the details of the suspended Federal regulations and its effect on Utah's proposed rules in greater detail in our findings concerning the State's proposed pre-subsidence survey rules, subsidence control plan contents, and the rebuttable presumption at parts III.C.6, III.C. 7, and III.C.9, respectively.

Based on the reasoning we described above, Utah's proposed definition of ''non-commercial building'' is no less effective than the counterpart Federal definition and is not inconsistent with SMCRA. It also satisfies item B.3 of our June 5, 1996, 30 CFR part 732 letter.

2. Utah Admin. R. 645–100–200, Definition of ''State-Appropriated Water Supply''

Utah proposed the definition of ''State-appropriated water supply'' at Utah Admin. R. 645–100–200 as follows:

> State Appropriated Water Supply'' means State-created water rights which are recognized under the provisions of the Utah Code.

The terms ''State-appropriated water supply'' and ''drinking, domestic or residential water supply'' are different terms used in Utah's proposed rules and the Federal regulations, respectively, in the same context. Utah refers to ''State-appropriated water supply'' in its permit application rules for subsidence control plans and for probable hydrologic consequences determinations related to underground coal mining and reclamation activities at Utah Admin. R. 645–301–525 and 645–301–728.350. Utah also uses the term in its water replacement performance standard for underground mining activities at Utah Admin. R. 645–301–731.530. The Federal regulations use the term ''drinking, domestic or residential water supply'' in the permit application regulations for probable hydrologic consequence determinations related to underground mining activities and for subsidence control plans at 30 CFR 784.14(e)(3)(iv) and 784.20(a). They also use this term in the underground mining performance standards for water replacement at 30 CFR 817.41(j).

Utah's proposed definition of ''State-appropriated water supply'' is based on its use of the term ''State-appropriated water'' at Utah Code Annotated (UCA) 40–10–18(15)(c). As written in that section of the Code,

> Subject to the provisions of Section 40–10–29, the permittee shall promptly replace any State-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

The Federal counterpart statutory provision is found at section 720(a)(2) of SMCRA, as amended by the Energy Policy Act of 1992. It provides for replacement of ''any drinking, domestic, or residential water supply from a well or spring'' rather than ''any State-appropriated water.''

In a January 29, 1997, letter clarifying the proposed use of the term ''State-appropriated water'' at UCA 40–10–18(15)(c) in amendment UT–035-FOR (administrative record number UT–1094), the State noted that it conferred and agreed with Utah water users and coal operators on use of that term. Utah wrote:

> It appears to DOGM that the ''subject to'' clause in the proposed bill more logically should be read as a deliberate cross-reference to subsection 1 of Utah Code 40–10–29, which subsection states:
>
> ''(1) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.''

Id. In other words, the water users want the ''subject to'' clause because they want to make absolutely clear that the new water replacement provisions in the Utah Coal Program supplement, rather than replace, any other common law or statutory remedies otherwise available to them. Stated otherwise, the water users are happy to get a new SMCRA-inspired statutory remedy for water replacement, but they do not want to give up other water resource protection remedies, if any, which they may already have under applicable water law. [Utah] does not think Congress intended to deprive water users of other existing remedies. Therefore, the ''subject to'' clause clearly does not make the Utah proposal less stringent than Section 720(a) of SMCRA.

The SMCRA counterpart to UCA 40–10–29(1) is found at section 717(a).

Utah further explained that existing statutes at Title 73 of the Utah Code Annotated govern all waters of the State. Utah wrote:

> Under Utah water law, a person or entity cannot be a ''legitimate'' water user if he/she/it is using water that has not been appropriated by the State. The deliberately broad phrase ''any state-appropriated water'' covers the ''* * * universe of legal Utah water uses by the universe of legal water users.''

Utah asserted that use of ''State-appropriated water'' in its statute, therefore, provided broader water replacement protection than the Federal provision for underground mining activities which is limited to ''drinking, domestic or residential water supply'' from a well or spring. For example, Utah noted that State-appropriated agricultural irrigation and industrial water must be replaced under its provision. We agreed with Utah and approved the State's use of ''State-appropriated water'' at UCA 40–10–18(15)(c) as no less stringent than section 720(a)(2) of SMCRA (62 FR 41845, August 4, 1997; finding number 7).

We received public comments on amendment UT–037–FOR that questioned the scope of Utah's proposed water replacement provisions (administrative record number UT–1112). One commenter specifically wrote that

> Utah Code Ann. § 40–10–18 is not limited to water ''supply'' but all state-appropriated water. Also, many water rights in Utah, including those in coal mining areas, predate statehood and thus are not state-created, but are recognized by Utah law.

The comment raised a question concerning the State's January 29, 1997, clarification that ''State-appropriated water'' covers all legal uses of water in Utah. It also prompted the need for clarification of Utah's proposed definition of ''State-appropriated water supply'' in this amendment.

We have previously said that section 717(a) of SMCRA requires deference to State water law on questions of water allocation and use (*See* 60 FR 16722, 16733; March 31, 1995). Utah's definition of ''State-appropriated water supply'' defers to existing State law in its recognition of State-created water rights. In its October 31, 2000, letter, Utah explained that, under UCA 73–3–5, the State can recognize water claims established by diversion (''diligence rights'') before statehood and before the State Engineer's office was established. As a result, the scope of ''State-appropriated water'' includes territorial water rights (Utah provided this explanation in response to a question we asked in our October 1, 1998, letter that was prompted by a public comment. *See* Part IV.1 of this final rule for that discussion of ''pre-statehood'' water rights). Utah asserts that ''State-appropriated water supply'' includes all legal water uses and that all legal uses of water in Utah must be appropriated by the State under provisions of the Utah Code. The term therefore includes water from wells and springs and any appurtenant delivery systems providing water for direct human consumption or household use as does the Federal definition of ''drinking, domestic or residential water supply.'' It also extends protection to other water uses not included in the Federal definition of the term ''drinking, domestic or residential water supply,'' such as water used only for agricultural or industrial needs.

Based on the State's explanation that the term ''State-appropriated water supply'' encompasses the ''universe of legal water uses by the universe of legal water users'' in Utah, we find Utah's proposed definition of ''State-appropriated water supply'' at Utah Admin. R. 645–100–200 to be no less effective than the Federal definition of ''drinking, domestic or residential water supply'' at 30 CFR 701.5. It also satisfies item B.1 of our June 5, 1996, 30 CFR part 732 letter.

3. Utah Admin. R. 645–100–200, Definition of ''Replacement of Water Supply''

Utah proposed the definition of ''replacement of water supply'' at Utah Admin. R. 645–100–200 as follows:

> ''Replacement of Water Supply'' means, with respect to State-appropriated water supplies contaminated, diminished, or interrupted by coal mining and reclamation operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.
>
> (a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.
>
> (b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

Under Utah's proposed definition, those water supplies subject to being replaced are State-appropriated water supplies contaminated, diminished, or interrupted by coal mining and reclamation operations. The Federal definition is similar but differs by extending replacement protection to ''protected water supplies'' that are adversely affected by ''coal mining operations.''

As explained in the previous finding at Part III.C.2 of this final rule, the State's proposed definition of ''State-appropriated water supply'' at Utah Admin. R. 645–100–200 includes the same water supplies that are included under the Federal counterpart definition of ''drinking, domestic or residential water supply'' at 30 CFR 701.5. In addition, as Utah explained in its January 29, 1997, clarification (administrative record number UT–1094), the State's term includes other water supplies such as water for agricultural and industrial needs. The term ''protected water supplies'' used in the Federal definition of ''replacement of water supply'' is not defined. However, the performance standard for water replacement at 30 CFR 817.41(j) identifies water supplies to be replaced as ''* * * any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities * * *.'' Such water supplies are included in Utah's definition of ''State-appropriated water supply'' as supported by the underlying definition of ''State-appropriated water'' in UCA 40–10–18(15)(c). In its January 29, 1997, clarification, the State further explained that ''State-appropriated water'' includes all legal water uses in Utah.

Utah's proposed definition of ''replacement of water supply'' requires replacement of an adversely affected ''State-appropriated water supply,'' which, in turn, is based on the term ''State-appropriated water'' as used at UCA 40–10–18(15)(c). That statutory provision addresses replacement of water adversely affected by *underground* coal mining operations. Utah clarified the scope of the term ''State-appropriated water'' in its January 29, 1997, letter as covering all legitimate water uses, including State-appropriated agricultural irrigation and industrial water. However, defining ''replacement of water supply'' in terms of ''State-appropriated water supply'' appeared to establish the scope of ''replacement of water supply'' in terms of underground coal mining operations only. As we explained in the preamble to the final rule approving the Federal counterpart definition of ''replacement of water supply'' (60 FR 16722, 16726; March 31, 1995), the Federal definition applies to underground *and* surface coal mining operations that affect water supplies. Our explanation added that the final rule is intended to apply to replacement of water supply under sections 717(b) and 720(a)(2) of SMCRA, which are the Federal counterparts to UCA 40–10–29(2) and 40–10–18(15)(c), respectively. Reference to ''protected water supplies'' in the Federal definition of ''replacement of water supply'' is broad enough to include water adversely affected by surface and underground operations.

In our October 1, 1998, letter (administrative record number UT–1125), we asked Utah to clarify its proposed definition of ''replacement of water supply.'' We specifically asked Utah to clarify whether its term, as proposed to require replacement of adversely affected State-appropriated water supplies, requires replacement of water adversely affected by surface *and* underground coal mining operations

under UCA 40–10–18(15)(c) and 40–10–29(2).

Utah responded to our request for clarification in its October 31, 2000, letter (administrative record number UT–1145). In its response, Utah wrote:

> The provisions for the replacement of water supplies that are made under the definition of ''Replacement of Water Supply'' at R645–100–200 are made for water supplies that are contaminated, diminished, or interrupted by coal mining and reclamation operations (emphasis added) which is a defined term also located at R645–100–200. Thus, the replacement of water supply(ies) as contemplated under the definition by the same name does include the replacement of water supplies affected by both surface and underground mining.

Utah's use of the term ''coal mining and reclamation operations'' in its proposed definition of ''replacement of water supply'' differs from the Federal term's definition but is consistent with it because it includes the same mining activities and effects, including ''activities conducted on the surface of lands in connection with a surface coal mine * * *.''

We received public comments concerning the scope of Utah's proposed water replacement rules in amendment UT–037–FOR (administrative record number UT–1112). Several comments suggested expanding Utah's water replacement provisions and are addressed under Part IV of this final rule.

In responses to comments the State received during its rulemaking process, Utah explained that it intends to require replacement of ''developed'' water supplies through its proposed water replacement rules (administrative record number UT–1119). That interpretation of the State's proposed rules does not appear to be consistent with its January 29, 1997, letter clarifying use of the underlying term ''State-appropriated water'' at UCA 40–10–18(15)(c). As asserted in that letter, any State-appropriated water covers the universe of legal Utah water uses by the universe of legal water users. Depending on what Utah considers ''developed'' water supplies to be, we believed some waters covered by the term ''State-appropriated water'' in the Utah Code might not be included in the proposed definition of ''State-appropriated water supply'' or covered by various rules incorporating that term throughout the proposed amendment.

In our October 1, 1998, letter, we asked Utah to describe what constitutes a ''developed'' water supply in its interpretation of its proposed rules. We also asked Utah to clarify how its interpretation is consistent with its interpretation of the term ''State-appropriated water'' at UCA 40–10–18(15)(c). Utah responded to our request for clarification in its October 31, 2000, letter by stating, ''The Division interprets that a ''State-Appropriated Water Supply'' includes the drinking, domestic, and residential water supplies of a water user.''

As we explained above and in our finding for the proposed definition of ''replacement of water supply,'' the State's proposed definition of ''State-appropriated water supply'' at Utah Admin. R. 645–100–200 includes the same water supplies included under the Federal definition of ''drinking, domestic or residential water supply'' at 30 CFR 701.5. Utah also explained in its January 29, 1997, clarification that its term includes other water supplies such as those supplying water for agricultural or industrial needs. The scope of water supply replacement under Utah's proposed definition of ''replacement of water supply'' is potentially broader than that provided by the Federal definition of ''replacement of water supply'' by virtue of the State's use of the term ''State-appropriated water supplies'' to identify water supplies subject to being replaced if contaminated, diminished, or interrupted by ''coal mining and reclamation operations.''

For these reasons, we find Utah's proposed definition of ''replacement of water supply'' is no less effective than the Federal definition. It also satisfies item B.5 of our June 5, 1996, 30 CFR part 732 letter.

4. Utah Admin. R. R645–301–525.100 through –525.130, Pre-subsidence Surveys

Utah proposed to delete the introductory statement at Utah Admin. R. 645–301–525 as well as its existing survey provisions at Utah Admin. R. 645–301–525.100 and 645–301–724.600. The State proposes to replace those rules with new rules introducing the subsidence control plan provisions in general and the pre-subsidence survey provisions at Utah Admin. R. 645–301–525 through –525.130.

In proposed section R645–301–525.100, Utah introduces the subsections on subsidence control plans and pre-subsidence survey requirements as pertaining to ''underground coal mining and reclamation activities.'' Use of that term is consistent with Utah's definition of the same term at R645–100–200. Though the Federal regulation at 30 CFR 784.20 does not contain a similar qualifying statement, part 784 of the 30 CFR regulations is entitled, ''UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN'' and includes section 784.20.

Utah's proposed section R645–301–525.110 differs from the Federal counterpart regulation at 30 CFR 784.20(a)(1) in two ways. First, it refers to a larger map scale required, if necessary, by the ''Division'' as compared to ''the regulatory authority'' in the Federal regulations. Second, it requires such maps to show the location and type of ''State-appropriated water'' compared to the Federal term, ''drinking, domestic, and residential water supplies.'' The Division [of Oil, Gas and Mining] is the regulatory authority in Utah. As we explained in our finding for Utah's proposed definition of ''State-appropriated water supply'' at Part III.C.2 of this final rule, the State's use of this term is based its use of the term ''State-appropriated water'' in the statutory provision for water replacement at Utah Code Annotated 40–10–18(15)(c). We approved Utah's use of ''State-appropriated water'' in the Utah Code as no less stringent than the term ''drinking, domestic, or residential water supply'' at section 720(a)(2) of SMCRA in the August 4, 1997, final rule **Federal Register** (62 FR 4185).

The requirement at proposed Utah Admin. R. 645–301–525.120 for a narrative indicating if subsidence could materially damage or diminish the value or use of structures or renewable resource lands or adversely affect water supplies differs from the counterpart Federal regulation at 30 CFR 784.20(a)(2) only in Utah's use of the term ''State-appropriated water supplies.'' As explained above, we find this term to be no less effective than the counterpart Federal term ''drinking, domestic or residential water supplies.''

Proposed Utah Admin. R. 645–301–525.130 requires a survey of the quantity and quality of all ''State-appropriated water supplies'' within the permit and adjacent areas that could be contaminated, diminished, or interrupted by subsidence. The counterpart Federal regulation also requires such a survey, but of the quantity and quality of ''drinking, domestic, or residential water supplies.'' As explained above, we find this term to be no less effective than the Federal term ''drinking, domestic or residential water supplies.''

This same proposed rule also requires a permittee to give written notification to property owners who deny access to conduct surveys of buildings, dwellings, other structures, and water supplies of the effect denial will have as ''described

in R645–301–525.543.'' Utah's original amendment contained a reference to Utah Admin. R. 645–301–525. In our October 1, 1998, letter (administrative record number UT–1125), we notified Utah of our concern that its reference should be more specific to ensure that applicants provide sufficient notice to owners that there will be no presumption of causation by subsidence if the owners deny applicants access to perform pre-subsidence surveys. Utah responded in its October 31, 2000, letter (administrative record number UT–1145) by changing the reference to cite Utah Admin. R. 645–301–525.543. The referenced rule provides that a rebuttable presumption does not exist if the permittee is denied access to conduct a pre-subsidence survey. Under proposed Utah Admin. R. 645–301–525.541, if material damage occurs to any noncommercial building, occupied residential dwelling, or related structure as a result of earth movement within the angle of draw from the outer boundary of underground mine workings to the land surface, a rebuttable presumption exists that the permittee caused the damage. Though the presumption can be rebutted, if it is not, the permittee must repair or compensate property owners for such damage under proposed Utah Admin. R. 645–301–525.520. Utah committed to promulgating the change proposed in its October 31, 2000, letter in its formal rulemaking process.

Proposed Utah Admin. R. 645–301–525.130 also requires permittees to give copies of the pre-subsidence survey and any technical assessment or engineering evaluation to the property owner and the ''Division.'' The Federal regulation at 30 CFR 784.20(a)(3) requires copies to be given to the property owner and the ''regulatory authority,'' which is the Division in Utah's case.

We note that the State based proposed Utah Admin. R. 6445–301–525.130 on the Federal regulation at 30 CFR 784.10(a)(3), part of which we suspended after our initial review of Utah's amendment. The last sentence of 30 CFR 784.20(a)(3) states ''* * * the requirements to perform a survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the areas encompasses by the applicable angle of draw is suspended per court order.''

In its April 27, 1999, decision in *National Mining Association* v. *Babbitt,* 173 F.3d 906 (1999), the United States Court of Appeals for the District of Columbia vacated certain parts of the Federal subsidence regulations that were among those published on March 31, 1995, under SMCRA and section 2504 of the Energy Policy Act of 1992 (''EPAct;'' Pub. L. 102–486, 106 Stat.2776 (1992)). EPAct added a new section 720 to SMCRA. Section 720 requires underground mine operators to repair or to compensate for material damage to residential structures and noncommercial buildings, and to replace drinking, domestic, or residential water supplies adversely affected by underground mining. The Federal regulation at 30 CFR 817.121(c)(4)(i) through (iv) provided that, if damage to any non-commercial building or occupied residential dwelling or related structures occurred as a result of earth movement in an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. The Court of Appeals vacated 30 CFR 817.121(c)(4)(i) through (iv) in their entirety. As we explained in the December 22, 1999, **Federal Register** (64 FR 71652), ''* * * the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply * * *.'' The Court held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. Essentially, the Court found that ''* * * for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation 'more likely than not' caused the damage at the surface * * *.'' We suspended 30 CFR 817.121(c)(4)(i) through (iv) in the December 22, 1999, final rule to comply with the Court's decision.

The Court also vacated the part of 30 CFR 784.20(a)(3) that required a specific structural condition survey of all EPAct-protected structures located within an area defined by an angle of draw. As we explained in the December 22, 1999, final rule:

> * * * the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EPAct-protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the ''angle of draw'' regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the ''angle of draw.''

So, in the December 22, 1999, **Federal Register** (*Id.*), we suspended the part of 30 CFR 784.20(a)(3) that required a specific structural condition survey of all structures protected by EPAct. The rest of that regulation remains in force to the extent that it applies to the EPAct-protected water supplies survey and any technical assessments or related engineering evaluations.

Utah declined to revise its amendment in light of the suspended Federal regulations (administrative record number UT–1148). The fact that we suspended the part of 30 CFR 784.20(a)(3) requiring a pre-subsidence structural condition survey of EPAct-protected structures within the area defined by an angle of draw does not preclude Utah from having that provision in its rules. In addition, Utah's proposal to include such a provision in its rules does not make Utah's proposed rule less effective than the Federal regulations or less stringent than SMCRA. Section 505(b) of SMCRA provides that ''Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.'' The State promulgated proposed Utah Admin. R. 645–301–525.130 on March 15, 1998. In addition, this proposed rule provides for the control and regulation of surface mining and reclamation operations in accordance with section 505(b) of SMCRA. 0

Therefore, based on the reasoning presented above, we find proposed Utah Admin. R. 645–301–525 through –525.120 are no less effective than the counterpart Federal regulations, and proposed Utah Admin. R. 645–301–525.130 is not inconsistent with SMCRA

or the Federal regulations. The State's proposal to remove existing provisions at Utah Admin. R. 645–301–525 through –525.100 and at 645–301–724.600 is appropriate in light of the new provisions it is adding.

5. Utah Admin. R. 645–301–525.400, –525.480, and –525.490, Subsidence Control Plan Contents

Utah proposes to add new provisions at Utah Admin. R. 645–301–525.400 through –525.490 describing information that must be included in subsidence control plans. It also proposes to remove existing provisions for subsidence control plans at Utah Admin. R. 645–301–525.110 through –525.170.

Proposed R645–301–525.400, which describes the conditions under which a pre-subsidence survey is to be conducted and what it information it must contain, differs somewhat from the Federal counterpart regulation at 30 CFR 784.20(b). Utah's rule refers to surveys conducted under ''R645–301–525.100'' where the Federal regulation refers to surveys conducted ''under paragraph (a) of this section.'' The Federal reference is to 30 CFR 784.20(a), which introduces the pre-subsidence survey requirements of subsections (a)(1) through (a)(3). Referenced R645–301–525.100, as also proposed in this amendment, is Utah's counterpart to 30 CFR 784.20(a). Proposed R645–301–525.400 also refers to surveying for the existence of ''State-appropriated water supplies'' and the need for a permit application to include a subsidence control plan if a survey shows such water supplies exist or could be adversely affected by subsidence. As we explained previously in this final rule, we find the State's term ''State-appropriated water supply'' to be no less effective than the Federal term ''drinking, domestic, or residential water supply.'' Additionally, references in proposed R645–301–525.400 to the ''Division'' are analogous to the counterpart Federal regulation's references to the ''regulatory authority'' because the Division is the regulatory authority in Utah.

Proposed Utah Admin. R. 645–301–525.480 requires subsidence control plans to include a description of measures to be taken ''in accordance with R645–301–731.530 and R645–301–525.500 to replace adversely affected State-appropriated water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures * * *.'' The counterpart Federal regulation at 30 CFR 784.20(b)(8) requires a description of measures taken to replace ''protected water supplies'' and to mitigate or remedy subsidence damage to land and protected structures in accordance with '' * * * §§ 817.41(j) and 817.121(c) of this chapter * * *.'' Referenced Utah Admin. R. 645–301–731.530 and 645–301–525.500 in Utah's proposed rule are the State's counterparts to OSM's performance standards for water replacement and surface damage repair at 30 CFR 817.41(j) and 817.121(c), respectively. We explained previously in our finding at Part III.C.3 of this final rule that, while the Federal regulations do not define ''protected water supplies,'' 30 CFR 817.41(j) clearly identifies a protected water supply subject to replacement as a ''drinking, domestic, or residential water supply.'' We also previously found that the State's term ''State-appropriated water supply'' is no less effective than the Federal term ''drinking, domestic, or residential water supply.''

Proposed Utah Admin. R. 645–301–525.490 requires subsidence control plans to include other information specified by the ''Division'' as needed to show the operation will be conducted according to R645–301–525.200, –525.300, –525.500, and –525.6500. In comparison, the counterpart Federal regulation at 30 CFR 784.20(b)(9) refers to the ''regulatory authority'' and to '' * * * § 817.121 of this chapter.'' As we noted above, the Division is the regulatory authority in Utah.

In the original amendment, proposed Utah Admin. R. 645–301–525.490 only referred to Utah Admin. R. 645–301–525.300. That referenced rule includes the State's performance standards for preventing or minimizing subsidence-related damage under Utah Admin. R. 645–301–525.310 through –525.313. Referenced counterpart 30 CFR 817.121 includes a much wider range of provisions that an operation must be conducted under. Because the State's original reference was less inclusive than the referenced counterpart Federal regulation, we found originally proposed Utah Admin. R. 645–525–301.490 did not ensure that the Division will be provided with sufficient information to determine that an operation will be conducted in accordance with all applicable provisions for subsidence control. We notified Utah of our concern in our October 1, 1998, letter (administrative record number UT–1125), and advised the State that its proposed rule should include a more inclusive reference. In its October 31, 2000, response (administrative record number UT–1145), the State revised proposed Utah Admin. R. 645–301–525.490 to include references to Utah Admin. R. 645–301–525.200, –525.500, and –525.600 in addition to the original reference to –525.300. These referenced rules contain provisions analogous to those included under 30 CFR 817.121. Utah committed to promulgating this change in its formal rulemaking process.

We note that the State based proposed Utah Admin. R. 645–301–525.400, –525.480, and –525.490 on the need for a subsidence control plan when indicated by the pre-subsidence survey conducted under Utah Admin. R. 645–301–525.130. That latter rule, in turn, is based on the Federal counterpart regulation at 30 CFR 784.20(a)(3), which is suspended in part. The fact that we suspended the part of 30 CFR 784.20(a)(3) requiring a pre-subsidence structural condition survey of EPAct-protected structures within the area defined by an angle of draw does not preclude Utah from having that provision, and other provisions based on it, in its rules. As we explained previously, Utah's proposal to include provisions in its rules that are not found in SMCRA or the Federal regulations does not make Utah's proposed rules less effective than the Federal regulations or less stringent than SMCRA if those State provisions are in effect and control and regulate surface mining and reclamation operations in accordance with section 505(b) of SMCRA.

Based on these reasons, we find proposed Utah Admin. R. 645–301–525.400, –525.480, and –525.490 are no less effective than the counterpart Federal regulations and are not inconsistent with SMCRA. The State's proposal to remove existing provisions at Utah Admin. R. 645–301–525.110 through –525.170 is appropriate in light of the new provisions being added.

6. Utah Admin. R. 645–301–525.530, Repair or Compensation for Damage to Other Structures

Proposed Utah Admin. R. 645–301–525.530 requires repair of, or compensation for, subsidence-caused damage to structures or facilities not protected by Utah Admin. R. 645–301–525.520. The Federal counterpart regulation at 30 CFR 817.121(c)(3) provides that the permittee ''* * * must, to the extent required under applicable provisions of State law, * * *'' correct material subsidence damage caused to any structures or facilities not protected ''* * * by paragraph (c)(2) of this section * * *'' by repairing damage or compensating owners for the decreased value resulting from subsidence. Utah's proposed rule does not require permittees to correct damage or compensate owners ''to the

extent required under applicable provisions of State law'' but says they ''* * * shall either correct material damage from subsidence caused to any structures or facilities not protected by paragraph 525.520 * * * '' by repairing such damage or by compensating owners for the resulting decreased value.

Utah's proposed rule extends replacement or compensation protection to structures and facilities not provided such protections under Utah Admin. R. 645–301–525.520, which is based on UCA 40–10–18(15)(b)(i). Those sections of Utah's rules and its Code, respectively, provide for repair of damage to occupied residential dwellings and related structures or noncommercial buildings caused by underground coal mining after October 24, 1992. However, they do not extend such protections to other structures damaged by subsidence as provided in proposed Utah Admin. R. 645–301–525.530. By not including a phrase corresponding to the phrase ''to the extent required under applicable provisions of State law'' in the counterpart Federal regulation, proposed Utah Admin. R. 645–301–525.530 *is* Utah's legal requirement that a permittee repair or compensate for subsidence-caused material damage to structures not protected by UCA 40–10–18(15)(b)(i) or Utah Admin. R. 645–301–525.520. As a result, there is no need to qualify the remedies available to owners of structures or facilities by the extent to which they are otherwise required under applicable provisions of State law.

Other differences between the wording in the proposed State rule and the counterpart Federal regulation do not make Utah's proposed rule less effective. Further, the State's reference to ''525.520'' in its proposed rule refers to Utah Admin. R. 645–301–525.520, which is Utah's counterpart to referenced ''paragraph (c)(2) of this section,'' or 30 CFR 817.121(c)(2), in the corresponding Federal regulation.

For these reasons, we find proposed Utah Admin. R. 645–301–525.530 is no less effective than the counterpart Federal regulation. It also satisfies item D.3 of our June 5, 1996, 30 CFR Part 732 letter.

7. Utah Admin. R. 645–301–525.540 Through –525.544, Rebuttable Presumption of Causation by Subsidence

Proposed Utah Admin. R. 645–301–525.540 through –525.544 introduce and establish a rebuttable presumption that damage sustained by certain structures was caused by mining. Proposed Utah Admin. R. 645–301–525.541 provides that, if damage occurs to any non-commercial building or occupied residential dwelling or structure related thereto as a result of subsidence in an area determined by an angle of draw from the outermost boundary of any underground workings to the land surface, there is a rebuttable presumption that the permittee caused the damage. The angle of draw normally is 30 degrees from the vertical but may be different if amended by the Division on a mine-specific basis under proposed Utah Admin. R. 645–301–525.542. Proposed Utah Admin. R. 645–301–525.543 provides for no presumption where a landowner denies a permittee access to perform a pre-subsidence survey. Finally, proposed Utah Admin. R. 645–301–525.544 provides that the presumption will be rebutted if damage predated mining, was caused by something other than subsidence, or occurred outside the surface area in which mining actually caused subsidence.

The State based its proposed rules at Utah Admin. R. 645–301–525.540 through –525.544 on the counterpart Federal regulations at 30 CFR 817.121(c)(4)(i) through (iv), which are suspended in their entirety. The fact that we suspended the Federal provisions for a rebuttable presumption of causation by subsidence at 30 CFR 817.121(c)(4)(i) through (iv) does not preclude Utah from having those provisions in its rules. In addition, Utah's proposal to include such provisions in its rules does not make Utah's proposed rules less effective than the Federal regulations or less stringent than SMCRA. Again, Utah's proposal to include provisions in its rules that are not found in SMCRA or the Federal regulations does not make Utah's proposed rules less effective than the Federal regulations or less stringent than SMCRA if those State provisions are in effect and control and regulate surface mining and reclamation operations in accordance with section 505(b) of SMCRA.

Based on this reasoning, we find proposed Utah Admin. R. 645–301–525.540, –525.541, –525.542, –525.543, and –525.544 are no less effective than the counterpart Federal regulations and are not inconsistent with SMCRA.

8. Utah Admin. R. R645–301–525.550, Adjustment of Bond Amount for Subsidence Damage

Proposed Utah Admin. R. 645–301–525.550 adds provisions for adjusting bond amounts when protected land, structures, or facilities are materially damaged by subsidence or when protected water supplies are contaminated, diminished, or interrupted. Utah's proposed rule references land, structures, or facilities protected under Utah Admin. R. 645–301–525.500 through –525.530. Those referenced proposed rules address protected surface lands, non-commercial buildings, dwellings, and related structures, and other structures or facilities. Parts III.B and III.C.6 of this final rule contain our findings that those rules are no less effective than the Federal regulations. The Federal counterpart to Utah Admin. R. 645–301–525.550 is 30 CFR 817.121(c)(5). It provides for adjusting bond amounts as a result of subsidence damage to the same buildings, dwellings, structures and facilities but refers to lands, buildings, structures and facilities protected under ''* * * paragraphs (c)(1) through (c)(3) of this section * * *.'' Those referenced paragraphs are found at 30 CFR 817.121(c)(1) through (c)(3), which correspond to referenced Utah Admin. R. 645–301–525.500 through –525.530.

Utah's proposed rule also provides for adjusting bond amounts when subsidence contaminates, diminishes, or interrupts water supplies protected under proposed Utah Admin. R. 645–301–731.530. As noted in previous findings in this final rule, Utah identifies protected water supplies as ''State-appropriated water supplies.'' The Federal regulation at 30 CFR 817.121(c)(5) similarly provides for bond adjustments when ''* * * water supplies protected under §§ 817.41(j) * * *'' are adversely affected by subsidence. Section 817.41(j) is the Federal counterpart to Utah Admin. R. 645–301–731.530 and identifies a protected water supply as a ''drinking, domestic, or residential water supply.'' As we explained previously, Utah's term ''State-appropriated water supply'' is no less effective than the Federal term ''drinking, domestic, or residential water supply.''

References to the ''Division'' in Utah's proposed rule are analogous to the Federal regulation's reference to the ''regulatory authority'' because the Division is the regulatory authority in Utah.

For the reasons explained above, we find proposed Utah Admin. R. 645–301–525.550 is no less effective than the Federal regulation at 30 CFR 817.121(c)(5). The State's proposed rule also satisfies item D.5 of our June 5, 1996, 30 CFR Part 732 letter.

9. Utah Admin. R. 645–301–728.340 and 728.350, Probable Hydrologic Consequences (PHC) Determination

Proposed Utah Admin. R. 645–301–728.350 requires probable hydrologic consequences determinations to find whether underground coal mining and reclamation activities conducted after October 24, 1992, will adversely affect State-appropriated water that exists in the proposed permit or adjacent areas at the time a permit application is submitted, and that is used for legitimate purposes in those areas.

The proposed rule differs from the Federal counterpart regulation at 30 CFR 784.14(e)(3)(iv) in Utah's use of the term ''State-appropriated water,'' reference to use of that water for ''legitimate purposes,'' and reference to ''underground coal mining and reclamation activities.'' Utah hydrology rules at Utah Admin. R. 645–301–700 establish requirements for information that must be included in applications for surface *and* underground coal mining. Because proposed Utah Admin. R. 645–301–728.350 pertains to a finding that must be included in PHC determinations specific to underground mines, the reference to ''underground coal mining and reclamation activities'' clearly identifies it as such. Similarly, adding a semi-colon at the end of the preceding subsection at Utah Admin. R. 645–301–728.340 and the word ''OR'' following it distinguishes proposed Utah Admin. R. 645–301–728.350 from subsection –728.340 as a finding that must be made for underground coal mining and reclamation activities as opposed to surface coal mining and reclamation activities. Utah's term ''underground coal mining and reclamation activities'' includes a reference to ''coal mining and reclamation activities'' as both are defined at Utah Admin. R. 645–100–200. The former term is the State's counterpart to the ''underground mining activities'' referred to in the counterpart Federal regulations at 30 CFR 784.14(e)(3)(iv), which are defined at 30 CFR 701.5.

The term ''State-appropriated water'' and reference to use of that water for ''legitimate purposes'' in proposed Utah Admin. R. 645–301–728.350 are not inconsistent with the Federal regulations. As noted in previous findings for this amendment, Utah's statutory provision for water replacement at Utah Code Annotated (UCA) 40–10–18(15)(c) is based on the term ''State-appropriated water.'' As used in this proposed rule and UCA 40–10–18(15)(c) and clarified by Utah in its January 29, 1997, letter (administrative record number UT–1094), ''State-appropriated water'' provides broader water replacement protection than is provided under the corresponding term ''drinking, domestic, or residential water supply'' used in the Federal regulation for PHC findings at § 784.14(e)(3)(iv) and protected under section 720(a)(2) of SMCRA. Utah's proposed qualification that the water in existence at the time a permit application is submitted be used for ''legitimate purposes'' refers back to its term ''State-appropriated water.'' To paraphrase Utah's clarification about the term ''State-appropriated water'' in its January 29, 1997, letter, the only *legitimate* use of water in Utah is the use of water appropriated by the State. Moreover, the criterion for legitimate water use proposed at Utah Admin. R. 645–301–728.350 for underground mining is consistent with the requirement that PHC determinations include findings on the impacts of surface coal mining and reclamation activities on the source(s) of water used for domestic, agricultural, industrial, or *other legitimate purpose* at Utah Admin. R. 645–301–728–340 and counterpart 30 CFR 780.21(f)(3)(iii) (emphasis added).

Based on the reasons explained above, proposed Utah Admin. R. 645–301–728.350 and the proposed revision to Utah Admin. R. 645–301–728.340 are not inconsistent with, and are no less effective than, the Federal regulation at 30 CFR 784.14(e)(3)(iv). The proposed rules also satisfy item C.1 of our June 5, 1996, 30 CFR part 732 letter.

10. Utah Admin. R. R645–301–731.530, Hydrology: Operation Plan: State-Appropriated Water Supply

Proposed Utah Admin. R. 645–301–731.530 requires a permittee to replace any State-appropriated water supply that is contaminated, diminished, or interrupted by underground coal mining and reclamation activities conducted after October 24, 1992, if the affected water supply existed before the Division received the permit application for the activities causing the adverse effects. It also requires use of baseline hydrologic and geologic information required in Utah Admin. R. 645–301–700 to determine mining impacts on the water supply. Utah's proposed rule differs from the counterpart Federal regulation at 30 CFR 817.41(j) in its use of the terms ''State-appropriated water supply,'' ''underground coal mining and reclamation activities,'' and ''Division'' and by referring to Utah Admin. R. 645–301–700. The corresponding terms in the Federal regulation are ''drinking, domestic or residential water supply,'' ''underground mining activities,'' and ''regulatory authority.'' Also, the Federal regulation refers to baseline hydrologic information required in 30 CFR 780.21 and 784.14 and geologic information required in sections 780.21 and 784.22.

In Part IV.A of this final rule, we describe in detail commenters' concern for the scope of Utah's proposed water replacement rules and their suggestion for expanding the State's water replacement provisions (administrative record number UT–1112). As we explained above and in previous findings in this final rule, the State's proposed definition of ''State-appropriated water supply'' at Utah Admin. R. 645–100–200 includes those water supplies included under the Federal definition of ''drinking, domestic or residential water supply'' at 30 CFR 701.5. Utah explained in its January 29, 1997, clarification that its term includes other water supplies such as wells and springs that supply water for agricultural, commercial or industrial needs. Therefore, the scope of water supply replacement under Utah's proposed rule is potentially broader than that provided under the Federal definition of ''replacement of water supply'' by virtue of the State's use of its defined terms ''State-appropriated water supplies'' and ''replacement of water supply'' in describing those water supplies subject to replacement if contaminated, diminished, or interrupted by underground coal mining and reclamation activities.

Utah's original (March 20, 1998) submittal of this amendment required prompt replacement of water adversely affected by ''underground mining activities.'' While that term appears to be identical to that in the counterpart Federal regulation, it is undefined in Utah's rules and statute. In telephone conversations on April 29 and May 11, 1998, we advised Utah that use of its defined term ''underground coal mining and reclamation activities'' would be more appropriate (administrative record numbers UT–1111 and UT–1113, respectively). The State responded with a letter dated May 13, 1998 (administrative record number UT–1115), in which it agreed to change ''underground mining activities'' to ''underground coal mining and reclamation activities'' through formal rulemaking. Utah promulgated the corrected rule that includes the term ''underground coal mining and reclamation activities'' on September 30, 1998 (DAR file number 21334), which is among those we are approving in this final rule. As defined at Utah Admin. R. 645–100–200, ''underground coal mining and reclamation activities'' is the State's counterpart to the Federal

term ''underground mining activities'' as defined at 30 CFR 701.5.

As noted previously, the Division is the regulatory authority in Utah.

Based on the reasons explained above, we find proposed Utah Admin. R. 645–301–731.530 is no less effective than the counterpart Federal regulation. It also satisfies item D.1 of our June 5, 1996, 30 CFR part 732 letter.

IV. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that we received and our responses to those comments.

A. Public Comments

We asked for public comments on the proposed amendment as originally submitted (administrative record number UT–1106) and as revised in Utah's October 31, 2000, letter (administrative record number UT–1156). We received six comment letters, two of which attached comments from four water user groups.

The Utah Mining Association (UMA) responded in a May 5, 1998, letter, by expressing its support for the proposed amendment and urging us to approve it (administrative record number UT–1114). UMA noted that it was actively involved in developing the State legislation that enabled the rule changes. It explained how it worked with the State Engineer to ensure protection of water rights throughout the legislative process and with water users in Utah's coal regions to develop legislative language.

We also received comments submitted by two law firms on behalf of a special service district, a water conservancy district, an irrigation company, and a water users association (hereafter, collectively the ''water users'') (administrative record number UT–1112). These commenters represent water users in a predominant coal mining region of Utah. The remaining discussions under Part IV.A of this final rule describe the water users' comments and our responses.

A number of water user comments proposed changes to rules that are not the subject of amendment UT–037–FOR. Those comments addressed alternative water source information for surface coal mining and reclamation activities, PHC findings and requirements concerning acid- or toxic-forming materials, discharges into underground mines, and gravity discharges. While these comments pertain to water-related issues, we find that the rules and changes they suggested do not apply to this rulemaking. However, we forwarded these comments to the State for its consideration.

1. Replacement of Water Supply; State-Appropriated Water Supply; and Water Supply

One comment described Utah's proposed definition of ''replacement of water supply'' at Utah Admin. R. 645–100–200 as applicable only to surface mining operations. The comment based this conclusion on Utah's reference to State-appropriated water supplies adversely affected by ''coal mining and reclamation operations.'' It assumed that this term in Utah Admin. R. 645–100–200 is less inclusive than the term ''coal mining operations'' in the Federal definition of ''replacement of water supply'' at 30 CFR 701.5.

As defined at Utah Admin. R. 645–100–200, ''coal mining and reclamation operations'' includes activities conducted on the surface of lands in connection with a surface coal mine and surface coal mining and reclamation operations, as well as surface impacts incident to an underground coal mine. The phrase ''surface impacts incident to an underground coal mine,'' also is defined at Utah Admin. R. 645–100–200 and means all operations involved in or related to underground coal mining and reclamation activities. It includes activities conducted on the land surface, that alter or disturb the land surface, or that disturb the surface, air, or water resources of the area.

The Federal counterpart to Utah's term ''coal mining and reclamation operations'' is ''surface coal mining operations'' and is defined at section 701(28) of SMCRA. ''Surface coal mining operations'' includes the scope of activities included in the term ''coal mining operations'' as defined at 30 CFR 705.5 and 706.3, and included in the Federal definition of ''replacement of water supply.'' It also includes activities conducted on the surface of lands in connection with a surface coal mine as well as to surface operations and surface impacts incident to an underground coal mine. Also, as we explained in our finding at Part III.C.3. of this final rule, Utah clarified in its October 31, 2000, letter (administrative record number UT–1145) that its proposed definition of ''replacement of water supply'' provides for the replacement of water supplies adversely affected by ''coal mining and reclamation operations.'' The latter term is defined in Utah's rules to include surface and underground mining. For these reasons, we found Utah's definition of ''replacement of water supply'' to be no less effective than the Federal counterpart definition at 30 CFR 701.5.

Other comments suggested removing the word ''supply'' from Utah's definitions of ''replacement of water supply'' and ''State-appropriated water supply,'' and from references to water supply throughout Utah's proposed amendment. In some cases, comments suggested replacing the word ''supply'' or ''supplies'' with ''source'' or ''sources'' or to add the term ''water sources.'' While the preamble to the final rule approving the Federal definition of ''replacement of water supply'' indicates that circumstances could require replacement of a water source (*See* 60 FR 16722, 16733, March 31, 1995), sections 717(b) and 720(a)(2) of SMCRA and the Federal regulations use the terms ''supply'' and ''supplies.'' The standard we use for review of Utah's program is that it must be no less effective than the Federal regulations and no less stringent than SMCRA. We cannot require Utah's provisions to be more stringent than SMCRA or more effective than the Federal regulations. Utah's use of the terms ''supply'' and ''supplies'' in its proposed rules is consistent with use of those terms in SMCRA and the Federal regulations. We therefore find the State's proposed rules are no less stringent than SMCRA and no less effective than the counterpart Federal regulations without the suggested changes.

Another comment suggested replacing the term ''water supply owner'' in Utah's proposed definition of ''replacement of water supply'' with ''water rights holder.''
Utah's use of the term ''water supply owner'' is consistent with use of the identical term in the counterpart Federal definition of ''replacement of water supply'' at 30 CFR 701.5. The State's proposed definition therefore is no less effective than the counterpart Federal definition in this regard as well without the suggested change.

One comment also maintained that UCA 40–10–18 is not limited to water ''supply'' but pertains to all State-appropriated water. It also stressed that many water rights in Utah pre-date statehood and thus are not State-created, but are recognized by Utah law. Sections of the State's rules to which this comment applied include: Utah Admin. R. 645–100–200, definitions; 645–301–525.120 and 525.130, pre-subsidence survey; 645–301–525.400 and 525.480, subsidence control plan contents; 645–301–525.550, adjustment of bond amount for subsidence damage; 645–301–728.350, PHC determinations for underground coal mining and reclamation activities; and 645–301–731.530, replacement of State-appropriated water supply.

In our October 1, 1998, letter to Utah (administrative record number UT–1125), we asked the State to further clarify its interpretation of the term ''State-appropriated water'' to address the question of whether there are legal uses of water in Utah that fall outside the scope of ''State-appropriated water.'' We also asked Utah to clarify its interpretation of the proposed definition of ''State-appropriated water supply'' to address the assertion that legal water rights exist in the State that are recognized by Utah law but are not created by the State.

Utah responded to our request for clarification in a letter dated October 31, 2000 (administrative record number UT–1145). In its response, Utah said it has a process under Utah Code Annotated Section 73–5–13 [which it included in its letter] to recognize water claims established by diversion (''diligence rights'') before the State Engineer's office was established and before Utah became a State. Utah's response concluded that ''State-appropriated water'' therefore includes territorial water rights. UCA 73–5–13 is entitled, ''Claim to surface or underground water not otherwise represented—Information required—Corrections—Filing—Investigation—Publication—Judicial action to determine validity—Rules.'' Subsection (1)(a) provides that:

> All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees, or by notice of claim filed pursuant to law, shall submit the claim to the state engineer.

Subsection (2) describes the information that each claim must include, and subsection (4) requires that:

> Upon submission by a claimant of a claim that is acceptably complete under Subsection (2) and the deposit of money by a claimant with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall (i) file the claim; (ii) endorse the date of its receipt; (iii) assign the claim a water right number; and (iv) publish a notice of the claim following the same procedures as provided in Section 73–3–6.

Subsection (4)(c) provides that ''The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.'' At the same time, however, the report of the State Engineer's investigation of the claim is ''* * * admissible in any administrative or judicial proceeding on the validity of the claim * * * '' under subsection (5)(b)(ii).

Our finding at Part III.C.2. of this final rule describes Utah's clarification of its term ''State-appropriated water'' at UCA 40–10–18(15)(c). We found the definition of this term to be no less effective than the counterpart Federal term ''drinking, domestic, or residential water supply.'' That Federal term is based on the wording of section 720(a)(2) of SMCRA as amended by EPAct and requires replacement of water supplies adversely affected by underground mining coal mining operations. Our findings at Parts III.C.2, 3, 4, 5, 9 and 10 of this final rule also explain why we find Utah's definitions and rules as proposed with the terms water ''supply'' or ''supplies'' to be no less effective than the Federal regulations. As we further explained at Part III.C.2 of this final rule, and is found at UCA 40–10–29(1), this provision supplements, but does not otherwise affect in any way, anyone's right to protect or enforce his or her interest in water resources affected by a coal mining operation.

In addition, Utah's rules contain other provisions to ensure protection of surface and ground water beyond the protections afforded by this amendment. Utah Admin. R. 645–301–728 addresses determinations of the probable hydrologic consequences of mining on surface and groundwater in proposed permit and adjacent areas. As required by Utah Admin. R. 645–301–729, for each permit application, the State develops a cumulative hydrologic impact assessment (CHIAs) of probable impacts of mining and reclamation on surface and ground water systems in the cumulative impact area. A CHIA also determines if proposed mining and reclamation is designed to prevent material damage to the hydrologic balance outside the permit area. Performance standards at Utah Admin. R. 645–301–750 *et seq.* require all coal mining and reclamation operations to be conducted to minimize disturbance to the hydrologic balance in the permit and adjacent areas. They also require those operations to prevent material damage to the hydrologic balance outside the permit area and to support approved postmining land uses.

One comment suggested rewording Utah's definition of ''replacement of water supply'' to require payment of actual delivery costs instead of costs in excess of customary and reasonable delivery costs for premining water supplies. As proposed in Utah's definition, such payment pertains to operation and maintenance costs in excess of customary and reasonable costs of premining water supply delivery. We considered payment of costs in the preamble to the final rule approving the Federal definition of ''replacement of water supply'' at 30 CFR 701.5 (60 FR 16722, 16726, March 31, 1995). In that discussion, we noted that payment of costs for replacement water supply operation and maintenance in excess of premining costs would ensure a water supply user or owner is made whole upon installation of the replacement supply by not passing-on to the user any additional costs beyond those that were customary and reasonable for the premining supply. The final Federal definition provides for payment of costs in excess of customary and reasonable delivery costs for premining supplies. Utah's proposed definition is no less effective than the Federal definition because it contains the same provision for payment of costs without the change suggested in the comment. As explained previously, the standard we use for review of Utah's program is that it must be no less effective than the Federal regulations and no less stringent than SMCRA. We cannot require Utah's provisions to be more stringent than SMCRA or more effective than the Federal regulations.

In another comment, water users suggested removing paragraph (b) from Utah's proposed definition of ''replacement of water supply'' at Utah Admin. R. 645–100–200. Paragraph (b) provides that demonstrating that a suitable alternative water source is available and could feasibly be developed will satisfy replacement requirements if the affected supply was not needed for the existing land use when it was lost, contaminated, or diminished, and if it is not needed to achieve the post mine land use. If this approach is selected, written concurrence from the supply owner must be obtained. The commenter maintained that no statutory provision excuses a permittee from the requirement to replace adversely affected State-appropriated water.

We considered similar comments in our preamble discussion of the Federal definition of ''replacement of water supply'' in the March 31, 1995, final rule (*Id.*, at 16727). We adopted the Federal definition, including the alternative water source demonstration, to give the water supply owner the option of foregoing installation of a delivery system in circumstances in which the system was not wanted or needed. We reasoned that the provision still would require all coal mining operations to be conducted to ensure water sources remain to support existing

and proposed land use by requiring the permittee to demonstrate water availability equal to premining quality and quantity. Only a water delivery system that would not be used for the postmining land use, and that was not needed for the premining land use, may be waived. We concluded that this provision ensures compliance with EPAct and section 717 of SMCRA in all essential respects, while avoiding unneeded expense. The same reasoning applies to Utah's proposed definition of ''replacement of water supply.'' Based on this reasoning, we believe Utah's proposed definition is no less effective than the counterpart Federal definition at 30 CFR 701.5 without the suggested change. Further, we cannot require Utah's provisions to be more stringent than SMCRA or more effective than the Federal regulations.

2. Suggested Additional Definitions and Rebuttable Presumptions

Four comments submitted by water users suggested that Utah should define a number of terms and create additional rebuttable presumptions to provide more protection to water rights holders. The terms included: ''Promptly,'' as used to describe replacement of State-appropriated water at UCA 40–10–18(15)(c) and proposed Utah Admin. R. 645–301–731.530; and ''contamination of water,'' ''diminution of water,'' and ''interruption of water'' as used to describe water subject to replacement at UCA 40–10–18(15)(c) and included in several rules in this amendment. The comments also suggested that these additional definitions should include rebuttable presumptions of contamination, diminution, and interruption, respectively.

The Federal counterpart to UCA 40–10–18(15(c) is section 720(a)(2) of SMCRA, as amended by EPAct. SMCRA does not define the terms ''promptly,'' ''contamination of water,'' ''diminution of water,'' or ''interruption of water'' as used in that section. We previously found UCA 40–10–18(15)(c) to be no less stringent than 720(a)(2) of SMCRA and approved it on that basis (62 FR 41845, August 4, 1997). In our discussion of comments in the preamble to the March 31, 1995, final rule, however, we decided that providing guidance on the issue of timing water supply replacement would promote consistent implementation of replacement requirements (*Id.,* at 16727). Guidance on ''prompt'' replacement, in particular, is provided in that discussion, and we intend it to help regulatory authorities decide if water supplies have been ''promptly'' replaced. We explained in our finding at Part III.C.3 of this final rule that we found Utah's definition of ''replacement of water supply'' to be no less effective than the counterpart Federal definition at 30 CFR 701.5 as proposed by the State.

SMCRA and the Federal regulations do not require presumptions of water contamination, diminution, or interruption. In the preamble to the final rule approving the Federal regulation at 30 CFR 817.121(c)(4) that established the rebuttable presumption that subsidence damaged noncommercial buildings, dwellings, and related structures, we considered comments suggesting a presumption of subsidence causation for damage to water supplies (*Id.*, at 16741; **Note:** This pre-dated our suspension of 30 CFR 817.121(c)(4)(i) through (iv) on December 22, 1999). We did not establish a presumption for water supply damage because we believe determining the cause(s) of water supply damage does not lend itself to such a presumption. We based our conclusion, in part, on our belief that determining the cause of damage to a water supply from springs and wells can be much more complex than determining the cause of damage to surface lands and structures because the cause(s) of water supply damage can involve a potentially greater variety of geological and hydrological formations and dynamics. At the same time, we also concluded that a water supply owner's ability to have an adversely affected water supply replaced will not be inhibited by the absence of a presumption that subsidence damaged the supply. In Utah's case, if the Division ultimately proves that a water supply has been adversely affected by an underground mining operation, the permittee must promptly replace the affected supply. Consequently, we believe Utah's definition of ''replacement of water supply'' is no less effective than the counterpart Federal definition without the suggested presumptions.

3. Pre-Subsidence Survey

In another comment, water users suggested adding a sentence concerning map requirements in pre-subsidence surveys to the end of the proposed paragraph at Utah Admin. R. 645–301–525.110. The suggestion would require permittees to file such maps with the State Engineer, the local conservancy district, the largest water right holder in the drainage, and the County office(s) where the permit area is located in addition to including it in the permit application. In Part III.C.4 of this final rule, we found Utah Admin. R. 645–301–525.110 is no less effective than the counterpart Federal regulation at 30 CFR 784.20(a)(1) without the provision for map submittal with a permit application as suggested by the comment. This comment would add requirements to Utah's proposed rule that go beyond the scope of the counterpart Federal regulation. As explained previously, we cannot require Utah's rules to be more effective than the Federal regulations.

In addition, however, existing State rules already require maps to be available to the public in their requirements for public participation and notice. Utah Admin. R. 645–300–121 provides for public notice of the Division's receipt of an application (including maps) in local newspapers, for making the application available for public inspection and copying at county courthouses, and notifying local governmental agencies, including planning agencies, water treatment authorities and water companies where they can inspect the complete application. Utah Admin. R. 645–300–122 provides for public comments and objections related to a permit application. Utah Admin. R. 645–300–123 provides for informal public conferences about permit applications. All permit applications (including maps) on file with the Division will be made available for public inspection and copying at reasonable times as provided by Utah Admin. R. 645–300–124.

Another comment suggested adding a statement to proposed Utah Admin. R. 645–301–525.130 requiring the [permit] applicant to consult water rights holder(s), land owner(s), and the State Engineer to determine that all springs and water sources have been properly identified, monitored, and addressed in the pre-subsidence survey. Utah's approved regulatory requirements for public participation and notice are described in the preceding paragraph's response to a similar comment. Further, the State's rules at Utah Admin. R. 645–301–700 *et seq.* require permit applications to include descriptions of existing hydrologic resources, including baseline information about surface and groundwater. We believe Utah Admin. R. 645–301–525.130 is not inconsistent with SMCRA and the Federal regulations as the State proposed it without the suggested additional statement.

4. Subsidence Control

Two water user comments suggested removing the phrase ''and economically'' from Utah Admin. R. 645–301–525.311 and –525.312, which require measures to respectively prevent

and minimize material damage to protected structures caused by subsidence to the extent technologically and economically feasible. We considered economic feasibility in our discussion of comments in the March 31, 1995, final rule adopting the Federal subsidence control regulations (*Id.,* at 16734). Recognizing that some material damage to protected structures from subsidence is possible, we required that such damage must be repaired. At the same time, we did not intend to discourage use of planned and controlled subsidence mining methods or to require underground mining methods not normally associated with such operations. We did, however, intend to require reasonable measures to be taken on the surface to protect occupied residential dwellings and related structures and non-commercial buildings from material damage. In that context, we reasoned that, by requiring measures to minimize subsidence damage to non-commercial buildings and occupied residential dwellings and related structures only when technologically and economically feasible, we mitigated any potential for unreasonably expensive minimization measures by providing that the requirement does not apply if the permittee demonstrates that minimization would cost more than repair. The same rationale applies to Utah Admin. R. 645–301–525.300 through –525.313. We believe the proposed rule is no less effective than the counterpart Federal regulations without the suggested change.

One water user comment suggested adding a new provision at Utah Admin. R. 645–301–525.312.3. The suggested provision would require written consent of all holders of State-appropriated water with a source in, adjacent to, or down drainage from the permit area as a second prerequisite for waiving measures to minimize material damage to protected structures to the extent technologically and economically feasible. We cannot require Utah to make this suggested change because it goes beyond the scope of the State's proposed rules and the Federal regulations by requiring water holders' consent in connection with the potentially unrelated issue of structural damage.

5. Subsidence Control Plan Contents

One comment suggested changes to proposed Utah Admin. R. 645–301–525.400 that would add requirements for concurrence by the State Engineer on the results of pre-subsidence surveys and with determinations by the Division that structures, renewable resource lands, or water supplies will be adversely affected by subsidence. The same comment suggested replacing references to water ''supplies'' with water ''sources.'' We previously explained in this final rule that Utah's use of the terms water ''supply'' or ''supplies'' is consistent with use of the same terms in the Federal regulations and SMCRA. We also previously explained that we cannot require Utah to include provisions in its rules that are more stringent than SMCRA or more effective than the counterpart Federal regulations. Additionally, in its January 29, 1997, clarification for statutory amendment UT–035–FOR (administrative record number UT–1094) Utah recognized the State Engineer's existing authority under State water law. For these reasons, we believe Utah Admin. R. 645–301–525.400 is no less effective than the Federal counterpart regulation at 30 CFR 784.20(b) without the suggested change.

One water user comment suggested adding a statement at the end of proposed Utah Admin. R. 645–301–525.420 that would require a separate plan, as part of the subsidence control plan, to replace any State-appropriated water that could be adversely affected by subsidence. Neither SMCRA nor the Federal regulations require a separate plan for this purpose so we cannot require Utah's rules to do so. Moreover, upon approval of this amendment, Utah will have measures in place to begin corrective action when water is adversely affected. They include: the second part of Utah Admin. R. 645–301–525.420, which refers to measures described in Utah Admin. R. 645–301–525.440, –525.450, and –525.470 that will be taken, when applicable, to correct subsidence-related material damage; and Utah Admin. R. 645–301–731.530, which requires replacement of certain adversely affected water supplies, using the baseline hydrologic and geologic information required in Utah Admin. R. 645–301–700 to determine the impact(s) of mining on water supplies. We believe Utah Admin. R. 645–301–525.420 is no less effective than counterpart 30 CFR 784.20(b)(2) without requiring a ''plan within a plan'' to replace water adversely affected by subsidence.

6. Repair of Damage to Surface Lands

In another comment, water users suggested removing the phrase ''technologically and economically feasible'' from proposed Utah Admin. R. 645–301–525.510, which concerns repair of damage to surface lands. The same reasoning we described in our response to water users' comments under the *Subsidence Control* topic in Part IV.A.4 above applies to this comment as well. We believe Utah's proposed rule has the same meaning as the counterpart Federal regulation without the suggested change.

7. Adjustment of Bond Amount for Subsidence Damage

In one comment, water users suggested changes to Utah Admin. R. 645–301–525.550, which provides for adjusting bond amounts for subsidence damage. The suggested changes would replace the term water ''supply'' with water ''source,'' remove the reference to Utah Admin. R. 645–301–731.530, and require the permittee to pay the water right holder for all damages caused by adverse effects on water or a water source if replacement does not occur within 30 days after the water or source is materially damaged. Our responses to other comments above concerning the term ''water supply'' explained that Utah's use of that term in its rules is consistent with the wording of the Federal regulations and SMCRA.

With respect to removing the reference to Utah Admin. R. 645–301–731.530, that rule is Utah's performance standard for water replacement. As referenced, it identifies those protected water supplies subject to replacement if adversely affected by subsidence. Such adverse effects invoke the requirement in proposed Utah Admin. R. 645–301–525.550 to adjust bond amounts sufficient to ensure replacement of water supplies if, and until, they are to be replaced. Removing the reference would render Utah Admin. R. 645–301–525.550 less effective than the counterpart Federal regulation at 30 CFR 817.121(c)(5), which similarly references the Federal performance standard for water replacement at 30 CFR 817.41(j).

The comment's suggestion to require payment of damages if replacement does not occur within 30 days after water is adversely affected is beyond the scope of payment of operation and maintenance costs provided under the State and Federal definitions of ''replacement of water supply.'' At the same time, however, we note that the citizen suit provisions of section 520(e) of SMCRA provide that nothing (in that section) shall restrict any right which any person may have under any statute or common law to seek enforcement of any of the provisions of SMCRA and the regulations or to seek any other relief. Utah's counterpart to section 520 of SMCRA is found at UCA 40–10–21(5).

Based on the explanations given above, we believe proposed Utah

Admin. R. 645–301–525.550 is no less effective than counterpart 30 CFR 817.121(c)(5) without the suggested changes.

8. Public Notice of Proposed Mining and PHC Determinations for Surface Mines

Two water user comments suggested significant changes to two sections of Utah's rules that the State made only minor changes to in this amendment. One comment suggested changing Utah Admin. R. 645–301–525.700, which provides for public notice of proposed mining. This amendment only proposes to recodify Utah Admin. R. 645–301–525.700 in view of the new rules being added to the same subsection. The comment's suggested change would require a mine operator to mail written notification of proposed mining to all holders of State-appropriated water rights in or adjacent to the permit area at least one year prior to mining. That notification would identify where the operator's subsidence control and water replacement plans may be examined. This suggested change is beyond the scope of Utah's proposed rulemaking because it does not address Utah's proposed change. In addition, we explained previously in Part IV.A.3 of this final rule that Utah's rules already provide for public notice and review of permit applications. Those applications would include plans for subsidence control and water replacement. Utah Admin. R. 645–300–121 provides for public notice of the Division's receipt of an application in local newspapers, for making the application available for public inspection and copying at county courthouses, and notifying local governmental agencies, including planning agencies, water treatment authorities and water companies where they can inspect the complete application. Further, all permit applications on file with the Division will be made available for public inspection and copying at reasonable times as provided by Utah Admin. R. 645–300–124.

The other comment suggested changing Utah Admin. R. 645–301–728.340, which addresses findings to be included in PHC determinations for surface coal mining and reclamation activities. Utah Admin. R. 645–301–728.340 is revised in this amendment only by the addition of a semi-colon and the word ''OR'' at the end of the paragraph to distinguish it from the new PHC findings requirement being added for underground mining at Utah Admin. R. 645–301–728.350. The comment's suggested change would require PHC findings to determine whether *surface* mining and reclamation activities conducted after October 24, 1992, would contaminate, diminish, or interrupt and underground or surface source of State-appropriated water (emphasis added). Also, it would delete the qualifying statement that such water be located within the permit or adjacent areas and be used for domestic, agricultural, industrial or other legitimate purpose. This comment does not address Utah's proposed change and is beyond the scope of the State's amendment. Nevertheless, we note that the suggested change to Utah Admin. R. 645–301–728.340 strives for consistency between that provision and the provision that follows at proposed Utah Admin. R. 645–301–728.350 for underground coal mining and reclamation activities. It is important to note that the underlying authority for proposed Utah Admin. R. 645–301–728.350 is UCA 40–10–18(15)(c), which in turn is based on section 720(a)(2) of SMCRA. Those statutory provisions require replacement of water supplies adversely affected by *underground* coal mining operations and do not affect existing water replacement requirements applicable to *surface* mining in the Federal regulations or in Utah's rules.

Though both comments are beyond the scope of this amendment, we forwarded them to the State for its consideration.

9. PHC Determinations for Underground Mines

One comment suggested rewording Utah Admin. R. 645–301–728.350, which addresses findings to be included in PHC determinations for underground coal mining and reclamation activities. The comment would change the phrase ''* * * may result in contamination, diminution, and interruption * * *,'' which describes adverse effects of underground mining, to read, ''may contaminate, diminish, and interrupt.'' It also suggested adding the term ''water sources'' after the term ''State-appropriated water'' and removing the qualifying statement that water be used for legitimate purposes within the permit or adjacent areas.

As proposed with the phrase ''* * * may result in contamination, diminution, or interruption * * *,'' Utah Admin. R. 645–301–728.350 provides for PHC findings as to whether underground coal mining and reclamation activities may adversely affect State-appropriated water supplies directly or indirectly. The water users' suggested language potentially could limit PHC findings to findings only of direct adverse effects of underground mining and reclamation activities. That, in turn, would render Utah Admin. R. 645–301–728.350 potentially less effective than the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv).

Utah's qualifying statement ''* * * and used for legitimate purposes'' * * *'' at Utah Admin. R. 645–301–728.350 describing existing water use is supported by a clarification the State provided for Utah Code amendment UT–035-FOR in its January 29, 1997, letter (administrative record number UT–1094). We discussed Utah's characterization of legitimate water use in the context of PHC findings at Utah Admin. R. 645–301–728.350 in our finding at Part III.C.9 of this final rule. Further, in the same finding, we explained how Utah's qualifying statement for legitimate use is consistent with the similar provision at Utah Admin. R. 645–301–728.340 for surface coal mining and reclamation activities. Additionally, our finding at Part III.C.2 of this final rule discusses Utah's clarification of the term ''State-appropriated water,'' including its reference to legitimate water use. Our previous responses to other comments concerning the term ''water source'' in Part IV.A of this final rule explain that Utah's use of ''State-appropriated water'' in its rules is no less effective than the Federal regulations and is no less stringent than SMCRA.

In the same comment, water users also maintained that there is no basis for Utah Admin. R. 645–301–728.350 to qualify that water subject to the PHC finding must have been used in the permit or adjacent areas. We considered the scope of ''the permit and adjacent areas'' in our discussion of comments in the March 31, 1995, final rule adopting the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv) (*Id.,* at 16729). In that discussion, we explained that ''adjacent area'' includes all areas outside the permit area where resources, including wells or springs, could reasonably be expected to be adversely impacted by the proposed mining operation, including probable impacts from underground workings. The same rationale applies to the provisions of Utah Admin. R. 645–301–728.350.

We therefore conclude that Utah Admin. R. 645–301–728.350 is no less effective than the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv) as proposed with its reference to State-appropriated water, its description of PHC findings of adverse effects, and its inclusion of the provision that existing water be used for legitimate purposes.

B. Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested

comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program. We asked for comments on the amendment as Utah originally submitted it and as revised in the State's October 31, 2000, letter (administrative record numbers UT–1106 and UT–1156, respectively).

U.S. Department of the Interior, Fish and Wildlife Service (USFWS)

The Utah Field Office of USFWS responded to our request for comments on the original amendment in a letter dated April 21, 1998 (administrative record number UT–1110). USFWS supported the proposed amendment, noting how subsidence and water loss can impact hydrologic systems and wildlife that depend on them. Additionally, USFWS observed that the amendment appears to strengthen requirements for controlling and mitigating subsidence damage and determining and correcting water supply losses.

U.S. Department of Agriculture, Forest Service (USFS)

An office of the Manti-LaSal National Forest submitted comments on the original amendment on behalf of the USFS after the close of the first comment period (administrative record number UT–1116). Discussion of those comments and our responses follow.

1. Replacement of Water Supply

One USFS comment proposed changes to Utah's definition of ''replacement of water supply'' at Utah Admin. R. 645–100–200. It suggested changing the last sentence of paragraph (a) of the definition to require agreement to a one-time payment of increased operation and maintenance costs by the landowner or surface management agency in addition to the permittee and the water supply owner. The comment also suggested adding another part to the definition to read:

> If the water supply or portion of the water supply is needed for the land use in existence at the time of loss, contamination, or diminution, or postmining land use, replacement requirements must meet such needs and be agreed to by the land owner or land management agency.

Both parts of this comment addressed concerns of the landowner and surface management agency for perpetuating water sources needed to sustain land uses and ecosystems. We agree that involving the landowner or surface management agency in determining water replacement needs is a prudent approach to resource management. However, imposing that as a requirement in Utah's rules is beyond the scope of the Federal water replacement regulations. It also could create conflict if the land owner and surface management agency are not the water supply owner(s) and if their consent is not a condition of land or water supply ownership or land management required under other State law.

With respect to the suggested additional part of the definition, we cannot require Utah's rules to be more effective than the Federal regulations or more stringent than SMCRA. Utah's proposed definition already provides that water replacement support existing land uses and postmining land use, as demonstrated by its provision of waivers only for replacement of adversely affected supplies not needed for the existing or postmining land uses. Further, as noted above in our response to the first part of this comment, requiring landowner or surface management agency consent could create conflict if not required by other provisions of State law. We believe Utah's definition is no less effective than the counterpart Federal definition at 30 CFR 701.5 without the suggested additional language.

2. Subsidence Control Plans and Pre-Subsidence Surveys

Another USFS comment suggested that the part of Utah Admin. R. 645–301–525 which addresses subsidence control plans require pre-subsidence surveys of all renewable resource lands, structures, and water sources within a subsidence area whether or not the permittee determines they will be adversely affected by subsidence. The comment also asserted that limiting surveys to State-appropriated waters will generate insufficient baseline data to determine the causes and effects of subsidence because they will overlook other protected water resources.

We believe Utah's proposed rules adequately provide for pre-subsidence surveys of structures, renewable resource lands and water supplies. Proposed Utah Admin. R. 645–301–525.100 specifically requires pre-subsidence surveys in each application for underground coal mining and reclamation activities. Whether adverse effects on structures, renewable resources or State-appropriated water resulting from subsidence are expected to occur or not is the basis for determining if the subsidence control plan must include the additional information described in Utah Admin. R. 645–301–525.410 through –525.490. As provided in Utah Admin. R. 645–301–525.400, that additional information will not be required in the subsidence control plan if the survey conducted under R645–301–525.100 shows, and the Division agrees, that: No structures, State-appropriated water supplies, or renewable resource lands exist; or, that no material damage to lands or structures, or no reduction in their value or use, and no adverse effects on water supplies, would occur as a result of subsidence. Proposed Utah Admin. R. 645–301–525 through –525.120 provide the same scope of pre-subsidence surveys as required by the counterpart Federal regulations at 30 CFR 784.20(a)(1) through (a)(2). Further, proposed Utah Admin. R. 645–301–525.130 provides for pre-subsidence structural surveys within an applicable angle of draw when that part of the corresponding Federal regulation at 30 CFR 784.20(a)(3) is suspended. We explained in our findings in Parts III.C.4 and III.C.5 of this final rule that partial suspension of 30 CFR 784.20(a)(3) does not make Utah's proposed provisions for pre-subsidence surveys of EPAct protected structures and subsidence control plan content inconsistent with SMCRA.

We also believe Utah's proposed rules adequately cover protected water supplies. As explained in our findings at Part III.C.3 and III.C.10 of this final rule and in our responses to other public comments in Part IV.A, Utah's water replacement provisions are based on its use of the term ''State-appropriated water'' at UCA 40–10–18(15)(c). Based on clarification provided by the State, that term expands Utah's protection and replacement provisions beyond the drinking, domestic, and residential water supplies from wells or springs included under the Federal regulations and SMCRA. Further, Utah's rules require baseline hydrologic data in addition to the pre-subsidence survey requirements proposed in this amendment. Provisions at Utah Admin. R. 645–301–700 *et seq.* list information required in permit applications to characterize hydrologic resources, identify potential impacts of mining on those resources, and to minimize disturbance of such resources located in proposed permit and adjacent areas.

Another USFS comment suggested that Utah Admin. R. 645–301–724.600 should not be removed as proposed in this amendment. This existing rule requires a survey to determine if aquifers and recharge areas would be materially damaged or diminished by subsidence, if it occurred, from underground mining. The comment stressed the importance of aquifers and recharge areas to surface water. It also

stressed the need to inventory water resources other than those appropriated by the State and to address them in the subsidence control plan to ensure protection of hydrologic systems. Proposed Utah Admin. R. 645–301–525.110, which replaces Utah Admin. R. 645–301–724.600, provides for pre-subsidence surveys to determine whether subsidence, if it occurred, would adversely affect structures, renewable resource lands and State-appropriated water. As defined at Utah Admin. R. 645–100–200, ''renewable resource lands'' includes aquifers, aquifer recharge areas, and other underground waters. SMCRA (as amended by EPAct) and the implementing Federal regulations extend replacement protection to drinking, domestic and residential water supplies from wells or springs. We explained previously in this final rule that Utah's protection of ''State-appropriated water supplies'' is no less effective than the Federal regulation and no less stringent than SMCRA because it extends protection to a wider range of water supplies. Utah clarified in its October 31, 2000, letter (administrative record number UT–1145) that, because it has a process under UCA 73–5–13 to recognize water claims established by diversion (''diligence rights'') before the State Engineer's office was established and before Utah became a State, ''State-appropriated water'' also includes territorial water rights. Our response to the preceding comment also showed that Utah requires baseline data for other water resources under Utah Admin. R. 645–301–700 *et seq.* As a result, we believe the State's proposed removal of existing Utah Admin. R. 645–301–724.600 is appropriate in light of the rules it proposed to add at Utah Admin. R. 645–301–525 through –525.130.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the changes Utah proposed in amendment UT–037–FOR pertain to air or water quality standards. As a result, we did not request EPA's concurrence.

Nevertheless, we provided copies of the original and revised amendments to EPA for review under 30 CFR 732.17(h)(11)(i) and asked if it had any comments (administrative record numbers UT–1106 and UT–1156). We did not receive any comments from EPA.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. In letters dated March 25, 1998, and April 6, 1998, we requested comments from the SHPO and the ACHP, respectively, on the original amendment (administrative record number UT–1106). We asked for comments on the revised amendment from the SHPO and the ACHP in letters dated January 11, 2001, (administrative record number UT–1156). We received one response from the SHPO in a letter dated April 7, 1998 (administrative record number UT–1109). In that letter, the SHPO concurred with the determination we made under the 36 CFR 800 regulations that the proposed amendment will have no effect on properties listed, or eligible for listing, on the National Register of Historic Places. We did not receive comments from the ACHP.

V. Director's Decision

Based on the above findings, we approve Utah's proposed amendment as submitted on March 20, 1998, corrected on May 13, 1998, and revised on October 31, 2000.

We approve, as discussed in Part III.A: Utah Admin. R. 645–301–525.200 through 525.240, recodified rules pertaining to protected areas; Utah Admin. R. 645–301–525.600, recodified rule pertaining to compliance with the approved subsidence control plan; and Utah Admin. R. 645–301–525.700, recodified rule pertaining to public notice of proposed mining; in Part III.B: Utah Admin. R. 645–100–200, definitions of ''material damage'' and ''occupied residential dwelling and structures related thereto;'' Utah Admin. R. 645–301–525.300 through –525.313, subsidence control measures to prevent or minimize damage, replacing existing Utah Admin. R. 645–301–525.200 and –525.210, which are removed; Utah Admin. R. 645–301–525.410, description in the subsidence control plan of coal removal method(s), replacing existing Utah Admin. R. 645–301–525.110, which is removed; Utah Admin. R. 645–301–525.420, requirement for a map to be in the subsidence control plan showing underground workings where planned subsidence is suspected, areas where subsidence will be minimized, and areas where subsidence-related damage will be minimized and corrected; Utah Admin. R. 645–301–525.430, description in the subsidence control plan of physical conditions affecting subsidence, replacing existing Utah Admin. R. 645–301–525.120, which is removed; Utah Admin. R. 645–301–525.440, requirement for a description in the subsidence control plan of subsidence monitoring to be done, replacing existing Utah Admin. R. 645–301–525.140, which is removed; Utah Admin. R. 645–301–525.450 through –525.460, description in the subsidence control plan of subsidence control measures, replacing existing Utah Admin. R. 645–301–525.130 through –525.134 and Utah Admin. R. 645–301–525.150, which are removed; Utah Admin. R. 645–301–525.470, description in the subsidence control plan of methods to minimize damage from planned subsidence; Utah Admin. R. 645–301–525.500, heading ''Repair of damage,'' replacing existing introductory statement at Utah Admin. R. 645–301–525.230, which is removed; Utah Admin. R. 645–301–525.510, requirement to repair damage to surface lands, replacing existing Utah Admin. R. 645–301–525.231, which is removed; Utah Admin. R. 645–301–525.520, requirement to repair, or compensate for, damage to non-commercial buildings and dwellings and related structures, replacing, in part, existing Utah Admin. R. 645–301–525.232, which is removed; and Utah Admin. R. 645–301–525.545, information to be considered in determination the cause of damage; in Part III.C.1: Utah Admin. R. 645–100–200, definition of ''non-commercial building;'' in Part III.C.2: Utah Admin. R. 645–100–200, definition of ''State-appropriated water supply;'' in Part III.C.3: Utah Admin. R. 645–100–200, definition of ''replacement of water supply;'' in Part III.C.4: Utah Admin. R. 645–301–525 through 645–301–525.130, subsidence control plans, pre-subsidence surveys, replacing existing Utah Admin. R. 645–301–724.600, which is removed; in Part III.C.5: Utah Admin. R. 645–300–525.400, –525.480, and –525.490, subsidence control plan contents, replacing existing Utah Admin. R. 645–301–525 through –525.170, which are removed; in Part III.C.6: Utah Admin. R. 645–301–525.530, repair or compensation for damage to other structures; in Part III.C.7: Utah Admin. R. 645–301–525.540, rebuttable presumption of causation by subsidence; Utah Admin. R. 645–301–525.541, rebuttable presumption of causation for damage within angle of draw; and Utah Admin. R. 645–301–

525.542, approval of site-specific angle of draw; in Part III.C.8: Utah Admin. R. 645–301–525.550, adjustment of bond amount for subsidence damage; in Part III.C.9: Utah Admin. R. 645–301–728.340 and 728.350, probable hydrologic consequences determination for underground mining effects; and in Part III.C.10: Utah Admin. R. 645–301–731.530, replacement of State-appropriated water supply.

We approve these rules as Utah proposed them with the provision that the State fully promulgate them in a form identical to the rules submitted to, and reviewed by, OSM and the public. To implement this decision, we are amending the Federal regulations at 30 CFR part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this regulation effectively will expedite that process. Further, SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittals are consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. The Department relied on the data and assumptions for the counterpart Federal regulations in making the determination as to whether this rule would have a significant economic impact.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (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 determination is based on the fact that the State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2001.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * * * *
March 20, 1998	December 4, 2001	Definitions of ''material damage,'' ''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' ''replacement of water supply,'' and ''State-appropriated water supply'' at Utah Admin. R. 645–100–200; 645–301–525 through 525.170; 645–301–525.200 through 525.240; 645–301–525.300 through 525.313; 645–301–525.400 through 525.490; 645–301–525.500 through 525.550; 545–301–525.600; 645–301–525.700; 645–301–724.600; 645–301–728.340; 645–301– 728.350; and 645–301–731.530.

[FR Doc. 01–29982 Filed 12–3–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–048]

RIN 2115–AE47

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operating regulations which govern the Metro North (Park Avenue) Bridge, at mile 2.1, across the Harlem River at New York City, New York. This final rule will allow the bridge owner to require a four-hour advance notice for bridge openings, from 10 a.m. to 5 p.m., daily. This action is expected to meet the present needs of navigation.

DATES: This rule is effective January 3, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–048) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 13, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Harlem River, New York, in the **Federal Register** (66 FR 47601). We received no comment letters in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Metro North (Park Avenue) Bridge, at mile 2.1, across the Harlem River, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water. The existing drawbridge operation regulations listed at 33 CFR 117.789(e) require the bridge to open on signal, from 10 a.m. to 5 p.m., except as provided in paragraph (b).

The owner of the bridge, Metro North, requested a change to the operating regulations to allow the bridge to open on signal, from 10 a.m. to 5 p.m., after a four-hour advance notice is given.

Metro North advised the Coast Guard that all the bridge openings during the last five years were for either vessel traffic employed in the construction of the Oak Point Link railroad Bridge located upstream or Metro North test openings at the bridge. The large construction barges, with equipment such as cranes on board, generally require a bridge opening.

The vessels that frequently use this waterway on a regular basis fit under the bridges without requiring bridge openings, with the exception of the Spuyten Duyvil railroad bridge, which has only 5 feet of vertical clearance at mean high water. All the upstream bridges, with the exception of the Spuyten Duyvil railroad bridge, presently require a four-hour advance notice for bridge openings, from 10 a.m. to 5 p.m., daily.

The existing drawbridge operation regulations are consistent with regard to the four-hour advance notice requirement, from 10 a.m. to 5 p.m., daily.

In addition, all the bridges, except Spuyten Duyvil, have similar or greater vertical clearances at mean high water (MHW) and at mean low water (MLW). The clearances for the bridges on the Harlem River are as follows.

Bridge name	Mile	MHW & MLW	
Metro North (Park Ave)	2.1	25	30
Madison Avenue	2.3	25	29
145 Street	2.8	25	30
Macombs Dam	3.2	27	32
207 Street	6.0	26	30
Broadway	6.8	24	29
Spuyten Duyvil	7.9	5	9

As a result of all the above information the Coast Guard believes that it is reasonable to allow the Metro North (Park Avenue) railroad bridge to open on signal, from 10 a.m. to 5 p.m., after a four-hour advance notice is given, except as provided in paragraph (b).

Discussion of Comments and Changes

The Coast Guard received no comment letters. No changes will be made to this final rule.

Regulatory Evaluation

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

(44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge will continue to open for vessel traffic after the advance notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''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 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 conclusion is based on the fact that the bridge will open on signal after the advance notice is given.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

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 substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.789 is amended by revising paragraph (e) to read as follows:

§ 117.789 Harlem River

* * * * *

(e) The draw of the Metro North (Park Avenue) Bridge, mile 2.1, shall open on signal, except as provided in paragraph (b) of this section, from 10 a.m. to 5 p.m., if at least a four-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: November 26, 2001.

G.N. Naccara,

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

[FR Doc. 01–30022 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

CGD08–98–020

RIN 2115–AE47

Drawbridge Operation Regulations: Missouri River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulations governing the operation of the drawbridges across the Missouri River in the States of Missouri, Iowa, Kansas, and Nebraska. The revisions will enable the Coast Guard to coordinate drawbridge operation schedules for these bridges during the winter season with the Army Corps of Engineers' (ACOE) dates of closure and opening of the commercial navigation season on the Missouri River.

DATES: This final rule is effective January 3, 2002.

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 CGD8–98–020 and are available for inspection or copying at Coast Guard District Eight Bridge Branch, 1222 Spruce Street, Suite 2.107f, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, 1222 Spruce

Street, St. Louis, MO 63103–2832, at (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 28, 1998, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations for the Missouri River in the **Federal Register** (63 FR 45980). No negative comments were received on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

In order to accommodate vessels during the winter season's low-water period, the Missouri River drawbridge operation regulations contained in 33 CFR 117.411(a) and 117.687(a) require that drawbridges on this waterway shall open on signal; except that from 16 December through the last day of February, the draws shall open on signal if at least 24 hours notice is given. Additionally, 33 CFR 117.691 requires that the draw of the Illinois Central Gulf Railroad Bridge located on the Missouri River shall open on signal; except that, from 1 December through the last day of February, the draw shall open on signal if at least 24 hours notice is given. These regulations reflect the actual dates that the ACOE had manipulated the water level on the Missouri River; however, during the past ten years, the ACOE has adopted a more flexible water-management regime. The change implemented by this final rule will bring the drawbridge operating regulations in synch with the commercial navigation season. This will be accomplished by tying the drawbridge on-demand-opening requirement to the ACOE's closure and opening of the commercial navigation season on the Missouri River.

Discussion of Comments and Changes

No negative comments were received during the comment period for the Notice of Proposed Rulemaking. The rule will align the drawbridge regulations with the commercial navigation season and allow bridge owners to more efficiently manage their operations at the beginning and end of the commercial navigation season.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of the 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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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. There are no small entities involved in this rulemaking.

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. Any individual that qualifies, or believes he or she qualifies, as a small entity, and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District Bridge Branch, (314) 539–3900, extension 378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1 (series), this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have significant effect on the human environment. This rule merely alters the time frame when the drawbridges on the Missouri River are required to open on demand. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. Section 117.411(a) is revised to read as follows:

§ 117.411 Missouri River.

(a) The draws of the bridges across the Missouri River from the mouth to Sioux City, Iowa, shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

* * * * *

3. Section 117.687(a) is revised to read as follows:

§ 117.687 Missouri River.

(a) The draws of the bridges across the Missouri River from the mouth to St. Joseph shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

* * * * *

4. Section 117.691 is revised to read as follows:

§ 117.691 Missouri River.

The draw of the Illinois Central Gulf Railroad Bridge, mile 618.3, at Omaha, shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

Dated: October 31 2001.

Roy J. Casto,

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

[FR Doc. 01–30018 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–144]

RIN 2115–AE47

Drawbridge Operation Regulations: Back River, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operating regulations governing the operation of the Maine Department of Transportation (MDOT) highway bridge, at mile 4.6, between Hodgdon and Barter's Island at Boothbay, Maine. This temporary change to the drawbridge operation regulations allows the bridge to remain in the closed position from December 15, 2001 through April 15, 2002. This action is necessary to facilitate structural repairs at the bridge.

DATES: This rule is effective December 15, 2001 through April 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–144) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 11, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Back River, Maine, in the **Federal Register** (66 FR 47121). We received no comment letters in response to the notice of proposed rulemaking. No public hearing was requested and none was held. Pursuant to 5 U.S.C. 553, good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**. The local fishermen haul their equipment in November and do not transit this bridge during the winter months. The bridge has not had any requests to open during the last three years December through April. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to perform this necessary bridge maintenance during the winter months when the bridge normally does not receive requests to open.

Background and Purpose

The MDOT, highway bridge, at mile 4.6, across the Back River has a vertical clearance of 6 feet at mean high water and 15 feet at mean low water. The existing regulations are listed at 33 CFR 117.523.

The bridge owner, MDOT, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate structural repairs at the bridge. This temporary rule will allow the bridge owner to keep the bridge in the closed position from December 15, 2001 through April 15, 2002. The bridge operates on a twenty-four hours advance notice from November 1 through May 31, normally. The local fishermen haul out their equipment during the month of November, after which, the bridge historically receives few requests to open. The number of bridge openings from December through April in past years have been relatively low. The bridge opening log data for December through April for the past three years is as follows:

	1998	1999	2000
December	4	0	0
January	0	0	0
February	0	0	0
March	0	0	0
April	0	0	0

The Coast Guard believes this rulemaking is reasonable based upon the relatively low number of bridge opening requests during past years December through April and the fact that this work is necessary maintenance required to assure continued uninterrupted operation of the bridge.

Discussion of Comments and Changes

The Coast Guard received no comment letters. No changes will be made to this final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that there have been few requests to open the bridge historically, during the time period that the bridge will be closed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''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 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 conclusion is based on the fact that there have been few requests to open the bridge during the time period the bridge will be closed.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

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 substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.523 [Suspended]

2. From December 15, 2001 through April 15, 2002, § 117.523 is suspended.

3. From December 15, 2001 through April 15, 2002, § 117.T524 is temporarily added to read as follows:

§ 117.T524 Back River.

The Maine Department of Transportation highway bridge, mile 4.6, between Hodgdon and Barter's Island at Boothbay, need not open for the passage of vessel traffic.

Dated: November 26, 2001.

G.N. Naccara,

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

[FR Doc. 01–30019 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–212]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Witt-Penn (Route 7) Bridge, mile 3.1, across the Hackensack River at Jersey City, New Jersey. This temporary deviation will allow the bridge to remain in the closed position from 9 a.m. on December 4, 2001 through 6 a.m. on December 7, 2001. This temporary deviation is necessary to facilitate maintenance repairs at the bridge.

DATES: This deviation is effective from December 4, 2001 through December 7, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Witt-Penn (Route 7) Bridge has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing regulations require the draw to open on signal at all times.

The bridge owner, New Jersey Department of Transportation, has requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled maintenance, the replacement of the bridge power and communications cable at the bridge. The nature of the required maintenance repairs will require the bridge to be closed to navigation during the implementation of this work.

This deviation to the operating regulations will allow the bridge to remain in the closed position from 9 a.m. on December 4, 2001 through 6 a.m. on December 7, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 26, 2001.

G.N. Naccara,

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

[FR Doc. 01–30020 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–213]

Drawbridge Operation Regulations: Mianus River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metro North Bridge, mile 1.0, across the Mianus River at Greenwich, Connecticut. This temporary deviation will allow the bridge to remain in the closed position during three periods: November 26, through December 6, 2001; December 10, through December 21, 2001; and January 7, 2002 through January 16, 2002. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from November 26, 2001 through January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metro North Bridge has a vertical clearance in the closed position of 20 feet at mean high water and 27 feet at mean low water. The existing regulations are listed at 33 CFR 117.209.

The bridge owner, Metro North Railroad, has requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural maintenance at the bridge. The nature of the required structural repairs will require the bridge to be closed to navigation during the implementation of this work.

This deviation to the operating regulations will allow the bridge to remain in the closed position from 6 a.m. on November 26, 2001 through 7 p.m. on December 6, 2001; from 6 a.m. on December 10, 2001 through 7 p.m. on December 21, 2001; and from 6 a.m. on January 7, 2002 through 7 p.m. on January 16, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 26, 2001.

G.N. Naccara,

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

[FR Doc. 01–30021 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP TAMPA–01–108]

RIN 2115–AA97

Security Zones; Crystal River, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary fixed security zones around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida. The security zones are needed for national security reasons to protect the public and the power plant from potential subversive acts. Entry into the zones is prohibited, unless specifically authorized by the Captain of the Port, Tampa, Florida, or his designated representative.

DATES: This regulation is effective from 6 p.m. (EST) on November 21, 2001 until 6 p.m. (EDT) on June 15, 2002.

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 [COTP Tampa–01–108] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David G. McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

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 a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners announcing the creation of this rule and place Coast Guard or other law enforcement vessels in the vicinity of these zones to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York City and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Florida Power Crystal River power plant. This power plant provides critical energy to the Tampa area and contains extremely hazardous materials. The security zone for the Florida Power Corporation Channel encompasses the waters within the following points: 28° 56.87′ N, 082° 45.17′ W (Northwest corner), 28° 57.37′ N, 082° 41.92′ W (Northeast corner), 28° 56.81′ N, 082° 45.17′ W (Southwest corner), and 28°

57.32′ N, 082° 41.92′ W (Southeast corner). The security zone for the Demory Gap Channel encompasses the waters within the following points: 28° 57.61′ N, 082° 43.42′ W (Northwest corner), 28° 57.53′ N, 082° 41.88′ W (Northeast corner), 28° 57.60′ N, 082° 43.42′ W (Southwest corner), 28° 57.51′ N, 082° 41.88′ W (Southeast corner). Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, Tampa, Florida or his designated representative.

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) because we have determined that only a small number of recreational fishermen will be affected by this regulation and there are ample areas nearby to fish that are not covered by this regulation. Moreover, vessels may be allowed to enter the zones on a case-by-case basis with the authorization of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include 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 because we have determined that only a small number of recreational fishermen will be affected by this regulation and there are ample areas nearby to fish that are not covered by this regulation. Moreover, small entities may be allowed to enter these zones on a case by case basis with the authorization of the Captain of the Port.

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 can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a ''significant energy action'' under 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), Reports and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 6.04–11, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–108 is added to read as follows:

§ 165.T07–108 Security Zones; Crystal River, Florida.

(a) *Regulated area.* The Coast Guard is establishing temporary fixed security zones around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida. The security zone for the Florida Power Corporation Channel encompasses the waters within the following points: 28° 56.87′ N, 082° 45.17′ W (Northwest corner), 28° 57.37′ N, 082° 41.92′ W (Northeast corner), 28° 56.81′ N, 082° 45.17′ W (Southwest corner), and 28° 57.32′ N, 082° 41.92′ W (Southeast corner). The security zone for the Demory Gap Channel encompasses the waters within the following points: 28° 57.61′ N, 082° 43.42′ W (Northwest corner), 28° 57.53′ N, 082° 41.88′ W (Northeast corner), 28° 57.60′ N, 082° 43.42′ W (Southwest corner), 28° 57.51′ N, 082° 41.88′ W (Southeast corner).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port or his designated representative. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157.1 MHz).

(c) *Authority.* The authority for this section is 33 U.S.C. 1226; 49 CFR 1.46.

(d) *Dates.* This section is effective at 6 p.m. (EST) on November 21, 2001 and will remain in effect until 6 p.m. (EDT) on June 15, 2002.

Dated: November 20, 2001.

A.L. Thompson, Jr.,

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

[FR Doc. 01–30023 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM2001–7]

Disruption or Suspension of Postal or Other Transportation or Communications Services

AGENCY: Copyright Office.

ACTION: Interim regulations; Request for comments.

SUMMARY: The Copyright Office is adopting interim regulations to address the effect of a general disruption or suspension of postal or other transportation or communications services on the Office's receipt of deposits, applications, fees, or any other materials, and the assignment of a date of receipt to such materials. When the Register of Copyrights has published a determination that there has been a general disruption or suspension of such services, persons who have sent materials to the Office and believe the Office's receipt of those materials has been delayed may submit evidence that the materials would have been received in the Office by a particular date but for the disruption or suspension. The Office may assign, as the date of receipt, the date on which the materials would have been received but for the disruption or suspension.

DATES: The effective date of the interim regulations is December 4, 2001. Comments should be submitted no later than January 3, 2002.

ADDRESSES: An original and 10 copies of comments and reply comments should be mailed to: Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024–0400. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Patricia Sinn, Senior Attorney, Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024–0400. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 709 of title 17, United States Code provides that:

> In any case in which the Register of Copyrights determines, on the basis of such evidence as the Register may by regulation require, that a deposit, application, fee, or any other material to be delivered to the Copyright Office by a particular date, would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other transportation or communications services, the actual receipt of such material in the Copyright Office within one month after the date on which the Register determines that the disruption or suspension of such services has terminated, shall be considered timely.

In cases of disruptions or suspensions of postal, transportation or communications services, section 709 permits the Register to assign, as the date of receipt for deposits, applications, fees and other materials submitted to the Office, the date on which the materials would have been received but for the disruption or suspension, so long as the Office has actually received the material within one month after the disruption or suspension has ended.

The Office has not promulgated any regulations relating to determination of the appropriate date of receipt of materials when a general disruption or suspension of postal or other transportation or communications services has taken place. Until now, the Office has perceived no need for such regulations. However, recent events have, unfortunately, demonstrated that such regulations are necessary. Concerns about anthrax in United States Postal Service facilities in the District of Columbia have caused severe disruptions of postal service to the Office since October 17.

Today the Register of Copyrights is publishing a separate notice declaring that commencing on October 18, there has been a general disruption of postal services to the Library of Congress. The Library continues to experience disruptions in its postal service. The Register shall publish another notice when she determines that the disruption of services has ceased.

The Office has already received one request to assign a date of receipt for a copyright registration application that was delayed due to the disruption of postal services, and it is anticipated that additional requests will be made. In order expeditiously to permit the application of section 709 to materials submitted during the current period of disruption of services, the Office is announcing interim regulations to govern such requests and the Office's determination of the date of receipt.

Assigning a date of receipt based on the date materials would have been received but for the disruption is important in a number of contexts. The effective date of registration of a copyright is the date the application, fees and deposit are received by the Copyright Office. 17 U.S.C. 410(d). That date can affect the copyright owner's rights and remedies, such as eligibility for statutory damages and attorney's fees. *See* 17 U.S.C. 412 (statutory damages and attorney's fees available only for works with effective date of registration prior to commencement of infringement or, for published works, within three months of first publication of the work). The date of recordation of a document can be crucial in determining priorities among conflicting transfers. *See* 17 U.S.C. 205, 37 CFR 201.9(c) (date of recordation is the date when all elements required for recordation, including the prescribed fee, have been received in the Copyright

Office). The date of recordation of a notice of termination of a grant of a transfer or license can be crucial in determining whether the termination is effective. *See* 17 U.S.C. 304(c)(4)(b) (notice of termination must be recorded in the Copyright Office before the effective date of termination), 37 CFR 201.10((f)(3) (date of recordation of notice of termination is the date when all of the elements required for recordation have been received in the Copyright Office).

Under section 201.8(a) of the interim regulations, when the Register determines that there has been a general disruption or suspension of postal or other transportation or communications services that has delayed the receipt by the Copyright Office of deposits, applications, fees, or any other materials, the Register shall publish an announcement to that effect. When the state of disruption or suspension of such services has ceased, the Register shall publish an announcement to that effect.

Section 201.8(b) provides that persons who have submitted material to the Office, the receipt of which has been delayed due to the suspension or disruption of services, may request that the Register assign, as the date of receipt of the material, the date on which the Register determines the material would have been received but for the disruption or suspension of services. Section 201.8(f) states where such requests should be sent.

Section 201.8(c) sets forth when a request may be submitted. Requests pertaining to applications for copyright registration must be made no later than one year after the claimant has received a certificate of registration. Such requests ordinarily will not be permitted until after the claimant has received a certificate of registration. Exceptions are made for cases in which the Office is communicating with a claimant about the application for other reasons, or other cases in which the Register finds there is good cause to consider a request prior to issuance of the certificate. In general, permitting the submission of requests prior to issuance of the certificate would impose unacceptable burdens on the Office due to difficulties in locating the particular pending applications to which the requests pertain. But when the Office has already communicated with the claimant in connection with an application, and the claimant is responding to the communication from the Office, the claimant may submit the request because there should be no difficulty in locating the application which is the subject of the communication.

Requests relating to transfers of copyright or other documents submitted for recordation must also be made no later than one year after the person seeking recordation has received a certificate of recordation, but there is no requirement to wait until after the certificate has issued. In fact, because it is easier for the Documents Recordation Section of the Cataloging Division to correct the date of recordation prior to recording the document, persons seeking adjustment of the date of receipt of a document submitted for recordation are encouraged to submit requests as soon as possible.

Requests pertaining to any other material submitted to the Copyright Office must be made no later than one year after the date the material is received by the Office.

Section 201.8(d) provides that when a certificate of registration or a certificate of recordation has already been issued, the original certificate must be returned to the Office along with the request. If the request is granted, the Office will issue a new certificate with the revised effective date of registration or date of recordation. If the request is not granted, the original certificate will be returned.

Section 201.8(e) provides that as evidence that the material would have been received on that date, the person making the request must submit a receipt from the United States Postal Service or a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, indicating how and when the material was received by the Postal Service or delivery service, and indicating sufficient information to determine when the Postal Service or delivery service would have delivered the material to the Copyright Office but for the disruption or suspension of services. The Office will also accept other documentary evidence that it considers equivalent to such receipts, and it will accept sworn statements from persons with personal knowledge of the facts relating to the attempt to deliver the material to the Office.

Section 201.8(f) provides for certain presumptions as to when material deposited with the United States Postal Service or a delivery service would have been received but for the disruption or suspension of services.

Effective Date

Because of the unanticipated nature of the recent disruption in services and the necessity of providing a mechanism that will immediately permit the Copyright Office to adjust the date of receipt of materials in appropriate circumstances due to that disruption, the Register finds that there is good cause for the interim regulations to take effect immediately.

Request for Comments

The Office solicits comments from the public on these interim regulations. Comments are due 30 days from the date these regulations are published. The Office will consider these comments in preparing final regulations.

The Office also solicits comments concerning a related issue. The Office was closed for business from October 18 through October 24, 2001, because of concerns about possible anthrax contamination in the Library of Congress. During this period, the Office could not receive any applications, fees, deposits or other materials, whether by mail, courier or any other means of delivery. Because the Office's inability to receive materials during this time period was due to the closure of the Library of Congress, and not due to a general disruption or suspension of postal or other transportation or communications services, it does not appear that section 709 provides any authority for the Register to assign a date of receipt during that period for any materials that would have been received by the Office on a day during that period but for the closure of the Library. Thus, a person who attempted to deliver an application for copyright registration to the Office in person on October 22 would not be able to seek an effective date of registration of October 22, because the Office was not open on that date.

Section 410(c) of 17 U.S.C. provides that ''[t]he effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.'' (Emphasis added). The only exception to the requirement that the effective date of registration be the date of actual receipt is set forth in section 709, which does not address the unanticipated closure of the Office.

Moreover, a person who deposited an application addressed to the Office with an overnight delivery service on October 17, with an expected date of receipt in the Office of October 18, would not be able to seek an effective date of registration on October 18 because section 709 only permits the Register to assign as a date of receipt the date on which the material ''would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other

transportation or communications services.'' (Emphasis added.) In this case, the reason the Office did not receive the application on October 18 was not a general disruption or suspension of postal or other transportation or communications services; it was the closure of the building that houses the Office. Thus, the earliest date of receipt that the Office could assign to the application would be October 25, the next date on which the Office was open.

The Office would like to be able to offer relief to persons who were unable to deliver materials to the Office due to unanticipated closure of the Office during normal business hours, but we are aware of no authority that permits us to grant such relief. We welcome any comments providing citations to and analysis of authority that would permit the Office to issue regulations governing such a situation notwithstanding the express language of 17 U.S.C. 410(c).

List of Subjects in 37 CFR Part 201

Communications, Copyright, Postal service.

Interim Regulations

In consideration of the foregoing, the Register of Copyrights amends part 201 of 37 CFR on an interim basis as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.8 is added to read as follows:

§ 201.8 Disruption of postal or other transportation or communication services.

(a) For purposes of 17 U.S.C. 709, when the Register has determined that there is or has been a general disruption or suspension of postal or other transportation or communications services that has delayed the receipt by the Copyright Office of deposits, applications, fees, or any other materials, the Register shall publish an announcement of that determination, stating the date on which the disruption or suspension commenced. The announcement may, if appropriate, limit the means of delivery that are subject to relief pursuant to section 709. Following the cessation of the disruption or suspension of services, the Register shall publish an announcement stating the date on which the disruption or suspension has terminated.

(b) At the request of any person who provides satisfactory evidence that he or she has attempted to deliver a deposit, application, fee or other material to the Copyright Office but that receipt by the Copyright Office was delayed due to a general disruption or suspension of postal or other transportation or communications services, the Register shall assign, as the date of receipt of the deposit, application, fee or other material, the date on which the Register determines the material would have been received but for the disruption or suspension of services, if the deposit, application, fee or other material was actually received in the Copyright Office within one month after the disruption or suspension of services has terminated.

(c) *Timing.* The request shall be made:

(1) With respect to an application for copyright registration, no earlier than the date on which the claimant receives the certificate of registration and no later than one year after the date on which the claimant receives the certificate of registration; provided, however, that a request may be made prior to receipt of a certificate of registration—

(i) If the Copyright Office has communicated with the claimant relating to the application and the claimant makes the request as part of a response to the communication from the Office; or

(ii) If the Register determines that good cause exists to entertain a request prior to the issuance of a certificate of registration;

(2) With respect to a transfer of copyright ownership or other document submitted for recordation pursuant to 17 U.S.C. 205, no later than one year after the date on which the person submitting the transfer or document receives the certificate of recordation;

(3) With respect to any other material, no later than one year after the date on which the material was actually received in the Copyright Office.

(d) In cases in which a certificate or registration or a certificate of recordation has already been issued, the original certificate must be returned to the Copyright Office along with the request.

(e) For purposes of paragraph (b) of this section, satisfactory evidence shall consist of:

(1) A receipt from the United States Postal Service indicating the date on which the United States Postal Service received material for delivery to the Copyright Office by means of first class mail, Priority Mail or Express Mail;

(2) A receipt from a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, indicating the date on which the delivery service received material for delivery to the Copyright Office and

(i) The date on which delivery was to be made to the Copyright Office, or

(ii) The period of time (e.g., overnight, or 2 days) from receipt by the delivery service to the date on which delivery was to be made to the Copyright Office;

(3) Other documentary evidence which the Register deems equivalent to the evidence set forth in paragraphs (e)(1) and (2) of this section; or

(4) A sworn statement from a person with actual knowledge of the facts relating to the attempt to deliver the material to the Copyright Office, setting forth with particularity facts which satisfy the Register that in the absence of the general disruption or suspension of postal or other transportation or communications services, the material would have been received by the Copyright Office by a particular date.

(f) For purposes of paragraph (b) of this section, the Register shall presume that but for the general disruption or suspension of postal or other transportation or communications services,

(i) Materials deposited with the United States Postal Service for delivery by means of first class mail would have been received in the Copyright Office seven days after deposit with the United States Postal Service;

(ii) Materials deposited with the United States Postal Service for delivery by means of Priority mail would have been received in the Copyright Office three days after deposit with the United States Postal Service;

(iii) Materials deposited with the United States Postal Service for delivery by means of Express mail would have been received in the Copyright Office one day after deposit with the United States Postal Service;

(iv) Materials deposited with a delivery service such as, or comparable to, United Parcel Service, Federal Express, or Airborne Express, would have been received in the Copyright Office on the date indicated on the receipt from the delivery service.

(g) Requests pursuant to paragraph (b) of this section shall be addressed to: Chief, Copyright Office Receiving & Processing Division, Copyright Office, and if delivered by hand they should be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room 401, First and Independence Avenue, SE., Washington, DC. If mailed, the request should be addressed to Chief, Receiving & Processing Division, P.O. Box 71380, Washington, DC 20024–1380.

Dated: November 26, 2001.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 01–30013 Filed 12–3–01; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[HIO62–OPP; FRL–7111–5]

Clean Air Act Full Approval of the Operating Permits Program; State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the State of Hawaii's operating permits program. Hawaii's program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On December 1, 1994 EPA granted interim approval to the Hawaii operating permits program. Hawaii revised its program to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on October 15, 2001. EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the State of Hawaii's operating permits program.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the Hawaii submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, and Oahu: Clean Air Branch, Department of Health, 919 Ala Moana Blvd., Room 203, Honolulu.

FOR FURTHER INFORMATION CONTACT: Robert Baker, EPA Region IX, at (415) 972–3979 (*Baker.Robert@epa.gov*).

SUPPLEMENTARY INFORMATION: This section contains additional information about our final rulemaking, organized as follows:

I. Background on the Hawaii operating permits program.
II. Comments received by EPA on our proposed rulemaking and EPA's responses.
III. EPA's final action.
IV. Effective date of EPA's full approval of the Hawaii operating permits program.

I. Background on the [District/State] Operating Permits Program

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain federal criteria. The State of Hawaii's operating permits program was submitted in response to this directive. Because the State's program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on December 1, 1994 (59 FR 61549). The interim approval notice described the conditions that had to be met in order for the State program to receive full approval.

After Hawaii revised its program to address the conditions of the interim approval, EPA promulgated a proposal to approve Hawaii's Title V operating permits program on October 15, 2001 (66 FR 52368).

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses

EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the State of Hawaii's operating permits program.

III. EPA's Final Action

EPA is granting full approval to the operating permits program submitted by the State of Hawaii based on the revisions submitted on September 21, 2001, which satisfactorily address the program deficiencies identified in EPA's July 26, 1994 interim approval (see 59 FR 37957). In addition, the State has made other changes to its operating permit program that are unrelated to the changes made to correct interim approval deficiencies. EPA is not taking any action on these additional program changes in this notice. EPA will evaluate the additional program changes and will take appropriate action at a later date.

IV. Effective Date of EPA's Full Approval of the Hawaii Operating Permits Program

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the State's program effective on November 30, 2001. In relevant part, section 553(d) provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule. Good cause may be supported by an agency determination that a delay in the effective date is ''impracticable, unnecessary, or contrary to the public interest.'' EPA believes that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The interim approved program expires on December 1, 2001. In the absence of this approved program taking effect on November 30, the federal program would automatically take effect and would remain in place until the effective date of the fully-approved state/district program. EPA believes it is in the public interest for sources, the public and the State to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because the State of Hawaii has been administering the Title V permit program for seven years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially but did not fully meet the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state approved program and the federal program. Finally, sources are already complying with all of the newly approved requirements as a matter of state law. Thus, there is little or no additional burden with complying with these requirements under the federally approved program.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not

contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR Part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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.

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 27, 2001.

Wayne Nastri,

Regional Administrator, Region 9.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (b) under Hawaii to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Hawaii

* * * * *

(b) Revisions were submitted on September 21, 2001. The rule amendments contained in the September 21, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1994. The Department of Health, State of Hawaii, is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01–29959 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IL; FRL–7112–1]

Clean Air Act Final Full Approval of the Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to fully approve the Illinois Clean Air Act Permit Program (CAAPP), 415 ILCS 5/39.5, submitted by Illinois pursuant to subchapter V of the Clean Air Act, which requires states to develop and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: The effective date of this action is November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Steve Marquardt at (312) 353–3214 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 353–3214, E-Mail Address: marquardt.steve@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What is involved in this final action?
What is the scope of EPA's full approval?

What Is Being Addressed in This Document?

As required under Subchapter V, generally known as title V, of the Clean Air Act (''the Act''), as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to title V, and EPA's implementing regulations, states developed and submitted to EPA programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state's operating permit program by the expiration of its interim approval period, a federal program under 40 CFR part 71 will automatically take effect in that state.

EPA promulgated final interim approval of the Illinois title V program on March 7, 1995 (60 FR 12478), and the program became effective on that date.

Illinois submitted amendments to its title V program for approval on May 31, 2001. Illinois intended the amendments to correct the four interim approval issues identified in the March 7, 1995 interim approval action. EPA proposed full approval of the Illinois title V program on October 22, 2001 (66 FR 53370), based on the resolution of the four identified interim approval issues.

In the October 22, 2001 notice, the EPA stated that Illinois needed to make two form clarifications as well as send a letter regarding its understanding of its ability to use the State's enhanced NSR provision at 415 ILCS 5/39.5(13)(c)(v). Illinois sent a letter dated November 9, 2001, to address the clarifications and changes requested in the proposed full approval.

The first form change dealt with identifying specific requirements applicable to insignificant emission units (IEUs). EPA stated that, prior to receiving full approval, Illinois must clarify that applicants must include in their applications all information on IEUs necessary to determine applicability of and compliance with specific requirements. Illinois has added text to the instructions of its application form 297–CAAPP to clarify that sources must provide information regarding specific applicable requirements which apply to IEUs, and compliance of the IEUs with those specific applicable requirements.

The second form change and additional statements dealt with Illinois' enhanced NSR provision at 415 ILCS 5/39.5(13)(c)(v). The EPA stated that, to assure that Illinois will not use this provision, Illinois will amend the State's administrative amendment application form, 273–CAAPP, to delete the category that enables a source to take advantage of incorporation of a construction permit through administrative amendment procedures. Illinois has deleted from application form 273–CAAPP the statement regarding the ability to incorporate a construction permit into the title V permit through the administrative amendment procedures. Additionally, in the November 9 letter submitted by Illinois, the State expressed that it would not use this option until the proper procedures are in place. Specifically, Illinois stated, ''the Illinois EPA understands that in order to use the enhanced NSR process, as described in 40 CFR 70.7(d)(1)(v), we must develop and obtain USEPA approval for program regulations which are substantially equivalent to the procedural requirements of 40 CFR 70.7 and 70.8 and compliance requirements substantially equivalent to those contained in 40 CFR 70.6.'' These form changes and clarifications provide adequate responses to the issues raised in the October 22, 2001 proposed full approval.

What Is Involved in This Final Action?

The EPA is granting full approval of the Illinois title V operating permits program based on the revisions submitted on May 31, 2001 and the previously mentioned November 9, 2001 letter. These revisions and clarifications satisfactorily address the four program deficiencies identified in EPA's March 7, 1995, interim approval rulemaking and the clarifications required in the proposed full approval.

What Is the Scope of EPA's Full Approval?

In its program submission, Illinois did not assert jurisdiction over Indian country. To date, no tribal government in Illinois has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

Citizen Comment Letter on Illinois' Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

One citizen group commented on what it believes to be deficiencies with respect to the Illinois title V program. As stated in the **Federal Register** notice published on October 22, 2001 (66 FR 53370), proposing to fully approve Illinois' operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we

determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded in writing to these comments and how the public may obtain a copy of our response. EPA Region 5 will also post its response letters on the Internet at *http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments.* EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies.

Administrative Requirements

A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval is also not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Illinois' Title V Program?

EPA's approval of Illinois' title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take

effect before December 1, 2001. The EPA's interim approval of Illinois' program expires on December 1, 2001. In the absence of this full approval of Illinois' amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Illinois and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Illinois to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because Illinois has been administering the title V permit program under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

C. What Is the Scope of EPA's Full Approval?

In its program submission, Illinois did not assert jurisdiction over Indian country. To date, no tribal government in Illinois has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region V.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for Illinois to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Illinois

* * * * *

(b) The Illinois Environmental Protection Agency: program revisions submitted on May 31, 2001; submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. Illinois is hereby granted final full approval effective November 30, 2001.

* * * * *

[FR Doc. 01–29960 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI; FRL–7111–6]

Clean Air Act Final Full Approval Of Operating Permit Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to fully approve the operating permit program submitted by the state of Michigan. Michigan submitted its operating permit program pursuant to subchapter V of the Clean Air Act (Act), which requires that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Please contact the person listed below to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–2703, *valenziano.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What is involved in this final action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Act, EPA has promulgated regulations that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, or withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states and local permitting authorities developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state operating permit program by the expiration of its interim approval period, EPA must establish and implement a federal operating permit program under 40 CFR part 71.

The Michigan Department of Environmental Quality (MDEQ) submitted the state's title V operating permit program for approval on May 16, 1995, with supplements submitted on July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996. The EPA promulgated interim approval of the Michigan title V program on January 10, 1997 (62 FR 1387), finding that Michigan's program substantially, but not fully, met the requirements of title V and part 70 and identifying certain deficiencies that Michigan would need to correct. The interim approved program became effective on February 10, 1997. Subsequently, EPA extended Michigan's title V interim approval period on several occasions, most recently to December 1, 2001 (65

FR 32036). On June 18, 1997, EPA granted Michigan source category limited interim approval, approving Michigan's 4-year initial permit issuance schedule (62 FR 34010). Source category limited interim approval allows EPA to approve an initial state permit issuance schedule up to 2 years past the 3-year phase in period required by 40 CFR 70.4(b)(11)(ii).

The MDEQ submitted revisions to its title V program for EPA approval on June 1, 2001, and submitted a supplemental package on September 20, 2001. The submittals included corrections to the deficiencies identified in the January 10, 1997 interim approval action, and also included additional program revisions and updates. Based on the interim approval corrections contained in the submittals, EPA proposed full approval for the Michigan title V program on October 30, 2001 (66 FR 54737). The EPA did not receive any public comments on the proposal. The EPA is taking final action to grant full approval to the Michigan title V program.

What Is Involved in This Final Action?

The EPA is granting full approval of the operating permit program submitted by Michigan based on the interim approval corrections submitted on June 1, 2001, and the supplemental package submitted on September 20, 2001. These revisions satisfactorily address the program deficiencies identified in EPA's January 10, 1997 interim approval rulemaking.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** notice.

The EPA received two timely comment letters pertaining to the Michigan title V program. As stated in the **Federal Register** notice published on October 30, 2001 proposing to fully approve Michigan's operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on Michigan's program and other programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. Consistent with these time frames, EPA also will publish a notice of deficiency (NOD) if EPA determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that EPA has identified through its program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies. EPA Region 5 will post its response letters on the Internet at *http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments.* EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. EPA will also publish a national notice of availability in the **Federal Register** notifying the public that EPA has responded in writing to the commenters and explaining how the public may obtain a copy of EPA's responses.

Administrative Requirements

A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval is also not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to

use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Michigan's Title V Program?

The EPA's approval of Michigan's title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Michigan's prior program expires on December 1, 2001. In the absence of this full approval of Michigan's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Michigan and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Michigan to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because MDEQ has been administering the title V permit program for nearly five years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

C. What Is the Scope of EPA's Full Approval?

In Michigan's final interim approval (62 FR 1387, January 10, 1997), EPA did not approve the state's program in Indian country. Similarly, this final full approval, which only addresses the state's interim approval corrections, also does not approve Michigan's operating permit program in Indian country. To date, no tribal government in Michigan has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (a)(3) to the entry for Michigan to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Michigan

(a) * * *

(3) Department of Environmental Quality: interim approval corrections submitted on June 1, 2001 and September 20, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Michigan is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01–29965 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI; FRL–7111–8]

Clean Air Act Final Full Approval of Operating Permit Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is taking final action to fully approve the operating permit program submitted by the state of Wisconsin. Wisconsin submitted its operating permit program pursuant to subchapter V of the Clean Air Act (Act), which requires that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Beth Valenziano at (312) 886–2703, or Susan Siepkowski at (312) 353–2654 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano or Susan Siepkowski, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Numbers: (312) 886–2703, and (312) 353–2654, respectively, E-Mail Addresses: *valenziano.beth@epa.gov,* and *siepkowski.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What is involved in this final action?

I. What Is Being Addressed in This Document?

As required under Subchapter V of the Act, EPA has promulgated regulations that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states and local permitting authorities developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of its interim approval period, EPA must establish and implement a federal Operating permit program under 40 CFR part 71.

The state of Wisconsin submitted its title V operating permits program for approval on January 27, 1994. The EPA promulgated interim approval of the Wisconsin title V program on March 6, 1995 (60 FR 12128), finding that Wisconsin's program substantially, but not fully, met the requirements of title V and part 70 and identifying certain deficiencies that Wisconsin would need to correct. The interim approved program became effective on April 5, 1995. Subsequently, EPA extended Wisconsin's title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

Wisconsin submitted revisions to its title V program for EPA approval on March 28, 2001, and submitted supplemental packages on September 5, 2001 and September 17, 2001. The submittals included corrections to the deficiencies identified in the March 6, 1995 interim approval action and also included additional program revisions and updates. Based on the interim approval corrections contained in the submittals, EPA proposed full approval for the Wisconsin title V program on October 30, 2001 (66 FR 54734). The EPA received no public comments on the proposal. The EPA is taking final action to grant full approval to the Wisconsin title V program.

What Is Involved in This Final Action?

The EPA is granting full approval of the operating permit program submitted by Wisconsin based on the interim approval corrections submitted on March 28, 2001, and supplemental packages submitted September 5, 2001 and September 17, 2001. These revisions satisfactorily address the program deficiencies identified in EPA's March 6, 1995 interim approval rulemaking.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permit programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** notice.

The EPA received one timely comment letter pertaining to the Wisconsin title V program. As stated in the **Federal Register** notice published on October 30, 2001 proposing to fully approve Wisconsin's operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on Wisconsin's program and other programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. Consistent with these time frames, EPA also will publish a notice of deficiency (NOD) if EPA determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that EPA has identified through its program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies. EPA Region 5 will post its response letters on the Internet at http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments. EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. EPA will also publish a national notice of availability in the **Federal Register** notifying the public that EPA has responded in writing to the commenters and explaining how the public may obtain a copy of EPA's responses.

Administrative Requirements

A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Wisconsin's Title V Program?

The EPA's approval of Wisconsin's title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Wisconsin's prior program expires on December 1, 2001. In the absence of this full approval of Wisconsin's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Wisconsin and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Wisconsin to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because WDNR has been administering the title V permit program for over five years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

C. What Is the Scope of EPA's Full Approval?

In Wisconsin's final interim approval (60 FR 12128, March 6, 1995), EPA did not approve the state's program in Indian country. Similarly, this final full approval, which only addresses the state's interim approval corrections, also does not approve Wisconsin's operating permit program in Indian country. To date, no tribal government in Wisconsin has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in

non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising the entry for Wisconsin to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Wisconsin

(a)(1) Department of Natural Resources: Submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires December 1, 2001.

(2) Department of Natural Resources: Interim approval corrections submitted on March 28, 2001, September 5, 2001, and September 17, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Wisconsin is hereby granted final full approval effective on November 30, 2001.

(b) [Reserved]

* * * * *

[FR Doc. 01–29964 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2001–01a; FRL–7112–3]

Clean Air Act Full Approval of Operating Permit Program; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final full approval.

SUMMARY: EPA is taking final action to grant full approval of the District of Columbia's (the District's) operating permit program. The District's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required each State to develop, and submit to EPA, a program for issuing operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. The EPA granted final interim approval of the District of Columbia's operating permit program on August 7, 1995. The District amended its operating permit program to address deficiencies identified in the interim approval action and this final rule approves those amendments. The EPA proposed full approval of the District of Columbia's operating permit program in the **Federal Register** on October 16, 2001. This final rulemaking action summarizes the adverse comments submitted on the October 16, 2001 proposal, provides EPA's responses, and promulgates final full approval of the District of Columbia's operating permit program.

DATES: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, Permits and Technical Assessment Branch at (215) 814–2167 or by e-mail at *pandya.perry@.epa.gov.*

SUPPLEMENTARY INFORMATION: On May 21, 2001, August 30, 2001, and September 26, 2001, the District of Columbia submitted amendments to its operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What is the District's operating permit program?
Why is EPA taking this action?
What were the concerns raised by the commenters?
What action is being taken by EPA?
What is the effective date of EPA's full approval of the District's operating permit program?
What is the scope of EPA's full approval?

What Is the District's Operating Permit Program?

The Clean Air Act (CAA or the Act) Amendments of 1990 required all States (including the District) to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in the EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40

CFR part 70, EPA granted interim approval contingent upon the State revising its program to correct the deficiencies. Because the District's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval of the District's program in a rulemaking published on August 7, 1995 (60 FR 40101). The interim approval notice described the conditions that had to be met in order for the District's operating permit program to receive full approval. On May 21, 2001,August 30, 2001, and September 26, 2001, the District of Columbia submitted amendments to its operating permit program to EPA to address its outstanding interim approval deficiencies.

The District fulfilled the conditions of the interim approval and EPA published a direct final rule on October 16, 2001 (66 FR 52538) granting full approval of the District of Columbia's operating permit program. However, in a letter dated November 15, 2001, EarthJustice submitted adverse comments on behalf of the District of Columbia Chapter of the Sierra Club in response to the companion proposal notice that was also published on October 16, 2001 (66 FR 52561). The October 16, 2001 direct final rule has, therefore, been withdrawn.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice. That notice was published in the **Federal Register** on December 11, 2000 (65 FR 77376).

The EarthJustice Legal Defense Fund commented on what they believe to be deficiencies with respect to the District of Columbia's title V program. As stated in the **Federal Register** notice published on October 16, 2001 (66 FR 52538) proposing to fully approve the District of Columbia's operating permit program, EPA takes no action on those comments in this final rule. Rather, EPA expects to respond by December 14, 2001 to timely public comments on programs that have obtained interim approval. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter, in writing, to explain our reasons for not making a finding of deficiency. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded, in writing, to these comments and how the public may obtain a copy of our response. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if we or a citizen identifies other deficiencies.

What Were the Concerns Raised by the Commenters?

As previously stated, EPA received one comment letter during the public comment period. EarthJustice provided comments on behalf of the District of Columbia Chapter of the Sierra Club in a letter dated November 15, 2001. In its November 15, 2001 letter, EarthJustice incorporated, by reference, prior comments it had provided to EPA pursuant to other actions taken by the Agency regarding the District of Columbia's operating permit program. Those comments incorporated a letter dated March 12, 2001commenting in response to the **Federal Register** notice published by EPA on December 11, 2000 (65 FR 77376). A copy of this letter is included in the docket of this final rulemaking maintained at the EPA Region III office. The following summarizes the comments raised in EarthJustice's November 15, 2001 letter and provides EPA's responses.

Comment: The commenter indicates that EPA cannot grant full approval of the District of Columbia title V operating permit program unless the program fully complies with all requirements of title V and EPA's implementing rules, and without first requiring the District to address all alleged deficiencies identified by EarthJustice in its prior comment letters.

Response: EPA is aware that comments have been made regarding alleged deficiencies other than those listed in the District of Columbia's August 7, 1995 final interim approval (60 FR 40101) and March 21, 1995 proposed interim approval (60 FR 14921). EPA agrees that these allegations must be addressed through appropriate actions by both the District and EPA. For the reasons discussed below, however, we disagree that newly alleged or other identified deficiencies prohibit EPA from granting full approval of the District of Columbia's operating permit program at this time.

In 1990, Congress amended the Act, 42 U.S.C. subsections 7401 to 7671q, by adding title V, 42 U.S.C. subsections 7661 to 7661f, which requires certain air pollutant emitting facilities, including ''major source[s]'' and ''affected source[s],'' to obtain and comply with operating permits. *See* 42 U.S.C. subsection 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. *See* 42 U.S.C. subsection 7661a(a). EPA is charged with overseeing the State's efforts to implement an approved program, including reviewing proposed permits and objecting to improper permits. *See* 42 U.S.C. subsections 7661a(i) and 7661d(b). Accordingly, title V of the CAA provides a framework for the development, submission and approval of State operating permit programs. Following the development and submission of a State program, the Act provides two different approval options that EPA may utilize in acting on State submittals. *See* 42 U.S.C. subsection 7661a(d) and (g). Pursuant to section 502(d), EPA ''may approve a program to the extent that the program meets the requirements of the Act * * *'' EPA may act on such program submittals by approving or disapproving, in whole or in part, the State program. An alternative option for acting on State programs is provided by the interim approval provision of section 502(g). This section states: ''If a program * * * substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval.'' This provision provides EPA with the authority to act on State programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR subsection 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to ''specify the changes that must be made before the program can receive full approval.'' 42 U.S.C. subsection 7661a(g); 40 CFR subsection 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a State corrects the specified deficiencies then it will be eligible for full program approval. EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as

such in proposing to grant interim approval.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a State operating permit program full approval until the State has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a State program full approval if the State has corrected those issues that the EPA identified in the final interim approval. The central question, therefore, is whether the District of Columbia, by virtue of correcting the deficiencies identified in the final interim approval, is eligible at this time for full approval, or whether the District must also correct any newly alleged or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. *See Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870–71. Whenever possible, the agency's interpretation should not render any of the provisions null or void. *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. *See* Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never envisioned by Congress. *Citizens to Save Spencer County*, 600 F.2d at 870.

In this situation, in order to give effect to the principles embodied in title V of the CAA that major stationary sources of air pollution be required to have an operating permit that conforms to certain statutory and regulatory requirements, and that operating permit programs be administered and enforced by State permitting authorities, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant the District full approval in this situation while working simultaneously with the District, in its oversight capacity, on any additional problems that have been or may be identified. To conclude otherwise would disrupt the current administration of the State program and cause further delay in the District of Columbia's ability to issue operating permits to major stationary sources. A smooth transition from interim approval to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V of the CAA.

Furthermore, requiring the District to fix all of the deficiencies that have been alleged or formally identified in the past year in order to receive full approval runs counter to the established regulatory process that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the Act and 40 CFR subsections 70.4(i) and 70.10 provides EPA with the authority to issue NODs whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing an approved part 70 program, or that the State's permit program is inadequate in any other way. Consistent with these provisions, any NOD issued by EPA will specify a reasonable time-frame for the permitting authority to correct the identified deficiency. The interim approval status of the District of Columbia's title V operating permit program expires on December 1, 2001. This deadline would not provide adequate time for the District to correct any newly identified issues prior to the expiration of interim approval. Allowing the District of Columbia's program to expire because of issues alleged as recently as March 2001 and November 2001 will cause disruption and further delay in the issuance of permits to major stationary sources in the District. As explained previously, we do not believe that title V of the Act requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received interim approval but prior to being granted full approval is the notice of program deficiency or administration deficiency as discussed herein. It should be noted that notices of deficiency (NODs) may also be issued by EPA after a program has been granted full approval. Following the defined process for the identification of deficiencies and the issuance of NODs will provide the District of Columbia an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire State operating permit program. As a result, addressing any newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, if EPA determines that any of the alleged deficiencies in the District of Columbia's program are well-founded, it will issue a NOD and place the District on notice that it must promptly correct the non-interim approval deficiencies within a specified time period or face CAA sanctions and withdrawal of program approval. At this time, EPA is still evaluating some of the deficiencies alleged by the commenter and others and will, in the very near future, respond to those allegations in a separate action. The comments EPA received from EarthJustice on March 12, 2001 will be considered when taking that separate action. EPA may issue NODs for any other deficiencies identified through EPA's oversight of the District's operating permits program at any time.

Therefore, EPA disagrees with the commenter that EPA must consider all alleged deficiencies prior to granting full approval of the District of Columbia's operating permit program. The proper administrative procedures have been followed to allow interested parties an opportunity to identify any concerns they may have with the various aspects of the District's title V operating permit program. EPA will address those concerns in the context of the relevant rulemaking or administrative actions, including this final rule granting full approval of the District of Columbia's operating permit program; the proposed rulemaking action approving any revisions to the District of Columbia's program; and as part of the process of responding to public comments pursuant to the December 11, 2000 notice (65 FR 77376).

Comment: The commenter indicates that EPA cannot grant full approval of the District of Columbia's title V operating permit program because the program excludes changes reviewed under minor new source review from the definition of Title I modifications.

Response: EPA, in its proposed interim approval, indicated that a revision of the 20 DCMR 399.1 Definition of Title I Modification or modification under any provision of Title I of the Act to include changes reviewed under minor new source review would be required only if EPA established such a change in definition through rulemaking. Because EPA has yet to revise the definition of a ''Title I modification'' to include changes subject to minor new source review, the District's current regulations remain consistent with 40 CFR part 70. Although EPA believes that the better

interpretation of ''Title I modifications'' is to include changes reviewed under a minor source preconstruction review program, EPA does not believe it is appropriate to require the District to change the definition until EPA completes its rulemaking on this provision.

Should EPA revise this definition in the future, the District will be required to revise its regulations as appropriate. As stated in EPA's proposed interim approval (March 21, 1995, 60 FR 14921), EPA did not identify the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' as necessary grounds for either interim approval or disapproval. Accordingly, EPA has not identified the District's definition of this term to be a program deficiency.

Comment: The commenter stated that the District of Columbia's regulation 20 DCMR 302.4(e)(1) only required that a request for coverage under a general permit ''provide any additional information the general permit specifies.''

Response: The quoted provision is only a portion of 20 DCMR 302.4(e)(1). Section 302.4(e)(1) also provides, among other things, that ''a request for coverage under a general permit shall provide information sufficient to demonstrate that the source is in compliance with the general permit.'' Title 20 DCMR 302.4(e), read in its entirety, satisfies 40 CFR 70.6(d)(2) requiring that the request for coverage under a general permit include all information necessary to assure compliance with the general permit. 20 DCMR 302.4(e) therefore corrects the interim approval deficiency.

Comment: The commenter asserts that although the District revised 20 DCMR 303.3(a) regarding the applicability of public participation and EPA review to the entire draft renewal permit (including those portions which are incorporated by reference), the revised provision does not require that public participation and EPA and affected state review will extend to anything other than the provisions being revised.

Response: 20 DCMR 303.3(a) clearly states that ''applications for permit renewal shall be subject to the *same procedural requirements*, including those for public participation, affected State comment, and Administrator's review, *that apply to initial permit issuance* under section 303.1.'' Section 303.3(a) further provides that an application for permit renewal may address only those portions of the permit that require revision, supplementing, or deletion, *incorporating the remaining permit terms by reference from the previous permit.* Because the ''remaining permit terms'' are to be incorporated by reference, they become a part of the permit renewal which is subject to the same procedural requirements that apply to initial permit issuance. Therefore, public participation and EPA and affected State review will apply to the entire renewal permit, including those portions which are incorporated by reference. This is consistent with 40 CFR 70.7(c)(1)(i).

Comment: The commenter indicates that the District's addition of 20 DCMR 303.5(d)(1)(E) is inadequate to correct the significant permit modification interim approval deficiency. 20 DCMR 303.5(d)(1)(E) requires that significant modification procedures shall be used for applications requesting permit modifications that do not qualify as administrative permit amendments under 303.4(a) or minor permit modifications under 303.5(b). The commenter states that 303.5(d)(1)(A), (B), (C), (D) and (E) are not listed in the alternative, and therefore permittees may argue that significant modification procedures are required only where all of the conditions in 303.5(d)(1)(A) through (E) are met.

Response: EPA interprets 20 DCMR 303.5(d)(1)(A), (B), (C), (D) and (E) as independent provisions such that if any one of the requirements in those provisions are met, the significant permit modification procedures would have to be followed. EPA similarly interprets the minor permit modification procedures provisions in the Federal regulation at 40 CFR 70.7(e)(2)(i)(A). EPA reads 40 CFR 70.7(e)(2)(i)(A)(1), (2), (3), (4), (5) and (6) as independent provisions even though the word ''and'' appears between 70.7(e)(2)(i)(A)(5) and (6). Therefore, EPA believes that the District of Columbia has corrected the interim approval issue relating to significant permit modification procedures.

Comment: The commenter indicates that the District's changes to its public notice requirements are deficient as the District had already issued all 35 title V permits within its jurisdiction. The commenter also asserts that the District's revised public notice rule is still deficient because it does not require notice ''by other means if necessary to assure adequate notice to the affected public.''

Response: During the permit issuance process, adequate procedures for public notice were followed by the District, including offering an opportunity for public comment and a hearing on the draft permits. Notice was given in the District of Columbia Register, and public hearings were held on each draft title V permit. There is no outstanding action on any of the issued title V permits. Although the District did not have the requirement to provide for sending notice to persons on a mailing list (including those people who request in writing to be on the list), this has been corrected with the revision of the public participation procedures of 20 DCMR subsection 303.10(a). During the process of issuing the 35 title V permits within the District, no one from the public requested to be on a mailing list. The revisions to 20 DCMR subsection 303.10(a) require notice of all future title V permit renewals and significant permit modifications to be sent to those individuals who are now on the District's mailing list. Moreover, the District has added information to its website, located at www.environ.state.dc.us which provides members of the public with an opportunity to have their name added to the District's title V permitting mailing list. Through these actions, the District has adequately addressed the deficiency identified in EPA's proposed interim approval.

With regard to the comment that the District's revised public notice rule is still deficient because it does not require notice ''by other means if necessary to assure adequate notice to the affected public'', the District, in fact, does provide notice by other means as it has established online information on dates of public hearings, title V permits, contact phone numbers, etc. Furthermore, the District of Columbia made amendments to its regulations to address interim approval issues identified by EPA. In the proposed and final actions granting interim approval of the District of Columbia's program (March 21, 1995, 60 FR 14921 and August 7, 1995, 60 FR 40101, respectively), EPA fulfilled its obligation under section 502(g) of the CAA by specifying the changes the District of Columbia must make to its program in order to receive full approval. 42 U.S.C. subsection 7661a(g); 40 CFR subsection 70.4(e)(3). EPA directed the District to amend 20 DCMR 303.10(a) to require that notice be sent to persons on a mailing list (including those people who request in writing to be on the list). As instructed by EPA, the District amended 20 DCMR 303.10(a) to include this requirement. Therefore, the District has met its statutory obligation under section 502(g) of the CAA to make changes to its operating permit program as specified by EPA and, consequently, its program may now receive full approval.

EPA did not identify any concerns with respect to requiring that the

District also modify 20 DCMR 303.10(a) to include a requirement for notice ''by other means if necessary to assure adequate notice to the affected public''. Therefore, in its November 15, 2001 comment letter, EarthJustice is expressing a concern with the District's public notice rule that was not identified by EPA or any other interested party prior to EPA's interim approval in 1995. As discussed previously, the District's receipt of full approval of its operating permit program is contingent upon it successfully correcting its regulations as directed by EPA in the March 21, 1995 and August 7, 1995 notices granting interim approval and not the correction of all deficiencies alleged or identified after interim approval was granted. Because the scope of today's action is limited to the District's correction of its interim approval deficiencies, this comment is not germane and EPA does not address it here.

EPA, however, will carefully consider EarthJustice's concerns regarding the impact of 20 DCMR 303.10(a) on the District's operating permit program and determine whether or not a NOD is warranted. Any such NOD will be issued in an action separate from this full approval.

Comment: The commenter indicates that the District's regulations provide for use of the incorrect value for the Consumer Price Index (CPI) in 20 DCMR 305.2(b) to calculate annual permit fees.

Response: In fact, this is not the case. As stated in 20 DCMR 305.2(a) ''The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31st of each calendar year.'' Then 20 DCMR 305.2(b) goes on to say ''The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used. The Consumer Price Index for all urban consumers for the month of August 1989 is one hundred twenty-four and six tenths (124.6).'' The statements made in these regulations are correct. The commenter's assertion that ''Section 305.2(b) continues to show 124.6 as the *base year index* for calculating fee increases' is incorrect. Although, 305.2(b) states that the August 1989 CPI is 124.6, this provision requires that the calendar year 1989 CPI shall be used as the base year index. As required by 20 DCMR 305.2(a), the District adjusts the annual fee based on the CPI-Urban Index that represents the 12-month average from September through August of the previous year. The District uses the same presumptive minimum fee that is computed by EPA each year. The commenter's remarks may have been relevant several years ago, however, it is highly improbable that a permittee would go back 12 years to adjust the CPI, when in practice, each title V source in the District is provided the updated adjusted annual fee calculation each year by the District's Air Quality Division. With this clarification, the District of Columbia's program is consistent with 40 CFR 70.9(b)(2)(iv).

Comment: The commenter states that the District of Columbia's Corporation Counsel did not cite to legislative authority that the Mayor can create a right of action in court and that the power to confer judicial jurisdiction and create judicial causes of action is traditionally reserved to the legislature (here either the Counsel or Congress).

Response: In the interim approval, EPA had requested that Corporation Counsel revise its opinion to reference existing provisions in District of Columbia law which satisfy the requirements of 40 CFR 70.11(a)(1) and (2), or establish authorities to restrain or enjoin immediately permit violators presenting substantial endangerment, and to seek injunctive relief for program and permit violations without the need for prior revocation of the permit. The District satisfied this requirement by citing to numerous provisions to establish such authority under its regulations. The District's legislative authority for these actions already existed in section 4(b) of the District of Columbia's Air Pollution Control Act enacted by Congress on July 30, 1968 (P.L. 90–440) which provides that ''[f]or the purpose of carrying out his duties under this act, the Commissioner [now the Mayor] may * * * (2) issue such orders as may be necessary to enforce the regulations prescribed by the Counsel under this Act and enforce such orders by all appropriate administrative and judicial proceedings, including injunctive relief; (3) hold hearings relating to the administration of this Act;* * * and (6) take any other actions which may be necessary to carry out his duties under this Act''. After Congress granted the District limited home rule by enacting the District of Columbia Home Rule Act on December 24, 1973 (Pub. L. 93–198), the enactments of Congress remained in force until amended by the Council. The Council of the District of Columbia subsequently re-enacted the same provision in D.C. Law 5–165, effective March 15, 1985, among other things, to amend it to reflect that the Mayor now serves as the chief executive officer. This authority is sufficient to meet the requirements of 70.11(a)(1) and (2).

Comment: The commenter states that criminal offenses and fines can only be set by the legislature and that Corporation Counsel has not cited any legislative authority for seeking criminal fines for violations of the District's operating permit program. The commenter also references Corporation Counsel's statement that 20 DCMR section 105.2 does not provide the Mayor with authority for criminal enforcement of the Air Pollution Control Act to support a proposition that the District lacks the criminal authority.

Response: The District, in Corporation Counsel's amended opinion, cited numerous provisions to establish such authority under the District's regulations. In addition, the authority to seek criminal fines already existed in D.C. Law 5–165, section 3, which enacted the first 9 chapters of Title 20 of the District of Columbia Municipal Regulations as the Air Quality subtitle. The provisions in sections 105.1 and 105.2 (subsequently renumbered 105.5) establish criminal penalties for air quality violations. Section 105.1 of D.C. Law 5–165 provides, in pertinent part, that each person who fails to comply with any of the provisions of this subtitle shall be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed ninety days, or both. Section 105.5 of D.C. Law 5–165 provides, in pertinent part, that each day of violation shall constitute a separate offence and the penalties described shall be applicable to each separate offense.

EPA believes that the commenter incorrectly concludes that Corporation Counsel's statement that 20 DCMR Section 105.2 does not provide the Mayor with authority for criminal enforcement of the Air Pollution Control Act is supportive of its (the commenter's) proposition that the District lacks the criminal authority. Corporation Counsel was noting that 105.2 is the incorrect provision to reference for the criminal authority and that Sections 105.1 and 105.5 are the correct provisions that established such authority. The District of Columbia has resolved the interim approval issue regarding criminal enforcement.

Comment: The commenter states that the District has not:

(a) Demonstrated that title V fees are adequate to cover compliance and enforcement activities;

(b) Shown how they will monitor and track source compliance;

(c) Committed to submission of annual enforcement reports;

(d) Reviewed self-monitoring reports; and

(e) Shown how it will follow up on violations.

Response: With regard to (a), the District has documented to EPA that time spent on title V activities by clerical staff, engineers and supervisors (in both the Engineering & Planning Branch (EPB) and the Compliance & Enforcement Branch (CEB)) are being tracked and accounted for appropriately as title V fees. In addition, the District's title V account shows a surplus, which demonstrates that title V fees are more than adequate to cover compliance and enforcement activities. Section IV of the District's original title V program submittal (dated January 13, 1994), states that ''District law provides authority for the Administrator of the Environmental Regulation Administration to assess and collect annual permit fees (or the equivalent amount of fees over some other period of time) from sources within the District which are subject to the requirements of title V of the CAA and 40 CFR part 70, in an amount sufficient to cover all reasonable direct and indirect costs required to develop, administer, and enforce the District's title V program.'' The District authority's is provided in 20 DCMR Sections 302.1(h) and 305.

With regard to (b), the District has committed to monitor and track source compliance through the ''Air Quality Inspection/Compliance Monitoring Plan'' which it has submitted to EPA. The most recent plan submitted to EPA is dated October 1, 2001. The plan identifies inspection objectives and targets title V air pollution sources for inspection, and sets out criteria for determining which minor sources within the District will be inspected.

With regard to (c), the submission of annual enforcement reports, the commenter asserts that the requirement is not satisfied merely by submission of information to the Aerometric Information Retrieval System/AIRS Facility Subsystem (AIRS/AFS). In addition to AIRS/AFS, the District submits enforcement reports to EPA on a semi-annual and annual basis. These reports were submitted in April 2001 and October 2001. The report entitled, ''Compliance and Enforcement Activities and Accomplishments—Year End 2001 Report'' contains information on High Priority Violators, as well as the dates that inspections were conducted at all title V sources in the District. In addition, the District participates in quarterly enforcement program reviews with EPA.

With regard to (d), the review of self-monitoring reports, in the ''Air Quality Inspection/Compliance Monitoring Plan'', the District has committed to review title V self certifications, semi-annual monitoring and periodic monitoring reports, and any other reports required by the permit.

In response to item (e), in a section of the ''Air Quality Inspection/Compliance Monitoring Plan'' entitled ''Compliance Monitoring Evaluation—Section 5.3,'' the District demonstrates how it will follow-up on violations. That section of the plan describes three compliance categories used by the District. This is taken from EPA's Clean Air Act Stationary Source Compliance Monitoring Strategy. In addition, another report entitled ''Compliance and Enforcement Activities and Accomplishments—Year End 2001 Report'' contains information on new ''High Priority Violators''.

The commenter's statement that the ''above-referenced requirements are not satisfied merely by citing existing EPA/DC agreements under other programs.'' is incorrect. Title 40 CFR 70.4(b)(5) provides that the submission should contain ''a complete description of the State's compliance tracking and enforcement program *or reference to any agreement the State has with EPA that provides this information.''* Therefore, the above plans and reports are sufficient to demonstrate that compliance and enforcement activities are being properly tracked and reported to EPA.

What Action Is Being Taken by EPA?

Based upon our analysis of the comments received, EPA has determined that the concerns raised regarding the interim approval deficiencies do not constitute deficiencies in the District of Columbia's operating permit program. The District has satisfactorily addressed the 29 program deficiencies identified by EPA in its final interim approval of the District's operating permit program on August 7, 1995. The operating permit program amendments submitted by the District of Columbia on May 21, 2001, August 30, 2001, and September 26, 2001, considered together with that portion of the District of Columbia's operating permit program that was earlier approved on an interim basis, fully satisfies the minimum requirements of 40 CFR part 70 and the Clean Air Act.

Therefore, EPA is granting final full approval of the District of Columbia's title V operating permit program.

What Is the Effective Date of EPA's Full Approval of the District of Columbia Title V Operating Permit Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the District of Columbia's program effective on November 30, 2001. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. EPA's interim approval of the District of Columbia's prior program expires on December 1, 2001. In the absence of this full approval of the District of Columbia's amended program taking effect on November 30, 2001, the Federal program under 40 CFR part 71 would automatically take effect in the District of Columbia and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and the District of Columbia to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because the District of Columbia has been administering the title V permit program for six years under an interim approval.

What Is the Scope of EPA's Full Approval?

In its program submission, the District of Columbia did not assert jurisdiction over Indian country. To date, no tribal government in the District of Columbia has applied to EPA for approval to administer a title V program in Indian country within the District of Columbia. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of Federal operating permits in Indian country. EPA's authority to issue permits in Indian country was

challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting final full approval of the District of Columbia's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 28, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for the District of Columbia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

District of Columbia

* * * * *

(b) The District of Columbia Department of Health submitted operating permit program amendments on May 21, 2001, August 30, 2001, and September 26, 2001. The rule amendments contained in the May 21, 2001, August 30, 2001, and September 26, 2001 submittals adequately addressed the conditions of the interim approval effective on September 6, 1995. The District of Columbia is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01–29967 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VA–T5–2001–01a; FRL–7112–5]

Clean Air Act Full Approval of Operating Permit Program; Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final full approval.

SUMMARY: EPA is taking final action to grant full approval of the Commonwealth of Virginia's operating permit program. The Commonwealth's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required each States to develop, and submit to EPA, a programs for issuing operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. The EPA granted final interim approval of Virginia's operating permit program on June 10, 1997, as corrected on March 19, 1998. The Commonwealth of Virginia amended its operating permit program to address the deficiencies identified in the interim approval, and this final rulemaking action approves those amendments. The EPA proposed full approval of Virginia's operating permit program in the **Federal Register** on October 10, 2001. This final rulemaking summarizes the adverse comments EPA received on the October 19, 2001 proposal, provides EPA's responses, and promulgates final full approval of the Commonwealth of Virginia's operating permit program.

DATES: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at *campbell.dave@.epa.gov.*

SUPPLEMENTARY INFORMATION: On November 20, 2000, the Commonwealth of Virginia submitted amendments to its State operating permit program. These amendments are the subject of this document, and this section provides additional information on the amendments by addressing the following questions:

What is the State operating permit program?
Why is EPA taking this action?
What were the concerns raised by the commenters?
What action is being taken by EPA?
What is the effective date of EPA's full approval of the Virginia operating permit program?
What is the scope of EPA's full approval?

What is the State Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 required all States to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in the EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit or have the potential to emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in the counties and cities in northern Virginia that are part of the Metropolitan Washington, DC serious ozone nonattainment area, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent upon the State revising its program to correct the deficiencies. Because the Virginia operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval of Virginia's program in a rulemaking published on June 10, 1997, as corrected on March 19, 1998 (62 FR 31516 and 63 FR 13346, respectively). The interim approval notice described the conditions that had to be met in order for the Virginia operating permit program to receive full approval. Interim approval of Virginia's operating permit program expires on December 1, 2001.

EPA tentatively concluded that the Commonwealth of Virginia fulfilled the conditions of the interim approval. Consequently, EPA published a direct final rule on October 10, 2001 (66 FR 51581) granting full approval of Virginia's operating permit program. However, adverse comments were received in response to the companion proposal notice that was also published on October 10, 2001 (66 FR 51620). The direct final rule was withdrawn on November 21, 2001 (66 FR 58400). In today's notice, EPA is responding to comments and taking final action on the companion proposal.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice. That notice was published on December 11, 2000 (65 FR 77376).

In response to the December 11, 2000 notice, several citizens commented on what they believe to be deficiencies with respect to the Virginia title V program. As stated in the **Federal Register** notice published on October 10, 2001 (66 FR 51620) proposing to fully approve Virginia's operating

permit program, EPA takes no action on those comments in this final rulemaking action. Rather, EPA expects to respond by December 14, 2001 to timely public comments on programs that have obtained interim approval. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter, in writing, to explain our reasons for not making a finding of deficiency. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded, in writing, to these comments and how the public may obtain a copy of our response. A NOD will not necessarily be limited to deficiencies identified by citizens, and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies. The process for issuance of NODs is discussed in greater detail below.

What Were the Concerns Raised by the Commenters?

EPA received two comment letters during the public comment period. The Virginia Manufacturers Association provided a letter dated November 9, 2001 stating its support of EPA's action to grant full approval of Virginia's operating permit program. Since this letter did not raise any concerns with the proposed action, no response is necessary. EarthJustice provided comments on behalf of the Virginia Chapter of the Sierra Club dated November 9, 2001. In its November 9, 2001 letter, EarthJustice incorporated, by reference, its prior comments submitted to EPA pursuant to other actions taken by the Agency regarding Virginia's operating permit program. Those comments were submitted in letters as follows: (a) Letter of March 12, 2001 commenting in response to EPA's December 11, 2000 **Federal Register** notice (65 FR 77376) which announced a 90-day comment period for the public to identify deficiencies in State and Local agency operating permits programs; and (b) Letter of November 2, 2001 regarding EPA's October 3, 2001 notice of proposed rulemaking approving revisions to the Virginia title V program (66 FR 50375).

Copies of each of these letters are included in the docket file maintained at the EPA Region III office. The following is a discussion of the issues raised in EarthJustice's November 9, 2001 letter and EPA's responses.

Comment: The commenter indicates that EPA cannot grant full approval of the Virginia title V operating permit program without first addressing all alleged deficiencies identified by EarthJustice in its prior comment letters.

Response: EPA is aware that comments have been made regarding alleged deficiencies other than those listed in Virginia's June 10, 1997 interim approval. EPA agrees that these allegations must be addressed through appropriate actions by EPA and/or the Commonwealth of Virginia. For the reasons discussed below, however, we disagree that newly alleged or formally identified deficiencies prohibit EPA from granting full approval of Virginia's operating permit program at this time.

In 1990, Congress amended the Clean Air Act, 42 U.S.C. 7401 to 7671q, by adding title V, 42 U.S.C. subsections 7661 to 7661f, which requires certain air pollutant emitting facilities, including ''major source[s]'' and ''affected source[s],'' to obtain and comply with operating permits. *See* 42 U.S.C. subsection 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. *See* 42 U.S.C. subsection 7661a(a). EPA is charged with overseeing the State's efforts to implement an approved program, including reviewing proposed permits and objecting to improper permits. *See* 42 U.S.C. subsections 7661a(i) and 7661d(b). Accordingly, title V of the CAA provides a framework for the development, submission and approval of State operating permit programs. Following the development and submission of a State program, the Act provides two different approval options that EPA may utilize in acting on State submittals. See 42 U.S.C. subsection 7661a(d) and (g). Pursuant to section 502(d), EPA ''may approve a program to the extent that the program meets the requirements of the Act * * *'' EPA may act on such program submittals by approving or disapproving, in whole or in part, the State program. An alternative option for acting on State programs is provided by the interim approval provision of section 502(g). This section states: ''If a program * * * substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval.'' This provision provides EPA with the authority to act on State programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR subsection 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to ''specify the changes that must be made before the program can receive full approval.'' 42 U.S.C. subsection 7661a(g); 40 CFR subsection 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a State corrects the specified deficiencies then it will be eligible for full program approval. EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a State operating permit program full approval until the State has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a State program full approval if the State has corrected those issues that the EPA identified in the final interim approval. The central question, therefore, is whether Virginia, by virtue of correcting the deficiencies identified in the final interim approval, is eligible at this time for full approval, or whether Virginia must also addresses any newly alleged or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. *See Citizens to Save Spencer County* v. *EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870–71. Whenever possible, the agency's interpretation should not render any of the provisions null or void. *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. *See Chevron U.S.A, Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never imagined by Congress. *Citizens to Save Spencer County*, 600 F.2d at 870.

In this situation, in order to give effect to the principles embodied in title V of

the CAA that major stationary sources of air pollution be required to have an operating permit that conforms to certain statutory and regulatory requirements, and that operating permit programs be administered and enforced by State permitting authorities, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant Virginia full approval in this situation while working simultaneously with the State, in its oversight capacity, on any additional problems that have been or may be identified. To conclude otherwise would disrupt the current administration of the State program and cause further delay in Virginia's ability to issue operating permits to major stationary sources. A smooth transition from interim approval to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V of the CAA.

Furthermore, requiring the Commonwealth of Virginia to fix all of the deficiencies that have been alleged or formally identified in the past year in order to receive full approval runs counter to the established regulatory process that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the Act and 40 CFR subsections 70.4(i) and 70.10 provides EPA with the authority to issue NODs whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing an approved part 70 program, or that the State's permit program is inadequate in any other way. Consistent with these provisions, any NOD issued by EPA will specify a reasonable time-frame for the permitting authority to correct the identified deficiency. The interim approval status of Virginia's title V operating permit program expires on December 1, 2001. This deadline would not provide adequate time for the Commonwealth to correct any newly identified issues prior to the expiration of interim approval. Allowing the Commonwealth's program to expire because of issues alleged as recently as March 2001 and November 2001 will cause disruption and further delay in the issuance of permits to major stationary sources in Virginia. As explained above, we do not believe that title V of the CAA requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received interim approval but prior to being granted full approval is the notice of program deficiency or administration deficiency as discussed herein. It should be noted that NODs may also be issued by EPA after a program has been granted full approval. Following the defined process for the identification of program issues and the issuance of NODs will provide the Commonwealth an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire State operating permit program. As a result, addressing any newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, if EPA determines that any of the alleged deficiencies in Virginia's program are well-founded, it will issue a NOD and place Virginia on notice that it must promptly correct the non-interim approval deficiencies within a specified time period or face CAA sanctions and withdrawal of program approval. At this time, EPA is still evaluating the deficiencies alleged by the commenter and others and will, in the very near future, respond to those allegations in a separate action. The comments EPA received from EarthJustice on March 12, 2001 mentioned above will be considered as part of that separate action.

Virginia also made revisions to its operating permit program since its program received interim approval in 1997. The revisions were not intended to address any of the identified interim approval deficiencies. Rather, the intent of these discretionary program changes was to improve implementation of the existing program. In a rulemaking action separate from this action granting full approval, EPA, in accordance with 40 CFR subsection 70.4(i), proposed approval of those revisions on October 3, 2001 (66 FR 50375). The EPA disagrees with the commenter's assertion that the amendments Virginia made to its program to address the identified interim approval deficiencies are inextricable from the program revisions that are the subject of the October 3, 2001 notice. The approval of the discretionary program revisions is not necessary in order for Virginia to adequately address its interim approval deficiencies, nor must they be approved prior to Virginia receiving full approval. The EPA will proceed with the appropriate administrative process to respond to any comments received pursuant to the October 3, 2001 proposed rulemaking action on the discretionary program revisions. The comments received from EarthJustice on November 2, 2001 will be considered as when taking that separate action.

Therefore, EPA disagrees with the commenter that EPA must consider all program revisions and alleged deficiencies prior to granting full approval of Virginia's operating permit program. The proper administrative procedures have been followed to allow interested parties an opportunity to identify any concerns they may have with the various aspects of Virginia's title V operating permit program. The EPA will address those concerns in the context of the relevant rulemaking or administrative actions, including this final rule granting full approval of Virginia operating permit program; the proposed rulemaking action approving revisions to Virginia's program; and, the process of responding to public comments pursuant to the December 11, 2000 notice (65 FR 77376).

Comment: EarthJustice believes Virginia's insignificant activity provisions for emergency generators are not consistent with title V of the CAA. Specifically, the commenter believes that the potential emissions generated by the types of internal combustion powered generators as defined under 9 VAC 5–80–720 C 4 should not be eligible to be classified as insignificant activities. Further, the commenter contends that Virginia's regulations would allow these types of units to emit pollutants at levels that would trigger title V requirements and still be classified as insignificant activities because there are no explicit restrictions on hours of operation or emissions for these units.

Response: With regard to the emergency generators that are central to EarthJustice's comment, EPA disagrees that emergency generators of the size and fuel-use capability as specified by 9 VAC 5–80–720 C 4 have the potential for significant emissions. First, the regulations specify that in order to be eligible for classification as insignificant activities these types of emergency generators may only be used when power is unavailable from the utility. If the facility in question is not served by a utility, the generators would not qualify as ''emergency'' generators because they would be the principal means by which the facility generated electricity. The EPA interprets 9 VAC 5–80–720 C 4 as excluding generators at facilities not served by a utility. Further, EPA is unaware of any facility in Virginia that is currently required to obtain a title V operating permit that is not served by a utility and the likelihood of such a title V source in the future is negligible. Second, it is unlikely for facilities that are provided power from a utility to need to use their emergency generators in excess of 500 hours in any given year. In support of its guidance document entitled, ''Calculating Potential to Emit (PTE) for

Emergency Generators'' (September 6, 1995 memorandum from John S. Seitz, Director, EPA Office of Air Quality Standards and Planning to Directors, EPA Regional Air Divisions), EPA determined that an emergency generator would likely operate 500 hours per year or less under worst case conditions. Therefore, the emergency generators specified by Virginia's regulations would only be in operation for a short time each year and the real potential for significant emissions is minimal. Finally, an analysis of the potential emissions from emergency generators of the size and fuel-type defined by 9 VAC 5080–720 C 4 indicates that if any of these generators were to operate 500 hours in a particular year, the worst case potential emissions from any of the classes of emergency generators would be six tons of nitrogen oxides per year. For these reasons, EPA believes the classification of emergency generators as defined in 9 VAC 5–80–720 C 4 as insignificant activities is appropriate and consistent with title V and part 70. As will be discussed in greater detail, the construction of Virginia's insignificant activities regulations provides additional assurances that emergency generators will not be incorrectly classified as insignificant activities and that all necessary and relevant operational and emissions data will be provided by applicants in order to determine if these types of sources have any title V requirements.

The purpose of insignificant activities lists and designation of units as insignificant activities is to enable permit applicants to streamline their applications by allowing them to exclude certain information and emissions data for individual emission units when such information or data is not needed to determine whether applicable requirements may apply to that unit or whether the source is a ''major source'' according to title V and part 70. The identification of a particular unit as an insignificant activity in no way relieves any applicable requirement that may apply to that unit. The EPA disagrees with the commenter's assertion that Virginia's permit program would allow certain insignificant activities to operate in excess of levels that would trigger title V requirements or ''major source'' requirements. While Virginia's operating permit program allows certain activities to be classified as insignificant, it does not allow these emission units to circumvent any applicable requirements of title V. Virginia's program also provides safeguards to prevent the mis-classification of units as insignificant and the omission of relevant emission data from title V permit applications.

Virginia's operating permit program regulations address insignificant activities in three ways. Virginia's regulations, at 9 VAC 5–80–720 A, provide a specific list of activities for which the permit applicant does not have to include information regarding these emission units in its title V permit application, including emission levels. Virginia's program, at 9 VAC 5–80–720 B, also allows permit applicants to identify emission units which fall below certain emission thresholds as insignificant activities, but does not require specific emission data for each of these units in the application. Finally, under 9 VAC 5–80–720 C, emission units may be listed in the application as insignificant activities if they fall below certain size or production rates for specific categories of units. Pursuant to 9 VAC 5–80–90 D and 9 VAC 5–80–440 D, the permit application must indicate the size or production rate of each unit that is being classified as an insignificant activity. The emergency generators that are the subject of the commenter's concern fall into this last general category.

Virginia's operating permit program regulations at 9 VAC 5–80–90 D and 9 VAC 5–80-440 D require that applicants must include any emissions data or other relevant information that is necessary to determine applicability of title V or of any other applicable requirements. As part of this full approval action, EPA is approving amendments to Virginia's regulations that clarify that permit applicants are obligated to provide this type of information for all emission units, including those that may be classified as insignificant activities. Therefore, even if a specific unit may be classified as an insignificant activity pursuant to 9 VAC 5–80–720, the applicant must provide emissions data or other information if the omission of such information would interfere with determining whether that unit has applicable requirements that must be reflected in a title V permit. Virginia also amended its regulations to require explicitly that all applicable requirements for all emission units, including those for insignificant activities must be contained in the title V permit. These amendments were made to address interim approval issues and are more fully discussed in the October 10, 2001 (66 FR 51581) direct final rulemaking notice.

Virginia's insignificant activity regulations significantly minimize the potential for inappropriate use of the insignificant activities list and the other mechanisms for identifying insignificant activities as provided in 9 VAC 5–80–720, including those for emergency generators. The purpose of the title V permit application is to provide all of the information necessary to develop a title V permit that contains all of a given source's applicable requirements. Virginia's regulations with regard to insignificant activities provide that all information necessary to determine applicable requirements for inclusion in title V permits must be provided by the applicant even if a given unit can be identified as an insignificant activity. Therefore, the various mechanisms to identify insignificant activities may be used by the applicant at their discretion with assumed liability for failure to provide complete and accurate information to Virginia. Pursuant to 9 VAC 5–80–80 G and 9 VAC 5–20–230, all applicants must certify, subject to civil and criminal penalty, that all information contained in its application is complete, accurate and true.

Comment: EarthJustice asserts that the identified interim approval issue regarding malfunction as an affirmative defense in Virginia's title V operating permit program has not been fully corrected. The commenter also believes Virginia's malfunction provisions at 9 VAC 5–20–180 are not consistent with title V of the CAA. Specifically, EarthJustice contends that title V sources may claim an affirmative defense for malfunctions to a degree far broader than provided under title V and 40 CFR subsection 70.6(g).

Response: Virginia's title V operating permit program regulations establish the permissible scope of claims for affirmative defense for noncompliance with title V permits due to emergencies at 9 VAC 5–80–250 and 9 VAC 5–80–650. (Virginia uses the term ''malfunction'' instead of ''emergency'', however, the term as defined at 9 VAC 5–80–60 C and 5–80–370 is consistent with EPA's definition of ''emergency'.) The commenter has not asserted that the provisions of 9 VAC 5–80–250 and 5–80–650 are inconsistent with title V or 40 CFR subsection 70.6(g). Virginia made amendments to these sections of its regulations to address interim approval issues. In the proposed and final actions granting interim approval of Virginia's program (March 18, 1997, 62 FR 12778 and June 10, 1997, 62 FR 31516, respectively), EPA fulfilled its obligation under section 502(g) of the CAA by specifying the changes Virginia must make to its program in order to receive full approval. 42 U.S.C. subsection 7661a(g); 40 CFR subsection 70.4(e)(3). EPA directed Virginia to

amend 9 VAC 5–80–250 B 4 and 9 VAC 5–80 650 to require permittees to properly report malfunctions of any duration in order for those malfunctions to be eligible for consideration as an affirmative defense. Previously, these regulations did not require permittees to report malfunctions of less than one hour, yet allowed for an affirmative defense for these unreported malfunctions. As instructed by EPA, Virginia amended 9 VAC 5–80–250 B 4 and 9 VAC 5–80–650 to require the reporting of malfunctions of any duration. These amendments are more fully discussed in the October 10, 2001 (66 FR 51581) direct final rulemaking notice granting full approval of Virginia's program. Therefore, Virginia has met its statutory obligation under section 502(g) of the CAA to make changes to its operating permit program as specified by EPA and, consequently, its program may now receive full approval.

EarthJustice's main concern regards Virginia's malfunction provisions as they exist outside of the operating permit program regulations. The malfunction defenses provided by 9 VAC 5–20–180 are codified as part of the general provisions of Virginia's air pollution control regulations. In its proposed and final rulemaking granting interim approval of Virginia's program, EPA did not identify any concerns with these provisions of Virginia's regulations, nor did it instruct Virginia to make any corrections to 9 VAC 5–20–180. Likewise, the malfunction provisions of 9 VAC 5–20–180 were not discussed in the October 10, 2001 proposed rulemaking action regarding full approval of Virginia's operating permit program. Therefore, in its November 9, 2001 comment letter, EarthJustice is expressing a concern with Virginia's operating permit program that has heretofore not been identified by EPA or any other interested party. As discussed more fully above, Virginia's receipt of full approval of its operating permit program is contingent upon it successfully correcting its regulations as directed by EPA in the March 18, 1997 and June 10, 1997 notices granting interim approval and not the correction of all deficiencies alleged or identified after interim approval was granted.

The EPA will carefully consider EarthJustice's concerns regarding the impact of 9 VAC 5–20–180 on Virginia's operating permit program and determine whether a notice of deficiency is warranted. Any such notice of deficiency will be issued in an action separate from this full approval.

Comment: EarthJustice has expressed concern with the discussion of Virginia's Voluntary Environmental Assessment Privilege Law (''Privilege Law''), Va. Code Sec. 10.1–1198, and Immunity Against Administrative or Civil Penalties for Voluntarily Disclosed Violation Law (''Immunity Law''), Va. Code Sec. 10.1–1199 as contained in the October 10, 2001 notice. The commenter is not satisfied with EPA's conclusion that these laws do not preclude Virginia from enforcing its operating permit program in a manner consistent with the CAA. EarthJustice further argues that the Virginia Attorney General's interpretation of these laws that supports EPA's conclusion are not binding on the courts of Virginia. EarthJustice suggests that the most appropriate remedies are for Virginia to either repeal the laws in their entirety or amend them to expressly exclude the title V program from their scope.

The EPA disagrees with the commenter's assertion that the Agency's and Virginia Office of Attorney General's interpretation of the existing Privilege and Immunity Laws may apply to Virginia's operating permit program. To the contrary, the commenter has not demonstrated that these laws pose any threat to the enforcement of title V operating permits in Virginia. EarthJustice has not identified a single instance where any source has successfully asserted protection under these laws from the enforcement of their title V operating permits by EPA, the Commonwealth of Virginia, or the public, in manner that is inconsistent with the CAA. As to the relevance of the Virginia Office of Attorney General's opinion on this matter, section 502(d) of the CAA requires as part of any approvable title V operating permit program a legal opinion from the State Attorney General, or equivalent, indicating that the State can enforce its operating permit program in a manner consistent with federal law. 42 U.S.C. subsection 7661a(d); 40 CFR subsection 70.4(b)(3). The EPA relies on the Attorney General's interpretation of the law, although the Agency recognizes it is always theoretically possible for developing case law to eventually overrule certain, or even all, of the opinions expressed by the Attorney General.

In this instance, the Virginia Office of Attorney General provided EPA legal opinions on December 29, 1997 and January 12, 1998 that state that the Commonwealth's Privilege Law does not extend to information required by federal law and that the Immunity Law does not apply to federally authorized programs such as the title V operating permit program. In absence of any rulings by the Virginia courts that further illuminate the application of these laws, EPA maintains its conclusion that the Commonwealth of Virginia's Privilege and Immunity Laws do not apply to enforcement of Virginia's operating permit program, and any permits issued pursuant to that program. Should the Virginia courts come to interpret these laws in the future in a manner that conflicts with the CAA, EPA will consider the full effect of those rulings and determine the most appropriate response, including the possible issuance of a NOD. Any such NOD will be issued in an action separate from this full approval.

What Action Is Being Taken by EPA?

Based on analysis of the comments received, EPA has determined that the concerns raised do not constitute deficiencies in the Virginia operating permit program. The Commonwealth of Virginia has satisfactorily addressed the six program deficiencies identified when EPA granted final interim approval of its operating permit program on June 10, 1997, as corrected on March 19, 1998. The operating permit program amendments submitted by Virginia on November 20, 2000 considered together with that portion of Virginia's operating permit program that was earlier approved on an interim basis fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is granting final full approval of the Commonwealth of Virginia's title V operating permit program.

What Is the Effective Date of EPA's Full Approval of the Virginia Title V Operating Permit Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the Virginia's program effective on November 30, 2001. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before

December 1, 2001. EPA's interim approval of Virginia's prior program expires on December 1, 2001. In the absence of this full approval of Virginia's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Virginia and would remain in place until the effective date of the fully approved state program. EPA believes it is in the public interest for sources, the public and the Commonwealth of Virginia to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because Virginia has been administering the title V permit program for four years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

What Is the Scope of EPA's Full Approval?

In its program submission, Virginia did not assert jurisdiction over Indian country. To date, no tribal government in Virginia has applied to EPA for approval to administer a title V program in Indian country within the Commonwealth. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting final full approval of Virginia's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 27, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Virginia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Virginia

(b) The Virginia Department of Environmental Quality submitted operating permit program amendments on November 20, 2000. The rule revisions contained in the November 20, 2000 submittal adequately addressed the conditions of the interim approval effective on March 12, 1998. The Commonwealth is hereby granted final full approval effective on November 30, 2001.

[FR Doc. 01–29961 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7111–7]

Clean Air Act Final Full Approval of the Operating Permits Program; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the State of Minnesota. Minnesota submitted its operating permits program in response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

EFFECTIVE DATE: The effective date of this action is November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Robert Miller at (312) 353–0396 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–7017, E-Mail Address: rineheart.rachel@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What is involved in this final action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act (''the Act''), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states developed, and submitted to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of an interim program, it must establish and implement a federal program.

The Minnesota Pollution Control Agency (MPCA) submitted its title V operating permits program (title V program) for approval on November 15, 1993. EPA promulgated interim approval of the Minnesota title V program on June 16, 1995 (60 FR 31637), and the program became effective on July 16, 1995. Subsequently, EPA extended Minnesota's title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

MPCA submitted amendments to its title V program for our approval on June 9, 2000, July 21, 2000, and June 12, 2001. Minnesota intended these amendments to correct interim approval issues identified in the June 16, 1995, action. Based on this submittal, EPA proposed full approval for the Minnesota title V program on October 30, 2001 (66 FR 54739). EPA did not receive any adverse public comment(s) on the proposal; therefore, EPA is taking final action to give full approval to the Minnesota title V program.

What Is Involved in This Final Action?

The EPA is granting full approval of the operating permits program submitted by MPCA based on the interim approval corrections submitted on June 9, 2000, July 21, 2000, and June 12, 2001. These revisions satisfactorily address the program deficiencies identified in EPA's June 16, 1995, interim approval rulemaking.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** notice.

The EPA received one timely comment letter pertaining to the Minnesota title V program. As stated in the **Federal Register** notice published on October 30, 2001 proposing to fully approve Minnesota's operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if EPA determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. EPA Region 5 will also post its response letters on the Internet at http://yosemite.epa.gov/r5/ardcorre.nsf/title+V+Program+Comments. EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. The EPA will also

be posting all response letters on the national EPA website, and the Agency will publish a **Federal Register** notice of the availability of those response letters.

Administrative Requirements

A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval is also not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Minnesota's Title V Program?

EPA's approval of Minnesota's title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Minnesota's prior program expires on December 1, 2001. In the absence of this full approval of Minnesota's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Minnesota and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Minnesota to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because MPCA has been administering the title

V permit program for more than six years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

C. What Is the Scope of EPA's Full Approval?

In its program submission, Minnesota did not assert jurisdiction over Indian country. To date, no tribal government in Minnesota has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising the entry for Minnesota to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Minnesota

(a) The Minnesota Pollution Control Agency: submitted on November 15, 1993; interim approval effective on July 16, 1995; interim approval expires December 1, 2001.

(b) The Minnesota Pollution Control Agency: Program revisions submitted on June 9, 2000, July 21, 2000, June 12, 2001; Rule revisions contained in the submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. Minnesota is hereby granted final full approval effective November 30, 2001.

(c) [Reserved]

* * * * *

[FR Doc. 01–29963 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IN003; FRL–7111–9]

Clean Air Act Final Full Approval of the Operating Permits Program; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the State of Indiana. Indiana submitted its operating permits program in response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

EFFECTIVE DATE: The effective date of this action is November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–3189, E-Mail Address: *portanova.sam@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
Response to comments.
What is involved in this final action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act (''the Act''), as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states developed, and submitted to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of an interim program, it must establish and implement a federal program.

The Indiana Department of Environmental Management (IDEM) submitted its title V operating permits program (title V program) for approval on August 10, 1994. EPA promulgated interim approval of the Indiana title V program on November 14, 1995 (60 FR 57188), and the program became effective on December 14, 1995. Subsequently, EPA extended Indiana's title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

IDEM submitted amendments to its title V program for our approval on May 22, 1996. Indiana intended these amendments to correct interim approval issues identified in the November 14, 1995, action. Based on this submittal, EPA proposed full approval for the Indiana title V program on July 30, 2001 (66 FR 39293). EPA received one adverse public comment on the proposal. After carefully reviewing and considering the issues raised by the commenter, EPA is taking final action to give full approval to the Indiana title V program.

Response to Comments

The comment that EPA received in response to our July 30, 2001, proposal

objects to granting full approval to the Indiana title V program. The commenter states that public comments on deficiencies in the Indiana title V program remain unaddressed. In addition, he notes that changes to the Indiana program adopted since the November 14, 1995, interim approval also remain unaddressed. He believes that these issues result in a program that is insufficient and demonstrate that Indiana is ''unwilling or unable to produce a minimally acceptable 40 CFR part 70 Operating Permits Program that meets the standard of full approval.''

EPA is aware that issues other than those listed in the November 14, 1995, interim approval exist in the Indiana program and that the Indiana regulations have undergone changes since 1995 that have not been submitted to EPA for approval. EPA agrees that these issues must be addressed and that the state must submit all changes made since 1995 for EPA review and approval. For the reasons discussed below, however, we disagree that newly identified deficiencies prohibit us from granting Indiana full program approval at this time.

In 1990, Congress amended the Act, 42 U.S.C. 7401 to 7671q, by adding title V, 42 U.S.C. 7661 to 7661f, which requires certain air pollutant emitting facilities, including ''major source[s]'' and ''affected source[s],'' to obtain and comply with operating permits. *See* 42 U.S.C. 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. *See* 42 U.S.C. 7661a(a). EPA is charged with overseeing the state's efforts to implement an approved program, including reviewing proposed permits and vetoing improper permits. *See* 42 U.S.C. 7661a(i) and 7661d(b). Accordingly, title V of the Act provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the Act provides two different approval options that EPA may use in acting on state submittals. *See* 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA ''may approve a program to the extent that the program meets the requirements of the Act * * *'' EPA may act on such program submittals by approving or disapproving, in whole or in part, the state program. An alternative option for acting on state programs is provided by the interim approval provision of section 502(g). This section states: ''If a program * * * substantially meets the requirements of this title, but is not fully approval, the Administrator may by rule grant the program interim approval.'' This provision provides EPA with the authority to act on state programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to ''specify the changes that must be made before the program can receive full approval.'' 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a state corrects the specified deficiencies then it will be eligible for full program approval. EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a state operating permit program full approval until the state has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a state program full approval if the state has corrected those issues that the EPA identified in the final interim approval. The central question, therefore, is whether Indiana by virtue of correcting the deficiencies identified in the final interim approval is eligible at this time for full approval, or whether Indiana must also correct any new or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. *See Citizens to Save Spencer County* v. *EPA,* 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870–71. Whenever possible, the agency's interpretation should not render any of the provisions null or void. *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. *See Chevron U.S.A, Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never imagined by Congress. *Citizens to Save Spencer County,* 600 F.2d at 870. Furthermore, as discussed more fully below, section 502 of the Act and 40 CFR 70.10 provide a mechanism for identifying problems in programs which states must correct to retain operating permit programs.

In this situation, in order to give effect to the principles embodied in title V that major stationary sources of air pollution must have an operating permit that conforms to certain statutory and regulatory requirements, and that state permitting authorities administer and enforce the operating permit programs, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant Indiana full approval in this situation while working simultaneously with the state, in EPA's oversight capacity, on any additional problems that were recently identified. To conclude otherwise would disrupt the current administration of the state program and cause further delay in Indiana's ability to issue operating permits to major stationary sources. A smooth transition from interim approval to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V.

Furthermore, requiring the state to fix all of the deficiencies that have been identified in the past year to receive full approval runs counter to the established regulatory process, mentioned above, that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the Act and 40 CFR 70.4(i) and 70.10 provide EPA with the authority to issue notices of deficiency (''NOD'') whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or that the state's permit program is inadequate in any other way. Consistent with these provisions, EPA will specify in a NOD a reasonable time frame for the permitting authority to correct the identified deficiency.

The Indiana title V interim approval expires on December 1, 2001. This deadline does not provide adequate time for the state to correct newly identified issues prior to the expiration of interim approval. Allowing the state's program to expire because of issues identified as recently as March 2001 will cause disruption and further delay in the issuance of permits to major stationary sources in Indiana. As

explained above, we do not believe that title V requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received interim approval but prior to being granted full approval is the notice of program deficiency or administration deficiency as discussed herein. This process provides the state an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire state operating permit program. As a result, addressing newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, EPA has notified Indiana that it must promptly correct the non-interim approval deficiencies within a specified time period or face sanctions and disapproval of its program. EPA identified non-interim approval deficiencies to Indiana in 2000. In response, Indiana began the process of revising its administrative code. Indiana worked with EPA throughout this rule adoption process to assure that all program deficiencies identified by EPA and by citizen groups are addressed by the revisions. Indiana's Air Pollution Control Board adopted the necessary title V rule revisions on October 3, 2001. These regulatory revisions still must undergo administrative review, and will not become effective until early 2002.

Because the regulatory revisions will not become effective by December 1, 2001, EPA will issue a NOD for these regulatory deficiencies in the Indiana program on that date. EPA recognizes that Indiana has almost completed the regulatory process to make the necessary revisions, and expects that the state will satisfy the conditions of the NOD by the end of February 2002. Furthermore, at the time that Indiana submits regulatory revisions to correct this NOD, the state must also submit for review and approval all changes that it has made to its title V program since we granted interim approval. Under that review, EPA will disapprove and issue NODs for any program revisions that are inconsistent with part 70.

What Is Involved in This Final Action?

The EPA is granting full approval of the operating permits program submitted by IDEM based on the interim approval corrections submitted on May 22, 1996. These revisions satisfactorily address the program deficiencies identified in EPA's November 14, 1995, interim approval rulemaking.

To date, no tribal government in Indiana has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA,* (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

Two citizens groups commented on what they believe to be deficiencies with respect to the Indiana title V program. As stated in the **Federal Register** notice published on July 30, 2001 proposing to fully approve Indiana's operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on Indiana's program and other programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. Consistent with these time frames, EPA also will publish a notice of deficiency (NOD) if EPA determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. EPA Region 5 will also post its response letters on the Internet at *http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments.* EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. The EPA will also be posting all response letters on the national EPA website, and the Agency will publish a **Federal Register** notice of the availability of those response letters. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies.

Administrative Requirements

A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Act.

This final approval is also not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Indiana's Title V Program?

EPA's approval of Indiana's Title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under Title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of ''a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Indiana's prior program expires on December 1, 2001. In the absence of this full approval of Indiana's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Indiana and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Indiana to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because IDEM has been administering the title V permit program for six years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for Indiana to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Indiana

* * * * *

(b) The Indiana Department of Environmental Management: Program revisions submitted on May 22, 1996; submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. Indiana is hereby granted final full approval effective November 30, 2001.

* * * * *

[FR Doc. 01–29962 Filed 12–3–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7112–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition to modify an exclusion (or delisting) from the lists of hazardous waste previously granted to Geological Reclamation Operations and Waste Systems, Inc. (GROWS). This action responds to a petition for amendment submitted by GROWS to increase the maximum annual volume of waste covered by its current exclusion.

After careful analysis, we have concluded the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to wastewater treatment sludge filter cake generated by GROWS at its facility in Morrisville, Pennsylvania. Accordingly, this final amendment conditionally excludes a specific yearly volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

EFFECTIVE DATE: December 4, 2001.

ADDRESSES: The RCRA regulatory docket for this final amendment is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for you to view from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, please contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is EPA finalizing?
B. Why is EPA approving this petition for amendment?
C. What are the limits of this exclusion?
D. How will GROWS manage the waste under this exclusion?
E. When is the final amendment effective?
F. How does this action affect States?
II. Background
A. What is a delisting petition?
B. What regulations allow hazardous waste generators to delist waste?
C. What information must the generator supply?
III. EPA's Evaluation of the Waste Data
A. What waste is the subject of this amendment?
B. How much waste did GROWS propose to delist?
C. How did GROWS sample and analyze the waste in its petition?
IV. Public Comments on the Proposed Amendment
V. Administrative Assessments

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating GROWS' petition, we proposed to amend the current GROWS' delisting to increase the maximum annual waste volume covered by its exclusion from 1000 cubic yards to 2000 cubic yards. *See* 66 FR 38969, July 26, 2001. EPA is finalizing:

(1) The decision to grant GROWS' petition to increase the maximum annual waste volume covered by its exclusion from 1000 cubic yards to 2000 cubic yards, subject to certain conditions; and

(2) The decision to use the Delisting Risk Assessment Software, which includes the EPACMPT fate and transport model, to evaluate the potential impact of the petitioned waste on human health and the environment. We used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of in a Subtitle D landfill.

B. Why Is EPA Approving This Petition for Amendment?

GROWS petitioned EPA to exclude the increased volume of its wastewater treatment sludge filter cake because it does not believe, even at the increased volume, that the petitioned waste meets the criteria for which it was listed.

GROWS also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See*, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

For reasons stated in both the proposed amendment and this document, we believe that GROWS' wastewater treatment sludge filter cake should continue to be excluded from hazardous waste control at the increased volume. Therefore, we are granting the final amendment to GROWS, located in Morrisville, Pennsylvania, for its wastewater treatment sludge filter cake, generated at a maximum annual volume of 2000 cubic yards.

C. What Are the Limits of This Exclusion?

This amended exclusion applies to the waste described in the petition only if the requirements described in Table 1 of Appendix IX to part 261 of Title 40 of the Code of Federal Regulations are satisfied. The maximum annual volume of the wastewater treatment sludge filter cake is 2000 cubic yards.

D. How Will GROWS Manage the Waste Under This Exclusion?

The wastewater treatment sludge filter cake is currently being disposed of in a Subtitle D landfill under the provisions of the existing exclusion. This final amendment will allow GROWS to dispose of the specified increased volume of waste in a similar manner.

E. When Is the Final Amendment Effective?

This rule is effective December 4, 2001. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a

provision that prohibits a Federally issued exclusion from taking effect in the State, or that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States (for example, Delaware and Pennsylvania) to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not necessarily apply within those authorized States. If GROWS transports the petitioned waste to, or manages the waste in, any State with delisting authorization, GROWS must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

Today, we are finalizing GROWS' petition for amendment, even though the GROWS' facility is located in a State which has recently been granted authorization for the delisting program, and with the knowledge that the amended exclusion is not automatically effective in a State authorized by EPA to make delisting decisions. Nevertheless, we take this action for the following reasons.

GROWS was granted its current Federal delisting exclusion on August 20, 1991 (56 FR 41286). For reasons described elsewhere in this preamble, on June 12, 2000, GROWS petitioned EPA for an amendment to this exclusion. This petition was received prior to November 27, 2000, the effective date of Pennsylvania's delisting authorization. Upon receiving the GROWS' petition, we began our evaluation of it in consultation with the Pennsylvania Department of Environmental Protection.

The evaluation of this petition was performed using a significant improvement to the methodology previously used by EPA to evaluate risk, as described in detail in the July 26, 2001 proposed amendment (66 FR 38969). The process of amendment also provides an opportunity to update other conditions of the current exclusion.

In order for this amendment to be effective in an authorized State, that State must adopt this amendment through its State administrative process.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to EPA or another agency with jurisdiction to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator believes should not be considered hazardous.

B. What Regulations Allow Hazardous Waste Generators to Delist Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. A generator can petition EPA for an amendment to an existing exclusion under these same provisions of the Code of Federal Regulations.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. EPA's Evaluation of the Waste Data

A. What Waste Is the Subject of This Amendment?

GROWS operates a commercial landfill and wastewater treatment plant in Morrisville, Pennsylvania. On November 13, 1986, GROWS petitioned EPA under the provisions in 40 CFR 260.20 and 260.22 to exclude from hazardous waste regulation a wastewater treatment sludge filter cake derived from the treatment of landfill leachate. This leachate originates, in part, from its closed landfill containing a mixture of solid wastes and hazardous wastes. The wastewater treatment plant also treats non-hazardous leachate from non-hazardous waste landfills.

A full description of these wastes and the Agency's evaluation of the 1986 GROWS' petition are contained in the ''Proposed Rule and Request for Comments'' published in the **Federal Register** on September 17, 1990 (55 FR 38090).

After evaluating public comment on the proposed rule, we published a final decision in the **Federal Register** on August 20, 1991 (56 FR 41286), to exclude GROWS' wastewater treatment sludge filter cake derived from the treatment of EPA Hazardous Waste No. F039 (multi-source leachate) from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 1991 was conditioned on the volume of waste identified in the 1986 GROWS' petition. Specifically, the exclusion granted by EPA is limited to a maximum annual volume of 1000 cubic yards. Any additional waste volume in excess of this limit generated by GROWS in a calendar year had to be managed as hazardous waste.

B. How Much Waste Did GROWS Propose To Delist?

As a result of an increase in wastewater treatment sludge filter cake production associated with an increase in the efficiency of the wastewater treatment operation, GROWS petitioned EPA on June 12, 2000, for an amendment to its August 20, 1991 final exclusion. In its petition, GROWS requested an increase in the maximum annual waste volume that is covered by its exclusion from 1000 cubic yards to 2000 cubic yards.

C. How Did GROWS Sample and Analyze the Waste in Its Petition?

The exclusion which we granted to GROWS on August 20, 1991, is a conditional exclusion. In order for its exclusion to remain effective, GROWS must verify that its waste meets prescribed delisting levels.

To support its petition for amendment, GROWS submitted its verification testing results from the past two years to EPA. This submission consisted of the results of twenty-seven (27) analyses conducted on samples collected for the time period from December 15, 1997, until December 10, 1999.

The verification testing program prescribed by EPA in the August 20, 1991 exclusion requires GROWS to analyze metal constituents using the Toxicity Characteristic Leaching Procedure (TCLP), cyanide using a distilled water leaching procedure, and organics using total constituent analysis.

In addition to the two most recent years of verification testing results mentioned above, we also requested that GROWS submit the results of total constituent analyses for a minimum of four samples for the inorganic

constituents. This was necessary because both total constituent analysis data and leachate data are now used in assessing the potential risk from disposal of a petitioned waste, and there is no reliable way to estimate actual total constituent concentrations of the inorganic constituents from leachate data.

Because the verification testing program specified by the current exclusion for GROWS does not require TCLP testing for organic constituents, we evaluated this request for an amendment by calculating theoretical maximum leachate concentrations for the organic constituents by applying the most conservative assumption. The procedure for determining the theoretical maximum leachate concentrations from total constituent analysis concentrations is described in the proposed amendment. *See* 66 FR 38969, July 26, 2001.

IV. Public Comments on the Proposed Amendment

We received no public comments on the GROWS' proposed amendment.

V. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq. as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 26, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX of Part 261—[Amended]

2. In Table 1 of Appendix IX of Part 261, the entry for ''Geological Reclamation Operations and Waste Systems, Inc., Morrisville, PA'' is revised to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Geological Reclamation Operations and Waste Systems, Inc.	Morrisville, Pennsylvania.	Wastewater treatment sludge filter cake from the treatment of EPA Hazardous Waste No. F039, generated at a maximum annual rate of 2000 cubic yards, after December 4, 2001, and disposed of in a Subtitle D landfill. The exclusion covers the filter cake resulting from the treatment of hazardous waste leachate derived from only ''old'' GROWS and non-hazardous leachate derived from only non-hazardous waste sources. The exclusion does not address the waste disposed of in the ''old'' GROWS' Landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, GROWS must implement a testing program for the petitioned waste. This testing program must meet the conditions listed below in order for the exclusion to be valid: (1) *Testing:* Sample collection and analyses, including quality control (QC) procedures, must be performed according to SW–846 methodologies. (A) *Sample Collection:* Each batch of waste generated over a four-week period must be collected in containers with a maximum capacity of 20-cubic yards. At the end of the four-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the four-week period. (B) *Sample Analysis:* Each four-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to EPA and the Pennsylvania Department of Environmental Protection within sixty (60) days from the end of the calendar year. All data must be accompanied by a signed copy of the statement set forth in 40 CFR 260.22(i)(12) to certify to the truth and accuracy of the data submitted. Records of operating conditions and analytical data must be compiled, summarized, and maintained on-site for a minimum of three years and must be furnished upon request by any employee or representative of EPA or the Pennsylvania Department of Environmental Protection, and made available for inspection. (2) *Waste Holding:* The dewatered filter cake must be stored as hazardous until the verification analyses are completed. If the four-week composite sample does not exceed any of the delisting levels set forth in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed of in accordance with all applicable solid waste regulations. If the four-week composite sample exceeds any of the delisting levels set forth in Condition (3), the filter cake waste generated during the time period corresponding to the four-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA. Filter cake which is generated but for which analyses are not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels. (3) *Delisting Levels:* If the concentrations in the four-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (mg/l or mg/kg) also listed below, the four-week batch of failing filter cake waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. GROWS has the option of determining whether the filter cake waste exceeds the maximum allowable concentrations for the organic constituents by either performing the analysis on a TCLP leachate of the waste or performing total constituent analysis on the waste, and then comparing the results to the corresponding maximum allowable concentration level.

(A) Inorganics	Maximum Allowable Leachate Conc. (mg/l)
Constituent:	
Arsenic	3.00e-01
Barium	2.34e+01
Cadmium	1.80e-01
Chromium	5.00e+00
Lead	5.00e+00
Mercury	7.70e-02
Nickel	9.05e+00
Selenium	6.97e-01
Silver	1.23e+00
Cyanide	4.33e+00
Cyanide extractions must be conducted using distilled water in place of the leaching media specified in the TCLP procedure.	

(B) Organics	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
Constituent:		
Acetone	2.28e+01	4.56e+02
Acetonitrile	3.92e+00	7.84e+01
Acetophenone	2.28e+01	4.56e+02
Acrolein	1.53e+03	3.06e+04
Acrylonitrile	7.80e-03	1.56e-01
Aldrin	5.81e-06	1.16e-04
Aniline	7.39e-01	1.48e+01
Anthracene	8.00e+00	1.60e+02
Benz(a)anthracene	1.93e-04	3.86e-03
Benzene	1.45e-01	2.90e+00
Benzo(a)pyrene	1.18e-05	2.36e-04
Benzo(b)fluoranthene	1.07e-04	2.14e-03
Benzo(k)fluoranthene	1.49e-03	2.98e-02
Bis(2-chloroethyl)ether	3.19e-02	6.38e-01
Bis(2-ethylhexyl)phthalate	8.96e-02	1.79e+00
Bromodichloromethane	6.80e-02	1.36e+00
Bromoform (Tribromomethane)	5.33e-01	1.07e+01
Butyl-4,6-dinitrophenol, 2-sec-(Dinoseb)	2.28e-01	4.56e+00
Butylbenzylphthalate	9.29e+00	1.86e+02
Carbon disulfide	2.28e+01	4.56e+02
Carbon tetrachloride	4.50e-02	9.00e-01
Chlordane	5.11e-04	1.02e-02
Chloro-3-methylphenol 4-	2.97e+02	5.94e+03
Chloroaniline, p-	9.14e-01	1.83e+01
Chlorobenzene	6.08e+00	1.22e+02
Chlorobenzilate	4.85e-02	9.70e-01
Chlorodibromomethane	5.02e-02	1.00e+00
Chloroform	7.79e-02	1.56e+00
Chlorophenol, 2-	1.14e+00	2.28e+01
Chrysene	2.04e-02	4.08e-01
Cresol	1.14e+00	2.28e+01
DDD	5.83e-04	1.17e-02
DDE	1.37e-04	2.74e-03
DDT	2.57e-04	5.14e-03
Dibenz(a,h)anthracene	5.59e-06	1.12e-04
Dibromo-3-chloropropane, 1,2-	3.51e-03	7.02e-02
Dichlorobenzene 1,3-	9.35e+00	1.87e+02
Dichlorobenzene, 1,2-	1.25e+01	2.50e+02
Dichlorobenzene, 1,4-	1.39e-01	2.78e+00
Dichlorobenzidine, 3,3′-	9.36e-03	1.87e-01
Dichlorodifluoromethane	4.57e+01	9.14e+02
Dichloroethane, 1,1-	1.20e+00	2.40e+01
Dichloroethane, 1,2-	2.57e-03	5.14e-02
Dichloroethylene, 1,1-	7.02e-03	1.40e-01
Dichloroethylene, trans-1,2-	4.57e+00	9.14e+01
Dichlorophenol, 2,4-	6.85e-01	1.37e+01
Dichlorophenoxyacetic acid, 2,4-(2,4-D)	2.28e+00	4.56e+01
Dichloropropane, 1,2-	1.14e-01	2.28e+00
Dichloropropene, 1,3-	2.34e-02	4.68e-01
Dieldrin	6.23e+01	1.25e+03
Diethyl phthalate	2.21e+02	4.42e+03
Dimethoate	6.01e+01	1.20e+03

(B) Organics	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
Dimethyl phthalate	1.20e+02	2.40e+03
Dimethylbenz(a)anthracene, 7,12-	1.55e-06	3.10e-05
Dimethylphenol, 2,4-	4.57e+00	9.14e+01
Di-n-butyl phthalate	5.29e+00	1.06e+02
Dinitrobenzene, 1,3-	2.28e-02	4.56e-01
Dinitromethylphenol, 4,6-,2-	2.16e-02	4.32e-01
Dinitrophenol, 2,4-	4.57e-01	9.14e+00
Dinitrotoluene, 2,6-	6.54e-03	1.31e-01
Di-n-octyl phthalate	1.12e-02	2.24e-01
Dioxane, 1,4-	3.83e-01	7.66e+00
Diphenylamine	3.76e+00	7.52e+01
Disulfoton	3.80e+02	7.60e+03
Endosulfan	1.37e+00	2.74e+01
Endrin	2.00e-02	4.00e-01
Ethylbenzene	1.66e+01	3.32e+02
Ethylene Dibromide	4.13e-03	8.26e-02
Fluoranthene	5.16e-01	1.03e+01
Fluorene	1.78e+00	3.56e+01
Heptachlor	8.00e-03	1.60e-01
Heptachlor epoxide	8.00e-03	1.60e-01
Hexachloro-1,3-butadiene	9.61e-03	1.92e-01
Hexachlorobenzene	9.67e-05	1.93e-03
Hexachlorocyclohexane, gamma-(Lindane)	4.00e-01	8.00e+00
Hexachlorocyclopentadiene	1.66e+04	3.32e+05
Hexachloroethane	1.76e-01	3.52e+00
Hexachlorophene	3.13e-04	6.26e-03
Indeno(1,2,3-cd) pyrene	6.04e-05	1.21e-03
Isobutyl alcohol	6.85e+01	1.37e+03
Isophorone	4.44e+00	8.88e+01
Methacrylonitrile	2.28e-02	4.56e-01
Methoxychlor	1.00e+01	2.00e+02
Methyl bromide (Bromomethane)	1.28e+02	2.56e+03
Methyl chloride (Chloromethane)	1.80e-01	3.60e+00
Methyl ethyl ketone	1.37e+02	2.74e+03
Methyl isobutyl ketone	1.83e+01	3.66e+02
Methyl methacrylate	1.03e+03	2.06e+04
Methyl parathion	1.27e+02	2.54e+03
Methylene chloride	2.88e-01	5.76e+00
Naphthalene	1.50e+00	3.00e+01
Nitrobenzene	1.14e-01	2.28e+00
Nitrosodiethylamine	2.81e-05	5.62e-04
Nitrosodimethylamine	8.26e-05	1.65e-03
Nitrosodi-n-butylamine	7.80e-04	1.56e-02
N-Nitrosodi-n-propylamine	6.02e-04	1.20e-02
N-Nitrosodiphenylamine	8.60e-01	1.72e+01
N-Nitrosopyrrolidine	2.01e-03	4.02e-02
Pentachlorobenzene	1.15e-02	2.30e-01
Pentachloronitrobenzene (PCNB)	5.00e-03	1.00e-01
Pentachlorophenol	4.10e-03	8.20e-02
Phenanthrene	2.09e-01	4.18e+00
Phenol	1.37e+02	2.74e+03
Polychlorinated biphenyls	3.00e-05	6.00e-04
Pronamide	1.71e+01	3.42e+02
Pyrene	3.96e-01	7.92e+00
Pyridine	2.28e-01	4.56e+00
Styrene	6.08e+00	1.22e+02
Tetrachlorobenzene, 1,2,4,5-	9.43e-03	1.89e-01
Tetrachloroethane, 1,1,2,2-	4.39e-01	8.78e+00
Tetrachloroethylene	8.55e-02	1.71e+00
Tetrachlorophenol, 2,3,4,6-	1.81e+00	3.62e+01
Tetraethyl dithiopyrophosphate (Sulfotep)	3.01e+05	6.02e+06
Toluene	4.57e+01	9.14e+02
Toxaphene	5.00e-01	1.00e+01
Trichlorobenzene, 1,2,4-	7.24e-01	1.45e+01
Trichloroethane, 1,1,1-	7.60e+00	1.52e+02
Trichloroethane, 1,1,2-	7.80e-02	1.56e+00
Trichloroethylene	3.04e-01	6.08e+00
Trichlorofluoromethane	6.85e+01	1.37e+03
Trichlorophenol, 2,4,5-	9.16e+00	1.83e+02
Trichlorophenol, 2,4,6-	2.76e-01	5.52e+00
Trichlorophenoxyacetic acid, 2,4,5-(245–T)	2.28e+00	4.56e+01
Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	1.00e+00	2.00e+01

(B) Organics	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
Trichloropropane, 1,2,3-	7.69e-04	1.54e-02
Trinitrobenzene, sym-	6.49e+00	1.30e+02
Vinyl chloride	2.34e-03	4.68e-02
Xylenes (total)	3.20e+02	6.40e+03

(4) *Changes in Operating Conditions:* If GROWS significantly changes the treatment process or the chemicals used in the treatment process, GROWS may not manage the treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) GROWS must demonstrate that the waste meets the delisting levels set forth in Paragraph 3; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process: and (c) it must obtain prior written approval from EPA and the Pennsylvania Department of Environmental Protection to manage the waste under this exclusion.

(5) *Reopener:*

(a) If GROWS discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then GROWS must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate and to the Pennsylvania Department of Environmental Protection within 10 days of discovering that condition.

(b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate and the Pennsylvania Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

* * * * * * *

[FR Doc. 01–29966 Filed 12–3–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991–AB05

Medicare and State Health Care Programs: Fraud and Abuse; Ambulance Replenishing Safe Harbor Under the Anti-Kickback Statute

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth a safe harbor, as authorized under section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, to protect certain arrangements involving hospitals or other receiving facilities that replenish drugs and medical supplies used by ambulance providers (or first responders) when transporting patients to the hospitals or receiving facilities.

EFFECTIVE DATE: These regulations are effective on January 3, 2002.

FOR FURTHER INFORMATION CONTACT: Vicki L. Robinson, Senior Counsel, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

Overview—Establishing a New Safe Harbor for Ambulance Restocking Arrangements

This final regulation establishes safe harbor protection for ambulance restocking arrangements.[1] Ambulance restocking is the practice, commonplace in many parts of the country, of hospitals or other receiving facilities restocking ambulance providers[2] with drugs or supplies used during the transport of a patient to the hospital or receiving facility. (For simplicity, we sometimes use the shorthand ''hospital'' or ''receiving hospital'' in this preamble; such terminology is intended to include other types of receiving facilities, such as urgent care or community health care clinics that provide emergency care services). Restocking enables the ambulance to depart the hospital ready for the next emergency call, fully stocked with current medications, sanitary linens, and a full complement of appropriate medications and supplies, and helps ensure that supplies, such as intravenous tubing and catheters, are compatible with equipment used in local emergency rooms so as to expedite the transfer of critically ill or injured patients to emergency room systems. *Bona fide* restocking arrangements serve a significant public interest and are consistent with Federal policy established over the past 25 years.[3]

Set forth below is a brief background discussion addressing the anti-kickback statute and the proposed safe harbor for ambulance restocking; a summary of the provisions being adopted into the final regulations; and a review of the public

[1] Because these arrangements are commonly known as ''restocking,'' we use that term in this preamble. As further discussed below, the regulations use the word ''replenish'' to make clear that the safe harbor only applies to the gifting or transfer of drugs and supplies that replace comparable drugs and supplies administered by the ambulance provider (or first responder) to a patient before the patient is delivered to the receiving facility. The rule is not applicable to any arrangements for the general stocking of the inventories of ambulance providers. Depending on the circumstances, such arrangements may fit into other safe harbors, such as the group purchasing organization safe harbor at § 1001.952(j) or the discount safe harbor at § 1001.952(h) of this part.

[2] In this preamble and regulations text, unless otherwise specified, the term ''ambulance provider'' compasses both independent ambulance suppliers and hospital-based providers, including ''under arrangements'' providers.

[3] *See,* e.g., Emergency Medical Services Systems Act of 1973, Public Law 93–154 (providing Federal funding for the development of regional Emergency Medical Services (EMS) systems at the State, regional, and local levels, and defining ''emergency medical services system'' as ''a system which provides for the arrangement of personnel, facilities and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions * * * and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system.''); Highway Safety Act of 1966, Public Law 89–594 (establishing an EMS program in the Department of Transportation); Emergency Medical Services for Children Program, under the Public Health Act, Public Law 98–555 (providing funds for enhancing pediatric EMS); and Trauma Care Systems Planning and Development Act of 1990, Public Law 101–590.

comments received and our responses to those concerns.

I. Background

A. Ambulance Restocking and the Anti-Kickback Statute

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration (i.e., anything of value, in cash or in kind) in order to induce the referral of business reimbursable by a Federal health care program. Violations of the statute may also result in civil money penalties under section 1128A(a)(7) of the Act or program exclusion under section 1128(a)(7) of the Act. The statute has been in existence since 1977 and applies broadly to all kinds of health care providers and suppliers. Payments tied to referrals corrupt the health care system, increasing the risks of overutilization of items and services, increased costs to the Federal health care programs, inappropriate steering of patients, and unfair competition. Ambulance restocking arrangements technically implicate the anti-kickback statute because the receiving hospital gives something of value (e.g., drugs or medical supplies) to a potential source of Federal health care program business, i.e., ambulance providers who deliver patients.

Notwithstanding the *potential* for a violation, the OIG believes that the vast majority of ambulance restocking arrangements are lawful under the anti-kickback statute. We fully recognize the importance of ambulances being restocked and ready for emergency use at all times. Properly structured restocking arrangements contribute to this laudable goal without significant risk of fraud or abuse.

B. OIG Advisory Opinions

The OIG was first asked to address an ambulance restocking arrangement in 1997 when two hospitals submitted a request for an advisory opinion under section 1128D of the Act. As required by the statute, the OIG responded to the request, even though the subject matter was not of significant concern to the OIG. As with all determinations under the anti-kickback statute, our review turned on the specific facts and circumstances of the arrangement as presented by the requesting hospitals. The request presented an unusual set of facts under which an unscrupulous party *could* potentially use an ambulance restocking arrangement for an unlawful purpose, namely the steering of patients to a particular hospital in exchange for remuneration. The OIG opined that the facts of the particular arrangement—as presented by the hospitals—would be likely to involve prohibited remuneration.[4] By law, the opinion applied only to the hospitals that requested it.

Subsequently, the OIG issued several favorable advisory opinions approving restocking arrangements that it believed to be much more representative of typical restocking arrangements.[5] Most recently, in December 2000, the OIG issued a favorable advisory opinion approving a hospital's proposal to restock only volunteer ambulance companies that do not charge anyone for their services.

C. The Proposed Safe Harbor

On May 22, 2000, we published a notice of proposed rulemaking to promulgate safe harbor regulations for ambulance restocking arrangements (65 FR 32060). In the notice of proposed rulemaking, we proposed protecting two categories of ambulance restocking arrangements: (1) Arrangements under which the ambulance provider pays a receiving facility fair market value for restocked drugs or supplies; and (2) arrangements under which the ambulance service provider receives contemporaneous restocking of drugs or medical supplies used during emergency transport of a patient to the receiving facility, even if the restocking is without charge or at reduced prices. The proposed rule was designed to protect restocking for emergency transports only.

Proposed § 1001.952(v)(2), the fair market value category, was designed to protect restocking arrangements where an ambulance provider pays the receiving facility fair market value, based on an arms-length transaction, for restocked drugs or supplies (including linens) used in connection with the transport of an emergency patient. Under the proposal, payment need not be made at the same time as the restocking, provided commercially reasonable and appropriate payment arrangements are made in advance.

Proposed § 1001.952(v)(3) was designed to protect remuneration in the form of restocking of drugs or medical supplies (including linens) used during an emergency transport of a patient to the receiving facility, even if the restocking is for free or reduced prices. Under the proposed rule, the restocking arrangements would have to be implemented on a community-wide basis with some involvement of an oversight entity. The proposed safe harbor would not protect unilateral referral arrangements that were not open to all hospitals and ambulance companies in the service area.

Most commenters supported a new safe harbor, but many objected to certain aspects of the proposed rule. Some found the rule too narrow or burdensome, while others found the provisions of the proposed regulations ambiguous or impracticable. Of particular concern to many commenters were the proposed safe harbor conditions relating to monitoring by an oversight entity, written memorialization of the arrangement, and billing for restocked drugs and supplies. We have eliminated or substantially revised these conditions, as described in greater detail in section II. below.

II. Summary of the Final Rule

As with the proposed rule, the goal of this final rule is safe harbor protection for the vast majority of ambulance restocking arrangements that further the important mission of insuring that pre-hospital emergency medical services (EMS) are timely, effective and efficient.

A. Major Changes

We have modified the proposed rule in a number of areas in response to public comments. Among the substantial changes and clarifications being made in the final regulations are:

- Eliminating the oversight entity condition in favor of a public operation and disclosure condition;
- Clarifying that no complicated written contracts or agreements are required and providing a short sample disclosure notice;
- Conforming the billing conditions to existing Federal health care program payment and coverage rules and regulations;
- Expanding the safe harbor to include restocking for non-emergency runs so long as the ambulance is also used for emergency runs;
- Allowing hospitals to limit the scope of protected restocking to all non-profit ambulance providers or all ambulance providers that do not charge for their services;
- Simplifying the documentation conditions so that only one party to the restocking arrangement is required to document the restocking;
- Adding specific safe harbor protection for Government-mandated ambulance restocking; and

[4] OIG Advisory Opinion 97–6 (October 8, 1997).

[5] OIG Advisory Opinion 98–7 (June 11, 1998); OIG Advisory Opinion 98–13 (September 30, 1998); OIG Advisory Opinion 98–14 (October 28, 1998); and OIG Advisory Opinion 00–09 (December 8, 2000).

• Including restocking of drugs or supplies initially administered to the patient by a first responder at the scene of the illness or injury.

B. Final Safe Harbor Conditions

The final safe harbor regulations establish broad protection for most existing ambulance restocking arrangements, while precluding protection for any abusive arrangements that use targeted or selective restocking for the purpose of inducing or rewarding referrals. The final regulations address three categories of restocking: (1) General restocking (whether for free or for a charge), (2) fair market value restocking, and (3) Government-mandated restocking. Parties need only satisfy the conditions applicable to any *one* of these categories. Parties who are unsure whether their restocking is at fair market value or is mandated by a Government authority may look to the general restocking category.

The final regulations provide that ''remuneration'' under the anti-kickback statute does not include any gift or transfer of drugs or medical supplies (including linens) by a hospital or other receiving facility to an ambulance provider for the purpose of replenishing comparable drugs or medical supplies (including linens) used by the ambulance provider (or a first responder) in connection with the transport of a patient by ambulance to the hospital or receiving facility if all applicable safe harbor conditions are satisfied.

The regulations are divided into two parts. First, there are four conditions, codified at § 1001.952(v)(2), that apply to all three of the restocking categories being protected by the safe harbor. Second, there are specific conditions codified at § 1001.952(v)(3) for each of the three categories being set forth (general restocking, fair market value restocking, and Government mandated restocking). To qualify for safe harbor protection, a restocking arrangement must meet all of the conditions in the first part and all of the conditions relevant to *one* category in the second part.

1. Conditions Applicable to All Safe Harbor Restocking Arrangements

The four conditions applicable to all safe harbor restocking arrangements are:

(a) *Appropriate billing of Federal health care programs.* The final rule conditions safe harbor protection on Federal health care program billing for restocked drugs and medical supplies that is consistent with all applicable program payment and coverage rules and regulations. The ambulance provider and the hospital may not both bill for the same restocked drug or supply. For purposes of this safe harbor, billing includes submitting claims for bad debt. Compliance with the requirement that billing be appropriate will be determined separately for receiving facilities and ambulance providers. For example, if a hospital improperly bills for restocked supplies, the ambulance provider who received the supplies may still be protected, so long as the provider has not done anything to impede the hospital's compliance with the billing rules.

(b) *Documentation requirements.* We have simplified the documentation requirements. Under the final rule, either the hospital or the ambulance provider may generate the necessary documentation, so long as the other party receives and maintains a copy of it for 5 years. This 5-year period is consistent with the recordkeeping requirements of the Centers for Medicare and Medicaid Services' (CMS) [6] hospital conditions of participation. The pre-hospital care report typically prepared by the ambulance service provider (sometimes called the trip sheet, patient care report or patient encounter report) will be sufficient to satisfy this requirement if (i) the report identifies the drugs and supplies used on the patient and subsequently restocked and (ii) a copy of the report is filed with the receiving facility within a reasonable amount of time. For arrangements that include restocking of linens, an exchange of linens will be presumed to occur with each run, absent documentation to the contrary. The pre-hospital care report or other documentation may be prepared and filed with the other party in hard copy or electronically.

(c) *No ties to referrals.* In the light of the easing of the billing conditions, we are adding a safeguard similar to one found in other safe harbors that prohibits any restocking arrangement that is conditioned on, or otherwise takes into account, the volume or value of any referrals or other business generated between the parties for which payment may be made in whole or in part by a Federal health care program (other than the delivery to the receiving facility of the particular patient for whom the drugs and medical supplies are restocked).

(d) *Compliance with all other applicable laws.* We have retained the proposed condition that the receiving facility and the ambulance provider must comply with all Federal, State and local laws regulating ambulance services, including, but not limited to, emergency services, and the provision of drugs and medical supplies, including, but not limited to, laws relating to the handling of controlled substances.

2. Safe Harbor Conditions Applicable to the Specific Categories of Safe Harbor Protection

The safe harbor conditions applicable to the three specific categories of safe harbor protection are summarized as follows:

(a) *General restocking.* This safe harbor for general restocking is available for free restocking arrangements, as well as arrangements under which the ambulance provider pays some amount for the restocked drugs and supplies (whether or not the amount is fair market value). (Any payment for drugs must comply with applicable Federal, State and local laws.) Two specific conditions apply to the general restocking category. First, the receiving facility must restock medical supplies or drugs on an equal basis for ambulance providers in one or more of three categories: (i) All ambulance providers; (ii) all non-profit and governmental providers; or (iii) all non-charging providers (typically volunteers and municipal providers). A receiving facility can offer restocking to more than one category, and can offer a different restocking program to each category that it restocks, so long as the restocking is uniform within each category. The final regulations make clear that safe harbor protection does not require each hospital and receiving facility in the service area to offer restocking, nor all ambulance providers to accept it.

Second, the restocking must be conducted publicly. As detailed in the regulations text, a restocking arrangement will be considered to be conducted publicly if: (i) The arrangement is memorialized in a conspicuously posted writing that outlines the terms of the restocking program and copies are available publicly (a sample disclosure form is included in the regulations); *or* (ii) The restocking program operates in accordance with a plan or protocol of general application promulgated by an EMS council or comparable organization. For purposes of safe harbor compliance, the writing need not disclose confidential proprietary or financial information.

(b) *Fair market value restocking.* This category protects restocking arrangements where an ambulance provider pays the receiving facility fair

[6] Until June 2001, CMS was known as the Health Care Financing Administration.

market value, based on an arms-length transaction, for restocked medical supplies (including linens). For consistency with the Prescription Drug Marketing Act,[7] and some State laws, the final regulations do not include the resale of drugs in this category. (Restocking of drugs may be covered under other safe harbor categories.) This safe harbor category has two conditions: (i) The restocking must be at fair market value, and (ii) payment arrangements must be commercially reasonable and made in advance. For reasons discussed in greater detail in the responses to comments in section III. of this preamble, we are not including any special accommodation related to the Non-Profit Institutions Act, 15 U.S.C. 13(c), exception to the Robinson-Patman Act.[8]

(c) *Government-mandated restocking.* This final safe harbor protects restocking of drugs and supplies undertaken in accordance with a State or local statute, ordinance, regulations or binding protocol that requires hospitals or receiving facilities in the area subject to such requirement to restock ambulances that deliver patients to the hospital with drugs or medical supplies that are used during the transport of that patient.

C. Safe Harbor Compliance Is Voluntary

As with all safe harbors, compliance with these new safe harbors is *voluntary*. While the vast majority of ambulance restocking arrangements should fit in this new safe harbor, failure to fit does not mean that an arrangement is illegal under the anti-kickback statute. Rather, it simply means that the legality of the arrangement must be evaluated on a case-by-case basis. If no purpose of the arrangement is to induce or reward the generation of Federal health care program business, there would be no violation of the statute. The obligation of parties to comply with the anti-kickback statute pre-dates this safe harbor rulemaking, and arrangements that were lawful before the rulemaking will continue to be lawful, whether or not they meet the safe harbor requirements. The safe harbor does not require the restructuring of any arrangements, although parties may choose to restructure to take advantage of the safe harbor protection. Parties who are unsure whether their existing or proposed arrangements fit in a safe harbor or would be subject to OIG sanctions may apply for an advisory opinion under section 1128D of the Act. The procedures for applying for an advisory opinion are set forth at 42 CFR part 1008 and on the OIG Web site at *http://www.dhhs.gov/progorg/oig/advopn/index.htm*.

III. Public Comments and Responses

In response to our proposed rulemaking, the OIG received a total of 46 timely-filed comments from a cross-section of ambulance providers, hospitals, local and regional emergency medical boards, professional associations and other interested parties. Set forth below is a summary of the issues raised by the commenters and our responses to those specific concerns.

A. General Comments

The vast majority of the public comments supported promulgation of a safe harbor for ambulance restocking, although many commenters took issue with one or more specific aspects of the proposal.

Comment: Several commenters believed that the OIG advisory opinions on ambulance restocking under the anti-kickback statute, especially the first one issued in 1997, have had a chilling effect on ambulance restocking arrangements.

Response: While this comment reflects a common perception in the industry, we have learned that a major source of the reluctance of many hospitals to enter into, or continue, restocking programs is financial. In other words, their willingness to participate in restocking arrangements is directly related to their ability to be reimbursed by Medicare or other insurers for costly supplies and drugs provided without charge to local ambulance services. Many of these drugs and supplies are increasingly becoming the standard of care for pre-hospital services. In many cases, financially strapped hospitals are unwilling to continue to subsidize the emergency medical system in the absence of definitive assurance that they will be adequately reimbursed for drugs and supplies used during ambulance transports. Some hospitals have used the unfavorable 1997 advisory opinion as a pretext for justifying decisions to terminate, or decline to participate in, restocking arrangements in order to blunt negative publicity and adverse local community reaction.

Comment: A number of commenters misread the proposed regulations as an effort by the OIG to dictate Medicare payment policy.

Response: The OIG does not set Medicare payment and coverage policy. As stated in the proposed rule, we express no view in these regulations as to the appropriate Federal health care program payment or coverage policy for drugs and supplies used during ambulance transports. Those determinations are properly made by the relevant Federal program. In crafting safeguards to include in safe harbor regulations, we considered the ways in which a particular payment policy or practice may affect the risk of patient or program abuse.

Comment: An ambulance provider with a limited budget, and in an area with a low call volume, explained that it could not maintain an Advanced Life Support level of service, because it was unable to restock drugs from a local hospital. According to the commenter, their costs of purchasing expensive drugs in small quantities makes such drugs prohibitively expensive. In addition, the commenter observed that many small providers do not have the facilities to maintain proper environmental conditions for larger supplies of these types of drugs.

Response: Nothing in these regulations prohibits hospitals from restocking ambulances with drugs or prohibits ambulance providers from taking advantage of (i) volume discounts obtained by hospitals (to the extent otherwise permitted under Federal, State and local law) or (ii) any hospital facility for storing such drugs.

Comment: Several commenters indicated that in some parts of the country, local and State governments have imposed mandatory requirements relating to the restocking of ambulances that deliver patients to hospitals. These commenters requested an additional category of safe harbor protection to address arrangements controlled by State or local government requirements.

Response: Nothing in the safe harbor regulations precludes State and local governments from regulating ambulance restocking. If the State or local law or regulation is duly promulgated, and the restocking arrangement is conducted in accordance with its mandate, the OIG sees little risk under the anti-kickback statute, which requires a showing of unlawful intent. Accordingly, we are including an additional safe harbor category for Government-mandated restocking, and have adapted language suggested by a major trade association. We note that nothing in State or local government laws or regulations mandating ambulance restocking affects the reimbursement rules under Medicare or other Federal health care programs.

Comment: Some commenters questioned whether ambulance

[7] Public Law 100–293, April 22, 1998, 102 Stat. 95.

[8] 15 U.S.C. 13(a)–(f).

restocking arrangements raise kickback concerns at all. Specifically, with respect to patient steering risks, one commenter explained that conscious patients select their own destination, and unconscious or unstable patients are taken to the nearest facility. Other commenters expressed the view that instances of fraud in ambulance restocking arrangements would be isolated.

Response: We agree that fraud and abuse are likely to be uncommon in *bona fide* ambulance restocking arrangements. Nonetheless, in crafting safe harbors, we must be mindful not only of the benefits of the practices we seek to protect, but also the potential abuses. With ambulance restocking, the risks are low but not absent.

Comment: Several commenters requested clarification of the term ''emergency patient'' as used in the proposed safe harbor. These commenters inquired whether this term referred to the patient's actual condition or to the manner by which the ambulance is summoned. One commenter suggested that an emergency patient be defined as a patient delivered to a *bona fide* emergency department for medical or traumatic care.

Response: Because we are expanding the safe harbor to cover non-emergency transports, we do not believe any regulatory definition of the term ''emergency patient '' is required. However, we are adding a definition of ''emergency ambulance service'' for purposes of identifying those ambulances and ambulance providers that provide emergency transports and are thus eligible for safe harbor-protected restocking. For purposes of these final regulations, we are defining an ''emergency ambulance service'' as one that results from a call through 9–1–1 or other emergency access number or a call from another acute care facility unable to provide the higher level care required by the patient and available at the receiving facility.

Comment: Paragraph (v)(1) of the proposed regulations indicated that remuneration ''* * * does not include any gift or transfer of drugs or medical supplies (including linens) * * *'' A commenter found the use of the word ''gift'' in this phrase confusing, since the safe harbor protects what is essentially an equal or equivalent exchange (i.e., what was used is restocked) and not the gifting of additional goods.

Response: The commenter is correct that the safe harbor is not designed to protect remuneration in the form of additional goods or services beyond the restocking of drugs or medical supplies (including linens) used on particular patients transported to the receiving facility. It does, however, protect restocking in the form of a gift, i.e., restocking bestowed voluntarily and without compensation.

Comment: A large self-insured manufacturing company that maintains its own private ambulance service to transport ill or injured employees to its preferred provider hospitals expressed concern about the impact of the proposed rule on its restocking arrangement. According to the commenter, the company negotiates preferred provider plans with hospitals in accordance with which the hospitals restock the ambulances at the hospitals' expense. No employees transported by the company's ambulance service are covered by Medicare or Medicaid, but the company is concerned that the safe harbor would affect restocking practices at the hospital.

Response: Because the company's ambulance service transports only private pay patients, nothing in this rule will directly affect the commenter's restocking arrangements. Short of making clear in this preamble discussion that the arrangement described in the comment need not be modified to comply with these rules, we know of no way of preventing the collateral impact anticipated by the company in particular cases.

B. General Restocking

1. Non-Emergency Transports

Comment: A number of commenters urged the OIG to expand the proposed safe harbor to cover the restocking of drugs and medical supplies for non-emergency transports. Given that ambulances that provide non-emergency transports are frequently on call for emergencies, commenters noted that it would be contrary to the public health and safety goals of restocking to bar restocking of an ambulance that arrives at a hospital with a non-emergency patient. One commenter recommended that we expand the safe harbor to apply to all patients brought to the hospital or, in the alternative, to all patients brought to the emergency room.

Response: In general, the scope of replenishing needed after a non-emergency transport is likely to be minimal, since relatively few drugs or supplies are typically administered to non-emergency patients during a transport. Nevertheless, to further the goal of protecting restocking arrangements that ensure that ambulances are stocked and ready to respond to emergencies at all times, we are expanding the safe harbor to cover the restocking of drugs and supplies used on both emergency and non-emergency transports, provided that the ambulance that is restocked is used with some degree of regularity to respond to emergency calls (i.e., calls from 9–1–1 or another emergency access number). We do not intend to protect restocking of ambulances that are not used with some degree of regularity for emergencies. The fact that such restocking is outside the scope of this rulemaking does not mean that such restocking is illegal. Whether arrangements for restocking of non-emergency ambulances violate the anti-kickback statute must be determined on a case-by-case basis. Parties to such arrangements may request an OIG advisory opinion.

In order to create a bright line rule that is simple to apply, this expansion requires a measure for determining when an ambulance is used for emergency calls with sufficient regularity to qualify for replenishing under the safe harbor. The new regulations provide that an ambulance will satisfy this standard if the ambulance is used to respond to emergencies an *average* of three times per week measured over *any* reasonable time period. This test does *not* mean that the ambulance must actually make three emergency runs every week. Rather, over a reasonable period of time, the ambulance must be used an *average* of three times per week. Thus, for example, if an ambulance is used 12 times during a month, the test will be met. Similarly, the test will be met if the ambulance is used for emergency runs 156 times in a year, even if there are some weeks in which the ambulance receives no emergency calls. In essence, the three runs test is designed to differentiate between ambulances that are reasonably likely to be called out for an emergency transport, and thus have a compelling need to be restocked by a receiving facility after a non-emergency run, and those that are not.

Restocking arrangements for ambulances or ambulance providers that only provide routine, non-emergency services, or that do not meet the three runs test described above, must be evaluated under the anti-kickback statute on a case-by-case basis. Finally, nothing in these regulations will require restocking of non-emergency transports or the expansion of existing restocking programs to cover non-emergency transports.

2. Uniform Restocking

Comment: The proposed rule conditioned safe harbor protection on a receiving hospital's provision of restocked drugs and supplies on an

equal basis to all ambulance providers that deliver patients to the hospital. This condition was intended to insure that the safe harbor did not protect selective or targeted arrangements that are not *bona fide* restocking for the purpose of enhancing the delivery of EMS. Commenters argued that the safe harbor should protect receiving facilities that opt to restock only certain categories of ambulance providers. For example, some wanted to restock only volunteer ambulance providers or only ambulance providers that do not charge patients or insurers. Tax-exempt hospitals commented that requiring them to restock for-profit ambulance providers could jeopardize their tax-exempt status. Other commenters wanted to offer different restocking programs to different types of ambulance providers, such as offering full restocking to non-charging volunteer companies and more limited restocking to companies that charge for services.

Response: Having reviewed the comments, we have concluded that an appropriate safe harbor can be structured that would afford hospitals greater flexibility in crafting restocking programs, while preserving the principle that protected restocking programs should not be unilateral arrangements for the benefit of selected providers. (Of course, unilateral arrangements in remote service areas where there is only one receiving facility or one ambulance service provider are protected if they meet all the safe harbor conditions.) The final regulations protect restocking of: (i) All ambulance providers; (ii) all non-profit and governmental ambulance providers; or (iii) all ambulance providers that do not charge patients or insurers (typically volunteers and municipal providers). A hospital can offer restocking to more than one category and can offer a different restocking program to each category that it restocks, so long as the restocking is uniform within each category (i.e., non-charging providers may be offered a larger scope of restocked items than charging providers). Limiting the scope of free restocking to providers within these categories represents a reasonable distinction that will ensure that arrangements qualifying for safe harbor protection will not be related to the volume or value of referrals or other business generated for the hospitals. This modification accommodates hospitals' legitimate interests in containing the cost of their restocking programs. (The issue of the effect, if any, of a restocking arrangement on a hospital's tax exempt status would be a matter for the Internal Revenue Service.)

Comment: A commenter expressed concern that the ''all ambulances'' condition in the proposed rule would not permit facilities to restock only small, low volume volunteer companies without charge or at below cost. The commenter explained that, in their region, hospitals could not afford to restock large, high volume commercial ambulance companies for free.

Response: We have revised the safe harbor to permit hospitals to restock volunteer companies only. To qualify for safe harbor protection, the hospital must restock all volunteer companies uniformly. The safe harbor does not protect differential restocking based on the volume of transports, although offering free or discounted restocking only to low volume companies would not necessarily violate the anti-kickback statute.

Comment: Several commenters requested clarification as to whether all ambulance providers and receiving facilities in a service area would be required to participate in a restocking arrangement in order for the arrangement to qualify for safe harbor protection.

Response: All ambulance providers in a service area are *not* required to participate in order for an arrangement to fit in the safe harbor. Under the proposed rule, we did not intend to require all ambulance providers and receiving facilities in a service area actually to participate in a restocking arrangement in order for the arrangement to qualify for safe harbor protection. We did intend to require that a protected restocking arrangement be open to the voluntary participation of all ambulance providers and receiving facilities in a service area. The final regulations—including the new public operation and disclosure condition—generally reflect this intent. We have made exceptions for arrangements that limit the scope of restocking to the particular subcategories of ambulance providers described in the preceding response or that limit the scope to emergency transports. These limitations are a reasonable means of constraining the costs of restocking and are not related to the actual or potential volume or value of referrals or other business generated between the parties that is payable by a Federal health care program.

3. Billing

Comment: Some commenters objected to the proposed billing conditions. While designed to limit safe harbor protection to those arrangements that posed no risk of double payments or ''double dipping,'' the conditions were misconstrued by many commenters as prohibiting legitimate billing practices under Medicare payment rules, or as barring all billing by both the hospitals and the ambulance providers for the restocked drugs and supplies. Some commenters wondered why a safe harbor under the anti-kickback statute would need to take into account the question of billing at all. Commenters recommended that the conditions on billing in the proposed safe harbor be removed or altered to provide only that any billing for restocked items must be consistent with applicable Federal reimbursement provisions.

A commenter explained that ambulance providers in its State are not allowed to purchase or bill for drugs. The drugs used in the field are purchased and owned by the hospitals and restocked locally through a system of State-approved protocols. The commenter believed the following language would better accomplish the safe harbor objectives, while still allowing one party to bill for drugs: ''Under no circumstances may the ambulance provider and the receiving facility both bill for the actual drug or supply. Restocked drugs or supplies may only be billed to any Federal health care program by either the ambulance provider or the receiving facility.'' Several other commenters suggested similar language.

Response: We agree with the commenters that a safe harbor regulation is not a tool for setting program payment and coverage policy and doing so was not our intent. The billing conditions we proposed were designed to ensure that the safe harbor would not protect arrangements that could result in Medicare paying twice for the same drugs and supplies (i.e., situations in which both the ambulance company and the hospital bill for the same drug or supply), or in the ambulance services provider receiving a double benefit by billing Medicare for drugs and supplies for which it obtained free replacements (double-dipping). In both circumstances, ambulance restocking arrangements have the potential to increase costs to Medicare and other Federal health care programs. In the interest of simplification, we are adopting the commenters' suggestion and modifying the billing conditions to require that any billing of the Federal health care programs comport with applicable payment and coverage rules and regulations. Under applicable Medicare rules, a particular drug or supply administered to a patient in a pre-hospital setting will be covered

under either the ambulance or the outpatient hospital benefit, depending on the circumstances (e.g., whether the ambulance transport is provided ''under arrangements'' with the hospital); thus, the ambulance provider and the hospital may not both bill for the same drug or supply.[9]

Comment: Commenters raised a number of issues related to reimbursement for restocked drugs or supplies in particular circumstances. For example, a commenter explained that several volunteer rescue squads in its region do not bill any Federal health care programs. The commenter believes the proposed rule, as written, did not consider how a hospital would be reimbursed for drugs and supplies used by a volunteer service when an emergency patient is not admitted to the hospital. Some commenters questioned how ambulance providers would be reimbursed for new lifesaving drugs that could not have been included in the base rate payable to ambulance providers because the drugs did not exist, or were not used in a pre-hospital setting, when the base rates were set. Several commenters asked that we create a separate safe harbor to cover restocking arrangements that deal with specific drugs or devices that are administered at the order of a physician at the receiving hospital or centralized medical control. A commenter observed that unless private ambulance companies recover costs for expensive new medications, they will likely cease providing emergency services, thus shifting the entire responsibility onto the local governments to provide emergency medical care.

Response: The question of reimbursement in the circumstances described by the commenters is outside the scope of the OIG's regulatory authority and should be directed to CMS or the relevant fiscal intermediary or carrier. We included a condition in the proposed safe harbor that would have denied safe harbor protection for arrangements under which ambulance providers billed separately (i.e., in addition to the base rate payment) for restocked drugs and supplies. The condition would not have barred the restocking of any particular drugs or supplies. However, we have removed the former billing condition and replaced it in the final regulations with one that requires appropriate billing of the Federal health care programs, as determined by CMS or other relevant payment agency. Restocking of lifesaving drugs will be protected so long as the safe harbor conditions are met. None of the safe harbor conditions strikes us as imposing any particular burden on restocking of lifesaving drugs. Given this, we see no need for the additional safe harbor suggested by the commenters.

Comment: Several commenters observed that hospitals are unwilling to absorb the cost of emergency medications and supplies provided for free or below fair market values.

Response: Nothing in these regulations requires hospitals to provide ambulances with free or below cost medications or supplies for emergency services. Our interest in developing the safe harbor provisions is in insuring that the anti-kickback statute does not chill *bona fide* hospital restocking arrangements by hospitals that wish to provide them. To the extent that reimbursement policies may adversely impact the delivery of EMS, those concerns should be addressed to CMS.

Comment: A commenter asked about the intended impact of these safe harbor regulations on current and future arrangements involving hospitals that have negotiated prospective payment arrangements that may incorporate medication charges or EMS providers that have negotiated fee structures that bundle such charges in one overall set of base-rate and mileage charges. The commenter pointed out that CMS's negotiated rulemaking process for EMS rate setting may alter these arrangements as new rates, including bundled charges, are phased in.

Response: These rules should have no impact on the arrangements described by the commenter. Nothing in these rules alters or changes any billing practice or arrangement.

4. Documentation

Comment: Several commenters raised concerns about the documentation requirement in the proposed safe harbor. Commenters believed that requiring both the hospital and the ambulance provider to document the restocking was unnecessary and duplicative. The commenters generally suggested that existing patient care reports (sometimes known as trip sheets or patient encounter reports) already maintained for other purposes, such as ensuring continuity of care and billing, should be sufficient. Commenters explained that in a busy emergency room, it would be difficult to maintain multiple logs for multiple ambulance providers for both supplies and medications. Several commenters noted that maintaining a record of every restocked item in a large urban EMS system with a large volume of patients would create large amounts of paperwork, consume limited resources, and slow down the response time of ambulances. Alternatively, some commenters suggested that parties could agree that either the hospital or the ambulance provider, but not both, should bear the responsibility for record keeping.

Response: We have modified the documentation requirement to permit either party to maintain records of the restocked drugs and medical supplies, so long as the other party receives and maintains a copy of the records. (In the alternative, both the hospital and the ambulance provider can maintain separate records of the restocking, in which case they need not file copies of their respective documentation with the other party.) Patient care reports, trip sheets, patient encounter reports, and the like (collectively being referred to as pre-hospital care reports in the final regulations) are sufficient to meet this requirement if they document the restocked drugs and medical supplies and are filed with the receiving facility within a reasonable time, in hard copy or electronically. It is our understanding that the preparation of a pre-hospital care report is the standard of care for transferring a patient to a receiving facility and is required by law in many States. However, parties may decide individually or between themselves to document the restocking using other kinds of paper or electronic records. In the case of first responder restocking, we are requiring that the restocked drugs and medical supplies be documented in the pre-hospital care report prepared by the transporting ambulance provider *or* in records maintained by the hospital and shared with the transporting provider.

Comment: One commenter favored the proposed documentation requirement in most situations, but suggested that this requirement might be rethought for linen exchanges and other routinely used items. In the commenter's view, the requirement that hospitals and ambulance providers keep records pertaining to routine items, like linens, is unduly burdensome. The commenter argued that there is little risk to the programs from a one-for-one exchange of soiled linen for clean linen, and that these exchanges are so prevalent throughout the industry that record keeping would be required on

[9] Nothing in this preamble or these safe harbor regulations should be construed as approving or establishing any particular billing or payment practice. Questions regarding Medicare billing should be addressed to CMS or the appropriate fiscal intermediary or carrier. Questions regarding Medicaid billing should be addressed to the State Medicaid agency. Questions regarding billing in other Federal health care programs should be addressed to the relevant agency.

virtually every transport for many ambulance providers.

Response: We agree that providers need not document the exchange of linens. If they are part of a restocking arrangement, linens will be presumed to have been exchanged on a one-for-one basis. The commenter did not identify, and it would not be feasible to enumerate in these regulations, other supplies that may be so routinely used as to warrant a comparable presumption. We think parties will be able to devise simple means of documenting such routine restocking.

Comment: One commenter requested guidance on the length of time providers need to maintain records of restocked drugs and supplies.

Response: As indicated above, we have simplified the documentation requirements. Under the final regulations, either the hospital or the ambulance provider may generate the necessary documentation, so long as the other party receives and maintains a copy of it for 5 years, a period consistent with the CMS's hospital conditions of participation recordkeeping requirements.

5. Writing Requirement

Comment: Some commenters objected to the proposed condition requiring the restocking arrangement to be memorialized in writing. The proposed rule required that the ambulance restocking arrangement be memorialized in writing, *either* (i) in a plan or protocol of general application *or* (ii) in a written contract between the parties. Some commenters misread this condition as requiring providers to enter into written contracts or agreements. In addition, we have heard, anecdotally, that some industry consultants and counselors have been advising ambulance providers and hospitals that the proposed rule required the creation of lengthy and detailed contracts.

Response: As is typical of most safe harbor regulations, the proposed rule required that the protected ambulance restocking arrangement be memorialized in writing. Under the proposal, the writing could be *either* a plan or protocol of general application *or* a written contract or agreement between the parties. Under the final rule, no particular form of writing is mandated. Indeed, the writing can take the form of a simple disclosure statement. A sample disclosure statement is being included as an appendix to part 1001, subpart C of the regulations. This sample is intended for guidance purposes only. Parties are free to use other formats or to substitute written contracts or protocols. No public disclosure of confidential proprietary or financial information is required.

We believe that virtually all existing restocking arrangements are already being conducted in accordance with some form of written description of the arrangement. So long as the written description is conspicuously posted and publicly available and describes (i) The category, or categories, of ambulance provider that qualifies for restocking; (ii) the drugs or medical supplies included in the restocking program for each category; and (iii) the procedures for documenting the restocking, no new paperwork is required to qualify for safe harbor protection.

6. Publicly-Conducted restocking

Comment: Many commenters objected to the ''oversight entity'' condition included in the proposed rule. Among other things, commenters argued that mandating a regional oversight body would unduly burden local communities by requiring the creation of a significant infrastructure and layers of bureaucracy. Some commenters expressed concern that the proposed rule was unclear as to the scope of the oversight entities' responsibilities and that such a requirement could lead to logistical problems for entities that would have to develop, review and monitor contracts for all regional providers. In some places, this would entail oversight of more than 80 receiving facilities. A hospital association expressed concern that the term ''oversight'' could imply a regulatory, rather than strictly an oversight, role. Some commenters thought the proposed rule tasked oversight entities with responsibility for monitoring contractual arrangements over which they might have little control. Some commenters noted that coordinated EMS councils do not exist in all parts of the country, and, where they do operate, it would often not be realistic to expect them to oversee the restocking programs of many different hospitals and ambulance providers. Other commenters found the language regarding the composition of the oversight entity confusing and questioned whether particular parties, such as labor unions, could be participants in the oversight entities.

Response: We originally proposed protecting ambulance restocking arrangements that were part of a comprehensive and coordinated EMS delivery system to ensure that the safe harbor would protect *bona fide* restocking arrangements and not selective arrangements used to attract or reward referrals. To effectuate this requirement, we proposed that restocking arrangements be implemented with the participation of, and monitored by, a regional EMS council or comparable entity.

While we had intended the oversight entity condition to be broad and flexible in accordance with local conditions, encompassing a broad array of entities of various composition that were representative of their service areas, the comments made clear that many in the industry found the requirement burdensome. Accordingly, we have eliminated the oversight entity condition, and in its place we have substituted three flexible safe harbor conditions that we believe will provide sufficiently comparable protection from a safe harbor perspective. These include conditions that: (i) Require a publicly conducted restocking arrangement, (ii) require uniformity in the restocking arrangement, and (iii) prohibit restocking that takes into account the volume or value of referrals (other than the referral of the particular patient to whom the restocked drugs and medical supplies were furnished). These new requirements should effectively exclude improperly selective or preferential arrangements from safe harbor protection, while protecting those arrangements that are truly intended to promote the safe, efficient and effective delivery of pre-hospital EMS.

Comment: One commenter noted that requiring restocking arrangements to be part of a comprehensive regional EMS delivery plan was an important way to guarantee compliance on the part of providers.

Response: Participation in a comprehensive regional EMS delivery system is an effective means of ensuring that ambulance restocking arrangements further the public interest in timely, effective and efficient EMS and are not improperly targeted at high referrers. Under the final rule, restocking arrangements that are conducted in accordance with a protocol or plan established by an EMS council or comparable body will satisfy the public operation and disclosure requirements of the safe harbor and will likely satisfy the other safe harbor requirements as well.

Comment: One commenter suggested that, as an alternative to the oversight entity condition, the OIG require hospitals (i) to have written policies, approved by the governing board, stating that their restocking program is open to all emergency ambulance providers; and (ii) to develop an internal system to confirm and verify this arrangement.

Response: We have essentially adopted this commenter's views in the

final rule, although hospitals may limit the scope of their restocking programs to certain subcategories of ambulance providers. We are not requiring governing board approval or the development of internal compliance systems as part of this safe harbor regulation, but note that such practices may be prudent as part of the hospital's overall anti-fraud and abuse compliance program and necessary to ensure proper billing of the Federal health care programs.

Comment: One commenter urged that the proposed safe harbor conditions, especially the oversight entity condition, be eased for restocking arrangements in rural or isolated areas since ambulance providers in these areas have, in effect, no choice of where to deliver a patient.

Response: We believe the final rule, as modified, accommodates the special circumstances of rural and isolated areas. As stated above, we are no longer requiring establishment of an oversight entity. We believe the remaining safe harbor conditions are reasonable and impose few, if any, additional burdens on providers.

7. First responders

Comment: A commenter requested safe harbor protection for restocking for first responders. The commenter described the following situation:

> A search and rescue company delivers a patient to an ambulance that transports the patient to the hospital. The search and rescue company is restocked for supplies used on the patient by the ambulance transport provider, which, in turn, is restocked by the hospital. The hospital charges the patient for the restocked supplies.

Response: The final regulations protect hospital restocking of first responders as described by the commenter, provided the safe harbor conditions are satisfied. Specifically, the safe harbor accommodates those arrangements in which a 9–1–1 (or comparable emergency access number) first responder—including, but not limited to, a fire department, paramedic service or search and rescue squad—administers drugs or supplies to the patient, but does not transport the patient to the receiving facility. In these circumstances, the transporting ambulance provider may restock the first responder and then, in turn, be restocked by the hospital. Any billing by the hospital, the ambulance provider, or the first responder would be subject to the applicable Federal health care program payment and coverage rules and regulations. This safe harbor only addresses restocking by hospitals. Restocking of first responders by ambulance transport providers (independent of any hospital restocking) was outside the scope of the proposed rulemaking and is not addressed in these final regulations. Such arrangements must be analyzed on a case-by-case basis for compliance with the anti-kickback statute. Parties may seek an OIG advisory opinion about such arrangements.[10]

C. Fair Market Value Restocking

Comment: Several commenters raised concerns about the fair market value safe harbor's application to the transfer of drugs. As these commenters explained, many hospitals participating in EMS systems historically have ''owned'' the medication and supplies used by the ambulances on emergency transports without passing title to the ambulance provider. In many cases, the drugs are controlled substances under State laws and cannot be the property of a fire department or ambulance company. The commenters asserted that if title does not pass to the ambulance provider, then the hospital does not provide anything of value when it replaces the drugs on the ambulance. In addition, several commenters questioned how prescription drugs could be *sold* to ambulance providers by hospitals. One commenter stated that the Prescription Drug Marketing Act of 1987 (21 U.S.C. 353(c)) specifically forbids hospitals from re-selling prescription drugs, except under narrow circumstances.

Response: We agree that the fair market value safe harbor category should be restricted to the resale of supplies and non-prescription drugs (which are included as ''supplies'' under Medicare's ambulance payment system). Nothing in these regulations should be construed as permitting any action in contravention of applicable Federal, State, or local laws governing the purchase and administration of controlled substances and prescription medications. Whether the transfer of drugs that cannot be owned by an ambulance provider, and that remain the property of the hospital when placed on an ambulance in accordance with State or local law, is remuneration to the ambulance provider that administers the drugs in the field turns, in the first instance, on whether the drugs are covered under Medicare's ambulance benefit or under the outpatient hospital benefit in the particular circumstances. As noted above, questions regarding appropriate coverage and payment under Medicare should be directed to CMS.

Comment: A commenter expressed concern that the fair market value safe harbor would make it impossible for a hospital to provide the goods on a *pro bono* basis to a small volunteer ambulance service. The commenter believed the proposed safe harbor required facilities either to charge volunteer companies the same rates they charge commercial or municipal services or to charge no one.

Response: The commenter misread the proposed safe harbor. Nothing in these regulations precludes *bona fide* charitable contributions by hospitals to volunteer ambulance services. The fair market value safe harbor at § 1001.952(v)(3)(ii) does not require that a receiving facility charge all ambulance providers the same prices. Rather, the safe harbor protects those arrangements that are at fair market value. Arrangements that are not at fair market value, such as free or deeply discounted restocking to volunteer companies or others, may be protected instead under the general restocking safe harbor at § 1001.952(v)(3)(i).

Comment: One commenter was concerned that market power disparity among receiving facilities could affect the fair market value prices ambulance companies pay, in turn creating an incentive for ambulance providers to take patients to larger hospital systems in a position to negotiate volume discounts for their drugs and supplies and pass those discounts on to ambulance companies. The commenter suggested that the OIG add provisions to guard against this risk.

Response: In applying the fair market value condition, fair market value should be measured in terms of prices the ambulance provider would pay for like supplies if it purchased them in an arms-length transaction from a seller (other than a receiving facility) for whom the ambulance provider is not a potential referral source. In many situations, fair market value will be a range of prices, not a single price. (Restocking at prices that are below fair market value is not protected by this safe harbor category, although the restocking may be protected by one of the other restocking safe harbor categories.) We recognize that there may be a potential inducement when the fair market value charged is at the low end of the range of fair market value prices. However, nothing in the anti-kickback statute prohibits legitimate price competition.

Comment: Some commenters questioned the reference in the

[10] The procedures for applying for an advisory opinion are set forth at 42 CFR part 1008 and on the OIG Web site at *http://www.dhhs.gov/progorg/oig/advopn/index.htm.*

proposed fair market value safe harbor to the Non-Profit Institutions Act (NPIA), 15 U.S.C. 13(c). The proposed safe harbor would have protected certain sales of supplies at cost by non-profit hospitals to non-profit ambulance providers if the sales were designed to take advantage of the NPIA exception to the Robinson-Patman Act.[11] One commenter indicated that the proposed language did not appear to address the situation of a non-profit hospital reselling supplies to a ''for profit'' ambulance provider. Another commenter asserted that absent definitive guidance from the Federal Trade Commission (FTC) that reselling supplies to an ambulance provider would fit within 15 U.S.C. 13(c), hospitals would be wary about complying with the safe harbor condition.

Response: We have reconsidered the need for the language referencing the NPIA in the fair market value safe harbor. Given the substantial easing of the conditions applicable to the general restocking safe harbor category, we believe that the final regulations provide adequate and easily achievable protection for all legitimate restocking, whether at fair market value prices, below fair market value prices or without charge. To the extent it may be unclear whether a particular resale of supplies is at fair market value, we do not believe it will pose any undue burden on non-profit hospitals to seek shelter under the general restocking safe harbor category, which offers protection to restocking without regard to what price, if any, the hospital charges for the restocked drugs or supplies. The question whether particular restocking arrangements undertaken by non-profit hospitals run afoul of the Robinson-Patman Act or qualify for the NPIA exception is an FTC concern outside the scope of our regulatory authority.

IV. Meeting the Criteria for Establishing New Safe Harbors

Section 205 of the Health Insurance Portability and Accountability Act, Public Law 104–191, established certain criteria that the Secretary may consider when modifying or establishing safe harbors to the anti-kickback statute. We have considered the criteria establishing in our notice of intent to develop regulations (61 FR 69061; December 31, 1996) in developing this final rule, and we believe, for the reasons described above, that these final safe harbor regulations for certain ambulance restocking arrangements is likely to: (1) Increase, or have no effect on, access for needy patients to health care services; (2) increase the quality of health care services for needy patients; (3) have little, or no effect on, the cost of Federal health care programs; (4) have little, or no effect on, competition; and (5) increase, or have no effect on, the quantity of services provided in underserved areas. We further believe that this safe harbor contains safeguards that limit the potential for overutilization and assure that patients retain their freedom of choice of service providers.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866, the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any given year). Since this regulation will not have a significant effect on program expenditures and as there is no additional substantive costs to implement the resulting provision, we do not consider this to be a major rule. The provisions in this rule are designed to permit individuals and entities to engage freely in competitive business practices and arrangements; health care providers and others may voluntarily seek to comply with these safe harbor provisions so that they have the assurance that their that business practices are not subject to any enforcement actions under the anti-kickback statute.

Additionally, in accordance with the Unfunded Mandates Reform Act of 1995, we believe that there are no significant costs associated with these safe harbor guidelines that would impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure of $110 million or more, adjusted for inflation, in any given year. Further, in reviewing this rule under the threshold criteria of Executive Order 13132, Federalism, we have determined that this rule will not significantly affect the rights, roles and responsibilities of States, and that a full analysis under these Acts are not necessary.

Further, in accordance with the Regulatory Flexibility Act (RFA) of 1980, and SBREFA of 1996, which amended the RFA, we are required to determine if this rule will have a significant economic effect on a substantial number of small entities and, if so, to identify regulatory options that could lessen the impact. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and Government agencies. Most hospitals (and most other providers) are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less annually. For purposes of the RFA, most ambulance companies are considered to be small entities. Individuals and States are not included in the definition of a small entity. In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 603 of the RFA.

While these safe harbor provisions may have an impact on small entities and rural providers, we believe that the aggregate economic impact of this rulemaking will be minimal, since it is the nature of the conduct and not the size of the entity that will result in a violation of the anti-kickback statute. Since the vast majority of individuals and entities potentially affected by these regulations do not engage in prohibited arrangements, schemes or practices in violation of the law, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule does not have a significant impact on a substantial number of small entities, or a significant impact on the operations of a substantial number of small rural providers.

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Paperwork Reduction Act

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in rulemaking. While compliance with the provisions in this safe harbor rule would be voluntary, §§ 1001.952(v)(2) and (v)(3) include information collection activities that would require approval by OMB. As such, we are required to solicit public comments under section 3506(c)(2)(A) of the PRA on these information collection activities.

[11] 15 U.S.C. 13(a)–(f).

Title: Ambulance Replenishing Safe Harbor Under the Anti-Kickback Statute.

Summary of the collection of information: While complying with safe harbor provisions under the anti-kickback statute is voluntary, to qualify an ambulance restocking arrangement for safe harbor protection, parties must satisfy the following recordkeeping and disclosure requirements set forth in the regulations:

- The ambulance provider or the receiving facility must maintain for five years records documenting the replenished drugs and medical supplies, provide copies of such records to the other party within a reasonable period of time (unless the other party is separately maintaining records), and make the records available to the Secretary promptly upon request. These records may be in the form of pre-hospital patient care reports already in use for other purposes. *See* § 1001.952(v)(2)(ii)(A).
- Except for government-mandated or fair market value restocking, protected restocking arrangements must be conducted in an open and public manner. This condition may be achieved by posting a written disclosure notice at the receiving facility (with copies available to the public upon request) or by operating in accordance with a plan or protocol of general application promulgated by an EMS Council or comparable entity (with copies available to the public upon request). *See* § 1001.952(v)(3)(i)(B).

We have attempted to reduce any paperwork burden associated with compliance with these safe harbor regulations by permitting parties to utilize documentation produced or developed for other business purposes wherever possible, and we believe that most, if not all, of these recordkeeping requirements will be satisfied using such documentation. With respect to keeping and maintaining documentation of the restocking, most pre-hospital care reports (sometimes known as trip sheets or patient encounter reports) already maintained for other purposes, such as ensuring continuity of care and billing, will suffice. It is our understanding that the preparation of a pre-hospital care reports is the standard of care for transferring a patient to a receiving facility and is required by law in many States. However, parties may decide individually or between themselves to document restocking using other kinds of paper or electronic records. The five year record retention period is consistent with CMS's hospital conditions of participation.

With respect to the disclosure requirement, a written disclosure notice can take any reasonable form, and we anticipate that most parties engaged in ambulance restocking arrangements will have pre-existing materials that can be used for this purpose. For those who need or choose to produce a written disclosure notice, we have provided a short, sample disclosure form in these regulations. EMS Council plans and protocols are likely to be existing documents used to promote comprehensive and coordinated emergency medical services in local communities. These regulations do not require any drafting of new plans or protocols. Nothing in these regulations requires parties to draft or enter into contracts or written agreements. We expect that these regulations will result in few public requests for copies of disclosure notices or plans or protocols.

Brief description of the need for, and proposed use of, the information. The documentation and disclosure requirements set forth in these safe harbor regulations are necessary (i) to ensure that protected ambulance restocking arrangements pose a minimal risk of fraud or abuse and (ii) to enable parties to demonstrate—and the Government to verify where necessary—whether all safe harbor conditions are met.

Description of likely respondents and proposed frequency of response to the information collection request. The respondents for the collection of information described in these regulations are hospitals, other receiving facilities, and ambulance providers that participate in ambulance restocking arrangements and that want safe harbor protection under the anti-kickback statute. We believe that a significant number of hospitals, receiving facilities, and ambulance providers are engaged in, or desire to engage in, ambulance restocking arrangements and that many will want safe harbor protection. We do not anticipate any response that exceeds routine business practice.

Estimated burden that shall result from the collection of information. We are assigning only one burden hour to this collection, because we believe that compliance can be achieved with existing documents produced in the course of routine business practice.

In accordance with the PRA requirements, we are inviting comments on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on parties, including through the use of automated collection techniques or other forms of information technology. As part of the OMB approval for the collection of information contained in this rule, we are soliciting public comments, thereby initiating the normal PRA clearance.

Comments on these information collection activities should be sent to the following address within 60 days following the **Federal Register** publication of this final rule:

OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street NW., Washington, DC 20053, FAX: (202) 395–6974.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare.

Accordingly, 42 CFR part 1001 is amended as set forth below:

PART 1001—[AMENDED]

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.952 is amended by republishing the text and by adding a new paragraph (v) to read as follows:

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(v) *Ambulance replenishing.* (1) As used in section 1128B of the Act, ''remuneration'' does not include any gift or transfer of drugs or medical supplies (including linens) by a hospital or other receiving facility to an ambulance provider for the purpose of replenishing comparable drugs or medical supplies (including linens) used by the ambulance provider (or a first responder) in connection with the transport of a patient by ambulance to the hospital or other receiving facility if all of the standards in paragraph (v)(2) of this section are satisfied *and* all of the applicable standards in *either* paragraph (v)(3)(i), (v)(3)(ii) or (v)(3)(iii) of this section are satisfied. However, to qualify

under paragraph (v), the ambulance that is replenished must be used to provide emergency ambulance services an average of three times per week, as measured over a reasonable period of time. Drugs and medical supplies (including linens) initially used by a first responder and replenished at the scene of the illness or injury by the ambulance provider that transports the patient to the hospital or other receiving facility will be deemed to have been used by the ambulance provider.

(2) To qualify under paragraph (v) of this section, the ambulance replenishing arrangement must satisfy *all* of the following four conditions—

(i)(A) Under no circumstances may the ambulance provider (or first responder) and the receiving facility both bill for the same replenished drug or supply. Replenished drugs or supplies may only be billed (including claiming bad debt) to a Federal health care program by either the ambulance provider (or first responder) or the receiving facility.

(B) All billing or claims submission by the receiving facility, ambulance provider or first responder for replenished drugs and medical supplies used in connection with the transport of a Federal health care program beneficiary must comply with all applicable Federal health care program payment and coverage rules and regulations.

(C) Compliance with paragraph (v)(2)(i)(B) of this section will be determined separately for the receiving facility and the ambulance provider (and first responder, if any), so long as the receiving facility, ambulance provider (or first responder) refrains from doing anything that would impede the other party or parties from meeting their obligations under paragraph (v)(2)(i)(B).

(ii) (A) The receiving facility or ambulance provider, or both, must

(*1*) Maintain records of the replenished drugs and medical supplies and the patient transport to which the replenished drugs and medical supplies related;

(*2*) Provide a copy of such records to the other party within a reasonable time (unless the other party is separately maintaining records of the replenished drugs and medical supplies); and

(*3*) Make those records available to the Secretary promptly upon request.

(B) A pre-hospital care report (including, but not limited to, a trip sheet, patient care report or patient encounter report) prepared by the ambulance provider and filed with the receiving facility will meet the requirements of paragraph (v)(2)(ii)(A) of this section, provided that it documents the specific type and amount of medical supplies and drugs used on the patient and subsequently replenished.

(C) For purposes of paragraph (v)(2)(ii) of this section, documentation may be maintained and, if required, filed with the other party in hard copy or electronically. If a replenishing arrangement includes linens, documentation need not be maintained for their exchange. If documentation is not maintained for the exchange of linens, the receiving facility will be presumed to have provided an exchange of comparable clean linens for soiled linens for each ambulance transport of a patient to the receiving facility. Records required under paragraph (v)(2)(ii)(A) of this section must be maintained for 5 years.

(iii) The replenishing arrangement must not take into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under any Federal health care program (other than the referral of the particular patient to whom the replenished drugs and medical supplies were furnished).

(iv) The receiving facility and the ambulance provider otherwise comply with all Federal, State, and local laws regulating ambulance services, including, but not limited to, emergency services, and the provision of drugs and medical supplies, including, but not limited to, laws relating to the handling of controlled substances.

(3) To qualify under paragraph (v) of this section, the arrangement must satisfy *all* of the standards in *one* of the following three categories:

(i) *General replenishing.* (A) The receiving facility must replenish medical supplies or drugs on an equal basis for all ambulance providers that bring patients to the receiving facility in any one of the categories described in paragraph (v)(3)(i)(A)(*1*), (*2*), or (*3*) of this section. A receiving facility may offer replenishing to one or more of the categories and may offer different replenishing arrangements to different categories, so long as the replenishing is conducted uniformly within each category. For example, a receiving facility may offer to replenish a broader array of drugs or supplies for ambulance providers that do no not charge for their services than for ambulance providers that charge for their services. Within each category, the receiving facility may limit its replenishing arrangements to the replenishing of emergency ambulance transports only. A receiving facility may offer replenishing to one or more of the categories—

(*1*) All ambulance providers that do not bill any patient or insurer (including Federal health care programs) for ambulance services, regardless of the payor or the patient's ability to pay (i.e., ambulance providers, such as volunteer companies, that provide ambulance services without charge to any person or entity);

(*2*) All not-for-profit and State or local government ambulance service providers (including, but not limited to, municipal and volunteer ambulance services providers); or

(*3*) All ambulance service providers.

(B)(*1*) The replenishing arrangement must be conducted in an open and public manner. A replenishing arrangement will be considered to be conducted in an open and public manner if one of the following two conditions are satisfied:

(*i*) A written disclosure of the replenishing program is posted conspicuously in the receiving facility's emergency room or other location where the ambulance providers deliver patients and copies are made available upon request to ambulance providers, Government representatives, and members of the public (subject to reasonable photocopying charges). The written disclosure can take any reasonable form and should include the category of ambulance service providers that qualifies for replenishment; the drugs or medical supplies included in the replenishment program; and the procedures for documenting the replenishment. A sample disclosure form is included in Appendix A to subpart C of this part for illustrative purposes only. No written contracts between the parties are required for purposes of paragraph (v)(3)(i)(B)(*1*)(*i*) of this section; or

(*ii*) The replenishment arrangement operates in accordance with a plan or protocol of general application promulgated by an Emergency Medical Services (EMS) Council or comparable entity, agency or organization, provided a copy of the plan or protocol is available upon request to ambulance providers, Government representatives and members of the public (subject to reasonable photocopying charges). While parties are encouraged to participate in collaborative, comprehensive, community-wide EMS systems to improve the delivery of EMS in their local communities, nothing in this paragraph shall be construed as requiring the involvement of such organizations or the development or implementation of ambulance

replenishment plans or protocols by such organizations.

(*2*) Nothing in this paragraph (v)(3)(i) shall be construed as requiring disclosure of confidential proprietary or financial information related to the replenishing arrangement (including, but not limited to, information about cost, pricing or the volume of replenished drugs or supplies) to ambulance providers or members of the general public.

(ii) *Fair market value replenishing.* (A) Except as otherwise provided in paragraph (v)(3)(ii)(B) of this section, the ambulance provider must pay the receiving facility fair market value, based on an arms-length transaction, for replenished medical supplies; and

(B) If payment is not made at the same time as the replenishing of the medical supplies, the receiving facility and the ambulance provider must make commercially reasonable payment arrangements in advance.

(iii) *Government mandated replenishing.* The replenishing arrangement is undertaken in accordance with a State or local statute, ordinance, regulation or binding protocol that requires hospitals or receiving facilities in the area subject to such requirement to replenish ambulances that deliver patients to the hospital with drugs or medical supplies (including linens) that are used during the transport of that patient.

(4) For purposes of paragraph (v) of this section—

(i) A *receiving facility* is a hospital or other facility that provides emergency medical services.

(ii) An *ambulance provider* is a provider or supplier of ambulance transport services that provides emergency ambulance services. The term does not include a provider of ambulance transport services that provides only non-emergency transport services.

(iii) A *first responder* includes, but is not limited to, a fire department, paramedic service or search and rescue squad that responds to an emergency call (through 9–1–1 or other emergency access number) and treats the patient, but does not transport the patient to the hospital or other receiving facility. 47

(iv) An *emergency ambulance service* is a transport by ambulance initiated as a result of a call through 9–1–1 or other emergency access number or a call from another acute care facility unable to provide the higher level care required by the patient and available at the receiving facility.

(v) *Medical supplies* includes linens, unless otherwise provided.

3. A new appendix A is added to subpart C to read as follows:

Appendix A to Subpart C of Part 1001

The following is a sample written disclosure for purposes of satisfying the requirements of § 1001.952(v)(3)(i)(B)(*1*)(*i*) of this part. This form is for illustrative purposes only; parties may, but are not required to, adapt this sample written disclosure form.

Notice of Ambulance Restocking Program

Hospital X offers the following ambulance restocking program:

1. We will restock all ambulance providers (other than ambulance providers that do not provide emergency services) that bring patients to Hospital X [or to a subpart of Hospital X, such as the emergency room] in the following category or categories: [insert description of category of ambulances to be restocked, i.e., all ambulance providers, all ambulance providers that do not charge patients or insurers for their services, or all nonprofit and Government ambulance providers]. [Optional: We only offer restocking of emergency transports.]

2. The restocking will include the following drugs and medical supplies, and linens, used for patient prior to delivery of the patient to Hospital X: [insert description of drugs and medical supplies, and linens to be restocked].

3. The ambulance providers [will/will not] be required to pay for the restocked drugs and medical supplies, and linens.

4. The restocked drugs and medical supplies, and linens, must be documented as follows: [insert description consistent with the documentation requirements described in § 1001.952(v). By way of example only, documentation may be by a patient care report filed with the receiving facility within 24 hours of delivery of the patient that records the name of the patient, the date of the transport, and the relevant drugs and medical supplies.]

5. This restocking program does not apply to the restocking of ambulances that only provide non-emergency services or to the general stocking of an ambulance provider's inventory.

6. To ensure that Hospital X does not bill any Federal health care program for restocked drugs or supplies for which a participating ambulance provider bills or is eligible to bill, all participating ambulance providers must notify Hospital X if they intend to submit claims for restocked drugs or supplies to any Federal health care program. Participating ambulance providers must agree to work with Hospital X to ensure that only one party bills for a particular restocked drug or supply.

7. All participants in this ambulance restocking arrangement that bill Federal health care programs for restocked drugs or supplies must comply with all applicable Federal program billing and claims filing rules and regulations.

8. For further information about our restocking program or to obtain a copy of this notice, please contact [name] at [telephone number].

Dated: _____

/s/ _____
Appropriate officer or official

Dated: July 12, 2001.

Michael F. Mangano,

Acting Inspector General.

Approved:

Tommy G. Thompson,

Secretary.

[FR Doc. 01–29875 Filed 12–3–01; 8:45 am]

BILLING CODE 4150–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 76

[FCC 01–345]

Implementation of Interim Filing Procedures for Certain Commission Filings

AGENCY: Federal Communications Commission.

ACTION: Temporary procedural requirements.

SUMMARY: In this document, the Commission amends its procedures on an emergency, interim basis to require the filing or refiling of certain documents electronically (*i.e.*, by facsimile or e-mail), by overnight delivery, or by hand delivery to the Commission's Capitol Heights, Maryland location. Due to recent events in Washington, DC, resulting in the unforeseeable and understandable disruption of regular mail delivery and of the processing of other deliveries, the Commission is unable to confirm receipt of certain Commission filings that may affect processing of applications and other urgent agency business. The intended effect of this action is to continue the timely processing of applications and other urgent agency business.

EFFECTIVE DATE: December 4, 2001.

FOR FURTHER INFORMATION CONTACT: Magalie Roman Salas at 202–418–0303.

SUPPLEMENTARY INFORMATION: This *Order,* adopted November 21, 2001, and released November 29, 2001, will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. The complete text is available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at qualexint@aol.com.

Synopsis of Order

1. Effective upon publication of this *Order* in the **Federal Register** and until further notice, the following types of pleadings shall be filed with the Commission electronically, by overnight delivery service, or by hand delivery: (i) petitions to deny filed pursuant to section 309 of the Communications Act of 1934, as amended (Act); (ii) petitions for reconsideration filed pursuant to section 405 of the Act; (iii) applications for review filed pursuant to section 5(c)(4) of the Act; (iv) informal requests for Commission action involving pending applications filed pursuant to § 1.41 of the Commission's rules; (v) petitions to amend the TV and FM Broadcast Table of Allotments and responsive pleadings; and, (vi) comments or oppositions to open video system certification made pursuant to § 76.1502 (e)(1) of the Commission's rules. The types of pleadings described in (i) through (vi) are referred to in this document as ''Covered Pleadings.'' The filing requirement described in this paragraph shall not apply to requests for review of decisions issued by the Universal Service Administrative Company (USAC) filed pursuant to §§ 54.719–54.725 of the Commission's rules, or any petitions for reconsideration or applications for review arising from such proceedings. As noted, these emergency procedures are adopted on a temporary basis only, and will be discontinued when normal U.S. Mail delivery resumes.

2. In order to assist the Commission in determining whether Covered Pleadings were filed during the period of interrupted processing, parties that have filed or will file Covered Pleadings from October 1, 2001 through and including the effective date of this *Order* are required to resubmit such pleadings electronically prior to 12:00 midnight Eastern Time on the seventh calendar day following the effective date of this *Order,* by hand delivery at the Capitol Heights, Maryland location, prior to 9:00 PM Eastern Time on the seventh calendar day following the effective date of this *Order,* or by overnight delivery service other than U.S. Postal Service Express and Priority Mail to the Commission's headquarters, prior to 5:30 PM Eastern Time on the seventh calendar day following the effective date of this *Order.* Three exceptions to these requirements are specified in paragraph 4. All refilings pursuant to this paragraph shall be accompanied by a signed affidavit or a declaration pursuant to Commission rule § 1.16 stating that the previously filed pleading was timely filed in accordance with Commission rules, the date the pleading was originally sent to the Commission, and by what means. Covered Pleadings submitted up to 7 calendar days following the effective date of this *Order* in a manner not consistent with its terms must be refiled in the same manner as Covered Pleadings filed before the effective date. Covered Pleadings filed in accordance with this paragraph will be treated as timely filed as of the date the pleading was originally sent to the Commission, but the time for any responsive pleading will be tied to the time of resubmission to the extent Commission rules set response periods based on the date of filing.

3. There are three exceptions to the filing requirements stated in paragraph 3. The first exception to the refiling requirement is for Covered Pleadings that were previously filed electronically in accordance with our rules. The second exception is for Covered Pleadings that were hand delivered to the Commission's headquarters at 445 12th Street, SW., Washington, DC, between October 1 and October 19, 2001, or to our Capitol Heights location in accordance with the public notices issued on October 17 and October 18, 2001. *See Public Notice,* ''FCC Announces Change in Filing Location for Paper Documents,'' DA 01–2436 (October 17, 2001); *Public Notice,* ''FCC Announces Changes In Filing Procedures,'' DA 01–2430 (October 17, 2001; *Public Notice,* ''Clarification on FCC's Announced Changes in Filing Procedures,'' DA 01–2451 (October 18, 2001). The third exception is for Covered Pleadings delivered to the Commission by overnight delivery services other than U.S. Postal Service Express and Priority Mail. Covered Pleadings falling within one of the three exceptions specified in this paragraph and pleadings not falling in the categories specified in paragraph 2 need not be resubmitted.

4. If filed electronically by e-mail, pleadings shall be filed at the following e-mail addresses depending on the Bureau or Office handling the matter:

Mass Media	MMBSecretary@fcc.gov
Wireless	WTBSecretary@fcc.gov
Common Carrier	CCBSecretary@fcc.gov
Cable Services ..	CSBSecretary@fcc.gov
International	IBSecretary@fcc.gov
Enforcement	EBSecretary@fcc.gov
Other	OtherSecretary@fcc.gov.

For security purposes, we recommend that documents filed via electronic mail be converted to PDF format. The Commission will automatically reply to all incoming e-mails to confirm receipt. If filed by facsimile, pleadings shall be faxed to 202–418–0187. The fax transmission should include a cover sheet listing contact name, phone number, and, if available, an e-mail address.

5. If filed by hand delivery, documents shall be delivered to 9300 East Hampton Drive, Capitol Heights, Maryland 20743 pursuant to the terms of our earlier October 17 and October 18, 2001 public notices. As stated in those public notices, all hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

6. If filed by overnight delivery service other than U.S. Postal Service Express and Priority Mail, filings must be received at the Commission's headquarters at 445 12th Street, SW., Washington, DC 20024. As noted in the October 17 and October 18, 2001 public notices, the Commission will divert those deliveries to the Capitol Heights facility. Documents filed under seal pursuant to § 0.457 or § 0.459 of the Commission's rules should be submitted by hand delivery or overnight delivery service to ensure confidential treatment under those rules.

7. Until further notice, parties filing Covered Pleadings electronically (either via electronic mail or facsimile) in accordance with the procedures set forth herein will not be required to file a paper original with the Office of the Secretary or the Capitol Heights, Maryland facility as described in our earlier October 17 and October 18, 2001 public notices.

8. Copies of all filings made pursuant to this *Order* should be provided to the Commission's duplicating contractor, Qualex International via e-mail at qualexint@aol.com. Copies of all filings and resubmitted filings must be served on parties to the extent service of such pleadings is required by Commission rules.

9. Failure to submit or resubmit pleadings in the manner set out by this *Order* will result in the waiver of any rights to have such pleading considered by the Commission if the Commission's decisional staff does not have the relevant pleadings before it at the time of its decision. Parties may file petitions for reconsideration regarding any decision made.

10. Accordingly, *It Is Ordered* that, pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), the Commission ADOPTS the procedural requirements set forth in this *Order* and SUSPENDS any contrary requirements.

11. *It Is Further Ordered* that the Secretary is delegated authority to rule on requests for extensions of time based

on operational problems associated with the Commission's electronic filing equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–30028 Filed 12–3–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF90

Endangered and Threatened Wildlife and Plants; Final Rule To List the Mississippi Gopher Frog Distinct Population Segment of Dusky Gopher Frog as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service, determine the Mississippi gopher frog (*Rana capito sevosa*) distinct population segment of the gopher frog (*Rana capito*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). Historically, the Mississippi gopher frog distinct population segment is believed to have occurred in at least nine counties or parishes across Louisiana, Mississippi, and Alabama, ranging from east of the Mississippi River in Louisiana to the Mobile River delta in Alabama. Today, it is known from only one site in Harrison County, Mississippi. The greatest threat to this last surviving population is the low number of adult frogs in the population and their vulnerability to environmental stressors, both natural and human-induced. Human-induced threats are a result of habitat destruction and degradation in the area adjacent to the frog's only known breeding site. Habitat changes are occurring due to construction associated with a proposed housing development and the construction and expansion of two highways. This action extends the Act's protection to the Mississippi gopher frog distinct population segment.

DATES: This rule is effective January 3, 2002.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Ms. Linda LaClaire at the above address, telephone 601/321–1126, or facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

The gopher frog (*Rana capito*) is a member of the large cosmopolitan family, Ranidae (''true frogs''). The genus *Rana* is the only North American representative of this family. We define the Mississippi gopher frog distinct population segment as those populations of gopher frogs in the lower coastal plain ranging from the Mississippi River in Louisiana to the Mobile River delta of Alabama. Goin and Netting (1940) originally described frogs from this geographic range as a distinct species of gopher frog, *Rana sevosa*. The taxonomic history of gopher frogs is complex (summary in Altig and Lohoefener 1983). Subsequent to the original description by Goin and Netting, frogs of this population segment were considered subspecies of *Rana capito* (gopher frog) (*R. c. sevosa*, common name dusky gopher frog) (Wright and Wright 1942) and later subspecies of *R. areolata* (crayfish frog) (*R. a. sevosa*) (Viosca 1949, Neill 1957). In 1991, Collins challenged the taxonomic arrangement that lumped crayfish frogs and gopher frogs together as one species and recommended their separation based on biogeographical grounds. This arrangement was followed by Conant and Collins (1991), who again recognized the name *R. c. sevosa*.

Young and Crother (2001) conducted the first comprehensive biochemical analysis of the relationships between gopher frogs and crayfish frogs and among subspecies of gopher frogs. They used allozyme electrophoresis (an assay (examination) of gene products) to examine allelic (genetic) differences between and among populations. Allozyme data have been used extensively to investigate the evolution of genetic relationships among related species. Young and Crother (2001) analyzed tissue from gopher frogs across the range of the species including populations in Mississippi, Alabama, Georgia, Florida, and North Carolina, and from crayfish frogs from Arkansas, Kansas, and Missouri. They found strong support for the species designations *R. areolata* (crayfish frogs) and *R. capito* (gopher frogs). In addition, they found that the population of gopher frogs from Harrison County, Mississippi, showed a fixed difference at a single locus (site for a specific gene on a chromosome) from all other gopher frogs east of the Mobile River drainage in Alabama. This difference is considered by many taxonomists that support the phylogenetic (evolutionary) species concept to be significant enough to warrant elevation of the frog to its own species (Young and Crother 2001). No other specific taxonomic divisions were determined among the remaining populations of gopher frogs sampled. Since Harrison County is within the range of the original specimens used to describe *R. sevosa*, Young and Crother recommended the resurrection of *R. sevosa* as a distinct species.

Young and Crother's recommendation and their supporting data were published relatively recently (May 2001). Given the varied and confusing history surrounding *sevosa,* it is unclear if the suggested taxonomy will be accepted by the herpetological scientific community. Young and Crother (2001) alluded to potential debates about this designation in their paper when they stated: ''It might be suggested that we have comfortably separated *R. areolata* from *R. capito* with three mutually exclusive differences but have not demonstrated the same for *R. capito* and *R. sevosa* with one fixed difference.'' In any case, our analysis of the five listing factors would be the same whether the Mississippi gopher frog is considered a distinct population segment or a unique species. We will continue to use the common name ''Mississippi gopher frog'' to avoid confusion with other populations of gopher frogs further east. The Mississippi gopher frog distinct population segment will be defined as all gopher frogs west of Mobile Bay, following the range description of Goin and Netting (1940). The scientific name, *Rana capito sevosa*, will be used to represent this distribution of frogs. If the name *Rana sevosa* is ultimately accepted by the herpetological scientific community, we will revise our List of Endangered and Threatened Wildlife and Plants to reflect this change in nomenclature (scientific name).

The Mississippi gopher frog has a stubby appearance due to its short, plump body, comparatively large head, and relatively short legs (Conant and Collins 1991). The coloration of its back is dark and varies in individual frogs. It ranges from an almost uniform black to a pattern of reddish brown or dark brown spots on a ground color of gray or brown (Goin and Netting 1940). Warts densely cover the back. The belly is thickly covered with dark spots and dusky markings from chin to mid-body (Goin and Netting 1940, Conant and Collins 1991). Males are distinguished

from females by their smaller size, enlarged thumbs, and paired vocal sacs on either side of the throat (Godley 1992). Richter (1998) reported mean snout-vent lengths from three years of data. They ranged from 63.2 to 70.2 millimeters (mm) (2.5 to 2.8 inches (in)) for males and 78.0 to 82.7 mm (3.1 to 3.3 in) for females in the extant population. Mississippi gopher frog tadpoles are presently indistinguishable in the field from those of leopard frogs and other gopher frogs (Altig *et al.* 2001).

Mississippi gopher frog habitat includes both upland sandy habitats historically forested with longleaf pine and isolated temporary wetland breeding sites embedded within the forested landscape. Frequent fires are necessary to maintain the open canopy and ground cover vegetation of their aquatic and terrestrial habitat.

Adult and subadult Mississippi gopher frogs spend the majority of their lives underground. They use active and abandoned gopher tortoise (*Gopherus polyphemus*) burrows, abandoned mammal burrows, and holes in and under old stumps as refugia (Allen 1932; LaClaire, pers. obs. 1996; Richter *et al.* 2001). Gopher tortoise burrows likely represented preferred underground habitats. In Florida, Godley (1992) reported that the closely related Florida gopher frog was known only from sites that supported gopher tortoises. The remaining Mississippi gopher frog population occurs in an area presently lacking gopher tortoises, most likely as a result of habitat degradation. An abandoned tortoise burrow occurs approximately 0.8 kilometers (km) (0.5 miles (mi)) from the breeding pond, and an active burrow was found within 1.6 km (1 mi) of the site in 1992 (T. Mann, Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1999).

The Mississippi gopher frog breeding site is an isolated pond (not connected to any other water body) that dries completely on a cyclic basis. Faulkner (unpub. data 2000) recently conducted hydrologic research at the site. He described the pond as a depressional feature on a topographic high. The dominant source of water to the pond is rainfall within a small, localized watershed that extends 61 to 122 meters (m) (200 to 400 feet (ft)) from the pond's center. Substantial winter rains are needed to ensure that the pond fills sufficiently to allow hatching, development, and metamorphosis (change to adults) of larvae. The timing and frequency of rainfall are critical to the successful reproduction and recruitment of Mississippi gopher frogs.

The single remaining breeding pond known for the Mississippi gopher frog is located in Harrison County, Mississippi. Adult frogs move to this wetland breeding site during heavy rain events, usually from January to late March (Richter and Seigel 1998b). The breeding pond is approximately 1.5 hectares (3.8 acres) when filled. It attains a maximum depth of 1.1 m (3.6 ft). The pond is hard-bottomed, has an open canopy, and contains emergent and submergent vegetation. Female Mississippi gopher frogs attach their eggs to the rigid vertical stems of emergent vegetation (Young 1997, Richter and Seigel 1998a, 1998b). The pond typically dries in early to mid-summer, but on occasion has remained wet until early fall (G. Johnson, U.S. Forest Service, pers. comm. 1993; Young 1997; Richter and Seigel 1998b). As many as 21 amphibian species (17 frogs and 4 salamanders) are known to utilize the site (R. Seigel, unpub. data 2001). Bailey (1990), Palis (1998), and Greenberg (2001) found similar habitat attributes in breeding ponds of the closely related gopher frogs in Alabama and Florida.

Adult Mississippi gopher frogs leave the pond site after breeding during major rainfall events. Adults of both sexes use specific migratory corridors when exiting the breeding pond (Richter and Seigel 1998b). Movements away from the pond are slightly east of due north. Richter *et al.* (2001) tracked a total of 13 frogs using radio transmitters. The farthest movement recorded was 268 m (879 ft) by a frog tracked for 88 days from its exit of the breeding site. In Florida, gopher frogs have been found 2 km (1.2 mi) from their breeding sites (Carr 1940, Franz *et al.* 1988). It is unclear if the distances recorded for the Mississippi gopher frogs were typical as the tracking periods represented only a fraction of their yearly life cycle. Movements corresponded with major rain events. However, dry conditions prevailed during most of the two study periods. In fact, the frogs in Richter and Seigel's study moved during only one 24-hour period, which was associated with a rain event.

Amphibians need to maintain moist skin for respiration (breathing) and osmoregulation (controlling the amounts of water and salts in their bodies) (Duellman and Trueb 1986). Since they disperse from their aquatic breeding sites to the uplands where they live as adults, desiccation (drying out) can be a limiting factor in their movements. Thus, it is important that areas connecting their wetland and terrestrial habitats are protected in order to provide cover and appropriate moisture regimes during their migration. This may be especially important for juveniles as they move out of the breeding pond for the first time (A. Braswell, North Carolina State Museum of Natural Sciences, pers. comm. 2000).

It is likely that, given appropriate habitat, Mississippi gopher frogs are long-lived. The longevity record for a captive close relative, the Carolina gopher frog (*R. capito capito*), is 9 years, 1 month (Snider and Bowler 1992). However, overall low rates of recapture at the extant breeding pond suggest low adult survival in the Mississippi gopher frog population (Richter 1998).

Historical records for the Mississippi gopher frog exist for two or possibly three parishes in Louisiana, six counties in Mississippi, and one county in Alabama. Researchers conducting numerous surveys have been unable to document the continuing existence of the Mississippi gopher frog in Louisiana (Seigel and Doody 1992, Thomas 1996) or in Alabama (Bailey 1992, 1994). The last observation of a gopher frog in Louisiana was in 1967 (G. Lester, Louisiana Natural Heritage Program, pers. comm. 1991). In Alabama, it was last seen in 1922 (Bailey 1994).

Historical records for the Mississippi gopher frog are limited. We have compiled 35 historical records—1 in Alabama, 14 in Louisiana, and 20 in Mississippi. Historical records are defined as those localities where gopher frogs were found prior to 1990. No new localities for the frog have been found since 1988. Localities are sites identified from specimens captured or heard calling during sampling of potential breeding sites or by surveying highway crossings when individuals were on their way to or from breeding sites. Of the 35 historical records, 24 provided data that were used to approximate the location of the original site.

Habitat degradation is the primary factor in the loss of gopher frog populations in Alabama, Louisiana, and Mississippi. Bailey (1994) visited the historical Alabama locality in 1993. The habitat had been developed as a residential area, and was no longer suitable for the gopher frog. Seigel and Doody (1992) and Thomas (1996) surveyed historical sites in Louisiana and searched for other potential sites that might be occupied by gopher frogs. They also found that longleaf pine forests in Louisiana had been severely degraded. The historical breeding and upland habitats had changed as a result of urbanization and conversion of forest to pine plantation. For example, they found three historical breeding sites that had been extensively altered. One had been converted into a permanent pond

in a residential backyard. Two other ponds had been extensively altered by bedding, clearing, and nutrient loading during conversion of the surrounding habitat to pine plantation. Both survey efforts by Seigel and Doody (1992) and Thomas (1996) were unsuccessful to find any Mississippi gopher frogs in Louisiana.

Crawford (1988) surveyed 42 ponds in 6 Mississippi counties in 1987 and 1988. He attempted to relocate all of the State's historical localities for the gopher frog. He found that habitat in the vicinity of historical localities had been altered by conversion of natural forest to agriculture and pine plantations. Urbanization was a factor in the loss of at least three breeding ponds. The character of relocated historical breeding ponds had been changed from open-canopy, temporary ponds with clear water and hard bottoms to muddy, more permanent ponds with a closed canopy (G. Johnson, pers. comm. 1999). No appropriate habitat for the Mississippi gopher frog could be found near any of the localities (G. Johnson, pers. comm. 1999). Crawford (1988) also used aerial maps to identify potential breeding sites. In many cases, ponds identified on these maps no longer existed due to land use changes. However, he was able to verify the presence of the species at four new sites in Harrison County, Mississippi. At three of these four sites, only one individual was observed. Kuss (1988) surveyed 60 ponds in southern Mississippi for the flatwoods salamander (*Ambystoma cingulatum*). He did not encounter any gopher frogs during the surveys. Subsequent to these studies, surveys have documented the continued existence of only one population in Mississippi. This population breeds at a pond located in the DeSoto National Forest in Harrison County. Surveyors working in Mississippi during the 1990s have been unable to find the species at any other sites (R. Jones, Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1998; G. Johnson, pers. comm. 1999). Although Allen (1932) found gopher frogs to be common in the coastal counties of Mississippi earlier in the century, today R. Seigel (Southeastern Louisiana University, pers. comm. 2001) estimates the extant Mississippi gopher frog population to be only 100 adult frogs at a single site.

The extensive habitat alteration found during surveys of historical gopher frog localities in Alabama, Louisiana, and Mississippi resulted from the loss of virtually all of the natural longleaf pine forest in these States. Presettlement longleaf pine forests were the dominant forest type of the southeastern coastal plain. Today, less than 2 percent of these forests remain (Ware *et al.* 1993). Second growth longleaf pine forests in the vicinity of historical Mississippi gopher frog breeding sites were clearcut extensively in the mid-1950s and then again in the 1980s and 1990s. Longleaf pine forest habitat was replaced with dense pine plantations, agriculture, and urban areas. Habitat degradation has occurred as a result of alterations in the soil horizon (layering of different soil types), forest litter, herbaceous community, and occurrence of downed trees and stumps that Mississippi gopher frogs use as refugia. Fire suppression has further degraded the habitat. The hydrology of many isolated temporary wetlands, required as breeding sites for the Mississippi gopher frog, has been altered. In addition, these same factors have resulted in the decline of the gopher tortoise, whose burrows are most likely the preferred habitat for adult gopher frogs. As a result of these habitat changes, both the uplands and the pond basins previously occupied by the Mississippi gopher frog have become unsuitable.

Distinct Vertebrate Population Segment

The biological evidence supports recognition of the Mississippi gopher frog as a distinct vertebrate population segment for purposes of listing, as defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). The definition of ''species'' in section 3(16) of the Act includes ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment endangered or threatened?).

Habitat of the lower Gulf Coastal Plain from the Mississippi River to the Mobile River delta contains the westernmost population of gopher frogs. This population segment is discrete because it is geographically segregated from other gopher frogs by a large gap (approximately 200 km (125 mi)) of unoccupied habitat and the Mobile River delta. Consequently, this population does not mix with other gopher frogs.

Young and Crother (2001) presented data that the Mississippi gopher frog distinct population segment is biologically and ecologically significant due to genetic characteristics different from the species as a whole (see discussion in ''Background'' section). They analyzed tissue from gopher frogs across the range of the species, including populations in Mississippi, Alabama, Georgia, Florida, and North Carolina, and found that the population of gopher frogs from Harrison County, Mississippi, showed a fixed difference at a single locus (site for a specific gene on a chromosome) from all other gopher frogs east of the Mobile River drainage in Alabama. This difference is considered by many taxonomists to be significant enough to warrant elevation of the frog to its own species (Young and Crother 2001).

Previous Federal Action

In our December 30, 1982, Notice of Review, we designated the dusky gopher frog (designation *Rana areolata sevosa*) as a category 2 candidate and solicited status information (47 FR 58454). Category 2 candidates were those taxa for which we had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. In our September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554), Notices of Review, we retained the dusky gopher frog in category 2. We identified the dusky gopher frog as a category 1 candidate species in our November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), Notices of Review. Category 1 taxa were those taxa for which we had sufficient information on biological vulnerability and threats on file to support issuance of proposed listing rules. Beginning with our February 28, 1996, Notice of Review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and we now consider only taxa that meet the definition of former category 1 taxa as candidates for listing. At that time, we removed *Rana areolata sevosa* from candidate status based on the need for additional information to support a listing proposal. We then completed an analysis of newly available information from recent studies and determined that listing the Mississippi gopher frog distinct population segment was warranted. We elevated the Mississippi gopher frog to candidate status in our October 25, 1999, Notice of Review (64 FR 57534).

We published the proposed rule to list the Mississippi gopher frog in the **Federal Register** on May 23, 2000 (65 FR 33283). This final rule is made in accordance with a judicially approved settlement agreement, which requires us to submit a final listing decision to the **Federal Register** by November 28, 2001.

We have been coordinating with our partners, the U.S. Forest Service, Mississippi Department of Wildlife, Fisheries and Parks, and Dr. Rich Seigel of Southeastern Louisiana University, on Mississippi gopher frog surveys and monitoring for the past 10 years. During the past 2 years, we and our partners have increased conservation efforts at the remaining breeding pond and adjacent areas on the DeSoto National Forest. These efforts have included attempting to alter two existing ponds to create potential breeding sites for the Mississippi gopher frog; developing a strategy to construct new breeding ponds; and responding to the ongoing drought by transporting water overland to the known breeding pond (with the assistance of the Mississippi National Guard) and digging two wells adjacent to the pond. A Memorandum of Understanding has been drafted between the partners for conservation of this species and is currently under review by the parties.

Summary of Comments and Recommendations

In the May 23, 2000, proposed rule and associated notifications, we requested that all interested parties submit factual reports or information that might contribute to the development of this final rule. The comment period for the proposed rule was open from May 23 through July 24, 2000. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested that they comment. We published a legal notice in the *Clarion Ledger* on June 2, 2000, and another in the *Sun Herald* on June 3, 2000, announcing the proposal and inviting comment. We received 18 comment letters. Twelve of these supported, 3 opposed, and 3 were neutral on the proposed listing action. The breakdown of the comments included 2 from Federal agencies, 2 from State agencies, and 14 from individuals or groups. The Mississippi Department of Wildlife, Fisheries and Parks and the Louisiana Department of Wildlife and Fisheries supported the protection of the Mississippi gopher frog distinct population segment under the Act. One request was made for a public hearing, however the request was later withdrawn.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below. Comments of a similar nature or point are grouped together (referred to as ''Issues'' for the purpose of this summary) below, along with our response to each.

Issue 1: The proposed listing rule was not based on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. The Service used too many documents that were not published papers in peer-reviewed journals in writing the rule.

Response: We thoroughly reviewed all available scientific and commercial data in preparing the proposed rule. We sought and reviewed historic and recent publications and unpublished reports concerning the Mississippi gopher frog and other gopher frog species, as well as literature documenting the decline of the longleaf pine ecosystem in general. We considered all types of available information in making a listing determination. This included reliable unpublished reports, non-literature documentation, and personal communications with experts. The public reviewed the proposed rule, which also was peer reviewed according to our policy (see ''Peer Review'' section). In the process of updating the proposed rule, some citations have changed due to the publication in peer-reviewed journals of some data originally cited as personal communications, unpublished manuscripts, or theses. We used our best professional judgment and based our decision on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

Issue 2: The Service does not have sufficient scientific information to conclude that the Mississippi gopher frog is a distinct species or a distinct population segment. As a result, the evaluation of the five factors is insufficient to support the listing of the frog.

Response: We analyzed the Mississippi gopher frog in relation to the three elements necessary for a population to be listed under the Act as a distinct vertebrate population segment—discreteness, significance, and population segment conservation status (see ''Distinct Vertebrate Population Segment'' section). The commenters did not provide any data to support their assertions. The best available scientific evidence supports the designation of the Mississippi gopher frog as a distinct vertebrate population segment.

Issue 3: The scientific data may provide support that the Mississippi gopher frog is a distinct population segment. However, since there is only one extant population, this population cannot be considered the same as populations, now extinct, which once occurred within the described range of *Rana sevosa* (west of Mobile Bay).

Response: In the original description of *Rana sevosa*, Goin and Netting (1940) restricted this species to the area of the Gulf coast from Louisiana to west of Mobile Bay, Alabama. They considered Mobile Bay a biogeographic barrier. At that time, gopher frogs were not known from other areas of eastern Alabama or the Florida panhandle. Gopher frogs were later discovered in these areas and subsequent authors extended the range of what was then described as the subspecies *R. capito sevosa* into eastern Alabama and the panhandle of Florida. The range extension was based on similarities in size and coloration of frogs across this area. However, no empirical data exist to support this designation (P. Moler, Florida Fish and Wildlife Conservation Commission, pers. comm. 2000). Young and Crother (2001) recently completed genetic analyses of gopher frogs from Mississippi, eastern Alabama, and the panhandle of Florida. Their results, showing differences between Alabama and Florida panhandle populations and the Mississippi gopher frog, provide evidence that gopher frogs differ on either side of Mobile Bay. Since the Mississippi gopher frog occurs within the original geographic area described by Goin and Netting for *Rana sevosa*, we will regard all populations historically distributed within that original area as part of the Mississippi gopher frog distinct population segment until such time as data dictate otherwise.

Issue 4: The Service should conduct more research before a listing decision is made.

Response: We have conducted and supported research on the Mississippi gopher frog for the past 10 years. We have learned much about the species during this period. Although there are still aspects of this species' life history which are not known, the information standard in section 4(b)(1) of the Act does not require us to possess detailed or extensive information about the general biology of the species or to make an actual determination of the causes for the species' status to make a listing determination. We have made the decision that the Mississippi gopher frog is in danger of extinction using the best available scientific and commercial information as required by the Act's information standard. We evaluated all

information with regard to its applicability to determination of species status using the five factors described under section 4(a)(1).

Issue 5: The Service should conduct more surveys before a listing decision is made. The Service may have missed populations of the Mississippi gopher frog due to the ongoing drought.

Response: Surveys for Mississippi gopher frogs have been ongoing since the late 1980s (see ''Background'' section). Most of the available habitat has been degraded or destroyed at historical sites. The drought has made sampling difficult; however, at most sites surveyed, poor habitat quality was the limiting factor, not lack of water. We used our best professional judgement and based our determination on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

Issue 6: Service suggestions that forest management activities have caused population declines in the Mississippi gopher frog are inappropriate.

Response: The best available information on the effects of timber management on the Mississippi gopher frog, cited in the ''Background'' and ''Summary of Factors Affecting the Species'' sections, indicates that habitat alteration, including loss of ground cover vegetation, destruction of subterranean refugia and alteration of hydrology at previously occupied sites, has been a causative factor in the decline of gopher frogs throughout the range of *Rana capito sevosa*. The manner, timing, and extent of silvicultural activities all dictate what effects they may have on the Mississippi gopher frog and its habitat. Timber management that avoids adverse effects to important habitat characteristics is compatible with maintenance of the Mississippi gopher frog, as evidenced by its continued occurrence on the DeSoto National Forest.

Peer Review

In accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we requested the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested three individuals who possess expertise on gopher frog natural history and ecology to review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, or to the supporting biological data used in our analyses of the listing factors. All expressed their belief that the data supported protection of the Mississippi gopher frog distinct population segment under the Act. We have incorporated their comments into the final rule, as appropriate, and briefly summarized their observations below.

All three reviewers strongly supported the listing of the Mississippi gopher frog as endangered. One reviewer provided his assessment of the available taxonomic data for the Mississippi gopher frog. He agreed with our determination of the geographic range of the Mississippi gopher frog distinct population segment. The second reviewer provided comments on our analysis of Mississippi gopher frog telemetry data. He believed that the cessation of movement in frogs followed to the proximity of the clearcut could have been explained by several factors other than the habitat changes on the site. He suggested that the location where they stopped could have been the burrow where they normally resided; that the lack of rainfall may have affected their movements; and that the timeframe the frogs were tracked was too short to accurately determine the length of their movements. The third reviewer commented that emigrating juveniles are more subject to predation or dessication than adults as they move out of the pond. As a result, he believed that good quality terrestrial habitat close to the breeding pond, including cover objects, may be especially important for metamorphs.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Mississippi gopher frog distinct population segment should be classified as an endangered species. We followed the procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) issued to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mississippi gopher frog distinct population segment (*Rana capito sevosa* Goin and Netting 1940) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The range of the Mississippi gopher frog has been reduced as a result of habitat destruction and modification (see ''Background'' section). Longleaf pine forested habitat has been reduced to less than 2 percent of its original distribution. Historically, the Mississippi gopher frog distinct population segment occurred in at least nine counties or parishes in the States of Alabama, Mississippi, and Louisiana. Today, it is known from only one site in Harrison County, Mississippi. Potentially available habitat continues to be degraded due to the accelerated rate of residential and commercial development in Harrison County.

The private property 200 m (656 ft) immediately north of the only known Mississippi gopher frog breeding site is slated for residential and commercial development, including a 20,000-unit retirement community (L. Lewis, Brown and Mitchell, Inc., pers. comm. 1999). This site was clearcut and prepared in 1994 prior to acquisition by the development company. Potential habitat for the Mississippi gopher frog was considerably degraded as a result. Richter (1998) reported that the majority of gopher frogs leaving the breeding pond moved in a northerly direction towards this private property. Three frogs, tracked using transmitters, were observed at the fence line delineating the DeSoto National Forest property boundary from the property (Richter *et al.* 2001). It seems likely that Mississippi gopher frogs may have occurred on this site in the very recent past. We are currently working with the developers of the site on a plan to restore and protect habitat in a ''no development zone'' on the property. Nevertheless, the large scale of development in the vicinity of the remaining habitat for the Mississippi gopher frog, including both ongoing and planned highway expansion, will fragment the remaining longleaf pine habitat (see ''Factor E''). Urbanization will expand along these highway corridors and further reduce available habitat for the frog.

The remaining breeding pond for the Mississippi gopher frog is located in the DeSoto National Forest. Silviculture, including timber sales with associated clearcutting and replanting, is currently the primary activity in this area. Incompatible timber management could alter the suitability of the Mississippi gopher frog's remaining habitat (see ''Background'' section). The private property north of the breeding pond

(described above) was previously owned by a timber company. The negative effects of the clearcutting and site-preparation activities included the destruction of all burrows and stump holes that could have been used by migrating or resident frogs. During bedding, the soil structure and below-ground structure (burrows, stump holes) were destroyed as hummocks with deep furrows on either side were created on which to replant trees. In addition, all overstory was removed from the site. The immediate result of this activity was creation of an area that would represent a desert to moisture-requiring frogs. Although at least three frogs moved to the vicinity of this site, it is not known what effect the altered landscape may have had on their movements. The effects of the timber harvest and replanting on the Mississippi gopher frog population are unknown. The frogs may or may not have used the site prior to the timbering activities. However, the resultant changes in habitat have made the site currently unsuitable for them.

Several recent studies (National Council on Air and Stream Improvement, Inc. (NCASI), unpub. data 1999, Baughman 2000, Russell 2000) have demonstrated that management of industrial forest lands can be compatible with maintaining a diverse amphibian community. However, rare amphibians which are endemic to the longleaf pine ecosystem, such as gopher frogs (LaClaire 1997), are not a typical component of this amphibian community on industrial forest lands. For example, a recent survey of ephemeral ponds on intensively managed forest lands found gopher frogs in only 17 of 444 ponds (4 percent) surveyed in Alabama, Florida, and Georgia (NCASI, unpub. data 1999). The loss of essential upland and wetland habitat features is most likely responsible for the absence of these species. Habitat alterations resulting from historical land use practices, including fire suppression (see ''Factor E''), removal of downed logs and other coarse woody debris, and short rotation times, may offer a partial explanation for the loss of these habitat features (Baughman 2000, Russell 2000).

Historical gopher frog breeding sites have been degraded and destroyed by roads that pass through or are adjacent to ponds. Erosion of unpaved roads adjacent to breeding sites may result in an influx of sediment from surrounding uplands during rainstorms. Runoff from paved roads may include petrochemicals or other substances toxic to frogs. The hydroperiod (period during which a wetland holds water) of the ponds can be negatively affected by increased input of water to the sites or by the road acting as a dam, both of which would create a more permanent pond. In addition, heavily traveled roads pose a threat to migrating frogs.

The open canopy and flat, unforested bottom of the Mississippi gopher frog breeding pond represent an alluring site for dumping unwanted trash and riding off-road vehicles (ORV). Many temporary ponds throughout the southeast have been degraded as a result of garbage dumping (LaClaire, pers. obs. 1994). ORVs can cause direct mortality of gopher frog tadpoles and adults (J. Jensen, Georgia Department of Natural Resources, pers. comm. 1996) as well as alter the quality of a breeding site. ORVs alter the contours of the pond floor, eliminate herbaceous vegetation, and can alter the hydrology of the site (LaClaire, pers. obs. 1995). Loss of herbaceous vegetation caused by ORVs could also discourage gopher frog reproduction, since egg masses are attached to stems of herbaceous vegetation (Young 1997; Richter and Seigel 1998a, 1998b). ORV tracks have been documented within the Mississippi gopher frog breeding site (G. Johnson, pers. comm. 1994). In 1994, an area of the DeSoto National Forest within 2.4 km (1.5 mi) of the existing breeding pond was temporarily closed due to accumulation of trash, soil erosion, and water quality degradation caused by ORVs, damage to endangered and sensitive plants and animals, and other vandalism (K. Godwin, U.S. Forest Service, pers. comm. 1994). ORV use on the DeSoto National Forest will likely increase in the vicinity of the pond when the proposed housing development is completed adjacent to the site.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Direct take of Mississippi gopher frogs for commercial, recreational, scientific, or educational purposes is not currently a threat. However, large numbers of other species of frogs are nationally and internationally traded for resale in pet stores and for food. Listing the Mississippi gopher frog may make it more attractive to collectors through recognition of its rarity. In addition, the life history and ecology of Mississippi gopher frogs make them vulnerable to collecting, as well as vandalism. Only one breeding pond remains for this frog. At predictable times of the year, all breeding adults congregate at this site to breed. A single act of collecting or vandalism could destroy the population.

C. Disease or Predation

Disease is not known to be a factor in the decline of the Mississippi gopher frog. However, during monitoring of our efforts to alter a nearby pond and create a new gopher frog breeding site, a fungal disease was observed in leopard frog tadpoles. Subsequent to this discovery, tadpole populations were monitored more closely and 100 percent mortality of these leopard frog tadpoles was observed. A sample of diseased tadpoles was sent to the U.S. Geological Survey's National Fish Wildlife Health Center in Madison, Wisconsin. The fungus has not yet been identified and the mode of transmission is unknown. However, this yeast-like fungus has been implicated in five die-offs at sites nationwide and has affected six species of ranid (frogs of the genus *Rana*) tadpoles (D. Green, National Wildlife Health Center, Madison, Wisconsin, pers. comm. 2001). Biosecurity measures, such as sterilizing boots and equipment, have been implemented at the existing Mississippi gopher frog breeding pond as a precaution against disease transmission. An unrelated chytrid fungus has been implicated in the decline of amphibians in the western United States, including the endangered Wyoming toad (M. Jennings, U.S. Fish and Wildlife Service, pers. comm. 2001).

Predation may be a threat. Survivorship from the egg stage to metamorphosis is typically low for ranid frogs and was estimated by Richter (1998) to be 4.91 percent for Mississippi gopher frogs. Additional predation, beyond the norm, could result in complete reproductive failure. Richter and Seigel (1998a) reported that approximately 44 percent of all eggs at the existing breeding site were lost in 1997 prior to hatching. An undetermined amount of the egg mortality was due to predation by caddisfly larvae (Order Trichoptera, Family Phryganeidae) on the egg masses. Richter (2000) observed no larval caddisflies at the Mississippi gopher frog breeding site in 1996, but caddisflies infested 100 percent of Mississippi gopher frog egg masses in 1997 and 1998. He found that two larval caddisflies in laboratory test chambers could consume between 11 and 24 developing embryos of leopard frogs (another ranid species; gopher frog embryos were not used due to their rarity). The effect of caddisfly predation on the Mississippi gopher frog population is unknown. However, any increases in mortality resulting from predation are a cause for concern in such an extremely small and isolated population.

Predation from fish probably contributed to the loss of historic populations. Temporary ponds altered to form more permanent bodies of water and stocked with fish are no longer suitable breeding sites. Fish may have also entered breeding sites through the connection of drainage ditches and firebreaks to pond basins. The Mississippi gopher frog is adapted to temporary wetlands, and its larvae cannot survive the heavy predation of bass and sunfish commonly used to stock ponds. One historical location in Louisiana was destroyed in part because it has become a permanent pond inhabited by fish (Thomas 1996). In Mississippi, a calling male was discovered in 1987 at a site that has since been converted to a fish pond (T. Mann, pers. comm. 1998). No gopher frogs have been reported subsequently at this site, which is no longer considered suitable breeding habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

Louisiana has no protective legislation for the Mississippi gopher frog. Alabama protects all gopher frogs as nongame species (J. Woehr, Alabama Department of Conservation and Natural Resources, pers. comm. 1994). The Mississippi gopher frog is listed as endangered in Mississippi (Mississippi Department of Wildlife, Fisheries and Parks 1992), and both Mississippi and Alabama provide protection against collecting of the species. However, this legislation does nothing to alleviate the habitat loss that has caused the decline of the species. The only known breeding site for the Mississippi gopher frog is on U.S. Forest Service land in Mississippi. As a result, there has been a concerted effort to encourage the U.S. Forest Service to manage the site for the frog. Although the U.S. Forest Service has an obligation under the National Forest Managment Act, to ensure their land management activities protect fish and wildlife, forest management is often limited by existing funding. Other avenues of funding become available to the U.S. Forest Service once a species is federally listed.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fire is needed to maintain the natural longleaf pine community. Ecologists consider fire suppression a primary reason for the degradation of the remaining longleaf pine acreage in the southeast (Noss 1988, Ware *et al.* 1993). Fire suppression has reduced the quality of terrestrial and aquatic habitat for the Mississippi gopher frog. Canopy closure from fire suppression alters the forest floor vegetation and threatens the open, herbaceous character typical of gopher frog breeding ponds (Kirkman 1995, LaClaire 1995). In addition, fire causes the release of nutrients bound in plant material. This release of nutrients results in a flush of primary productivity that is important to the herbivorous gopher frog tadpoles. Fire suppression has probably negatively impacted all of the historical Mississippi gopher frog sites. At this time, fire is the only known management tool that will maintain the existing breeding pond as suitable habitat.

Between 1991 and 2001, the U.S. Forest Service has conducted periodic growing-season burns of the forest compartment surrounding the Mississippi gopher frog breeding pond and of the pond basin itself. These burns improved habitat conditions, but the frequency and extent of burning needs to be improved. Appropriate burning regimes must be maintained to prevent woody encroachment and to enhance herbaceous growth. Residential and commercial development and road construction in the vicinity of the breeding pond will create increased concerns about, and likely reduce the use of, fire as a management tool. The fire management officer on the DeSoto National Forest estimates that, due primarily to smoke management concerns, that development in the area will cause a 20 percent reduction in the amount of days that the U.S. Forest Service will have the opportunity to burn Mississippi gopher frog habitat (J. Boykin, U.S. Forest Service, pers. comm. 2001).

Habitat fragmentation of the longleaf pine ecosystem, resulting from habitat conversion, threatens the survival of the single remaining Mississippi gopher frog population. Studies have shown that the loss of small, fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, Burkey 1995). As patches of available habitat become separated beyond the dispersal range of a species, populations are more sensitive to genetic, demographic, and environmental variability and may be unable to recover (Gilpin 1987, Sjogren 1991, Blaustein *et al.* 1994). This scenario describes threats to the Mississippi gopher frog. Five historical Mississippi gopher frog localities exist within a 19.2 km (12 mi) radius of the remaining site. Highways have fragmented this area and contributed to habitat degradation. The most recent records of frogs at these locales was in the late 1980s. The planned construction of highways within 5 km (3.1 mi) both to the north and east of the existing Mississippi gopher frog pond will further isolate the remaining population from other potentially restorable habitat in the DeSoto National Forest. The Biloxi River and additional residential development bound the habitat to the west and south.

Low reproductive potential may also present a threat to the Mississippi gopher frog's continued existence. Studies at the Mississippi breeding site suggest that female Mississippi gopher frogs may not breed until 2 to 3 years of age and may breed only in alternate years and/or have only a single lifetime breeding event (Richter and Seigel 1998b). In addition, survival of juvenile frogs is thought to be extremely low (Richter and Seigel 1998b).

Annual variability in rainfall influences how frequently and how long a pond is appropriate breeding habitat. Reliance on specific weather conditions results in unpredictable breeding events and reduces the likelihood that recruitment will occur every year. No larvae survived to metamorphosis in 3 out of 6 years of the reproductive study of the extant Mississippi gopher frog population (summarized in Richter and Seigel 1998b). In addition, study results indicate that only 1 year out of 6 resulted in the explosive numbers (2,488) of juveniles typical of temporary pond breeding amphibians.

The Mississippi gopher frog population is highly susceptible to genetic isolation, inbreeding, and random demographic events as a result of having only one known breeding site. Long-lasting droughts or frequent floods may negatively affect the population. Although these are natural processes, other threats, such as habitat fragmentation, habitat degradation, and low reproductive potential, may cause the population to decline to the point that it cannot recover.

Pesticides and herbicides pose a threat to amphibians such as the Mississippi gopher frog, because their permeable eggs and skin readily absorb substances from the surrounding aquatic or terrestrial environment (Duellman and Trueb 1986). Aquatic frog larvae are likely more vulnerable than adults to chemical changes in their environment. Negative effects of commonly used pesticides and herbicides on amphibian larvae include delayed metamorphosis, paralysis, reduced growth rates, and mortality (Bishop 1992, Berrill *et al.* 1997, Bridges 1999). Sublethal levels of chemical contamination can alter juvenile recruitment in amphibian populations (Bridges and Semlitsch 2000). Adult gopher frogs are

predaceous and could be affected by pesticides accumulated in their invertebrate prey. Herbicides may alter the density and species composition of vegetation surrounding a breeding site and reduce the number of potential sites for egg deposition, larval development, or shelter for migrating frogs.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Mississippi gopher frog distinct population segment as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. As discussed under Factor A, in spite of extensive surveys throughout the known range of the Mississippi gopher frog, only one population of approximately 100 adult frogs is known to exist. Natural processes, such as genetic isolation, inbreeding, droughts, and floods, pose ongoing threats to this population. Further, residential and commercial development in conjunction with new and expanding highways will increase habitat fragmentation and the likelihood of fire suppression. Both habitat fragmentation and fire suppression pose threats to the frog's remaining habitat. For these reasons, we find that the Mississippi gopher frog distinct population segment is in danger of extinction throughout all or a significant portion of its range and, therefore, endangered status is appropriate.

Critical Habitat

Critical habitat is defined in section 3, paragraph 5(A), of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. In the proposed rule, we indicated we would make a final critical habitat determination with the final listing determination for the Mississippi gopher frog. However, our budget for listing and critical habitat activities is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the Mississippi gopher frog without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke the protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designation when it is essential that such determinations be promptly published. We will prepare a critical habitat determination for the Mississippi gopher frog in the future at such time as our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Mississippi gopher frog occurs in the DeSoto National Forest, Federal land administered by the U.S. Forest Service. The U.S. Forest Service will be required to evaluate whether their activities have the potential to adversely affect the Mississippi gopher frog. Their activities that could adversely affect the frog include, but are not limited to, forest management and road construction. Other Federal agencies that may be involved in authorizing, funding, or carrying out activities that may affect the Mississippi gopher frog include the U.S. Army Corps of Engineers, due to their regulation of discharges of dredged or fill material into wetlands under section 404 of the Clean Water Act; the Federal Energy Regulatory Commission, due to their oversight of gas pipeline and powerline rights-of-way; and the Federal Highway Administration, if Federal funds are involved in road construction. However, we have resolved nearly all section 7 consultations so that species are protected and project objectives are met.

We have been working with the U.S. Forest Service since 1988 to protect the last remaining population of the Mississippi gopher frog. We have advised the U.S. Forest Service on protection and management needs for this species. We have supported research on the ecology and life history of this population by projects funded through our cooperative agreement with the State of Mississippi under section 6 of the Act. In addition, we have collaborated with the U.S. Forest Service and the Mississippi Department of Wildlife, Fisheries and Parks on the plans to move gopher tortoises to the existing breeding site to provide additional subterranean refugia via the tortoise's burrows and to create new breeding ponds for the frog. We have drafted a Memorandum of Understanding with our partners and this document is currently under review by all the parties.

Section 9 of the Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of

the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that are or are not likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range.

We believe, based on the best available information, that the following activities are unlikely to result in a violation of section 9 for the Mississippi gopher frog:

(1) Possession of legally acquired Mississippi gopher frogs;

(2) Lawful hunting activities;

(3) Lawful burning of habitat where the Mississippi gopher frog is known to occur, including winter burning;

(4) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, bedding, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), when the activity is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act; and,

(5) Conversion of longleaf pine habitat where the Mississippi gopher frog does not occur.

We believe the following activities could potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized killing, collecting, handling, or harassing of individual Mississippi gopher frogs, including unauthorized use of off-road vehicles in the wetland basins of known breeding sites of the species.

(2) Possessing, selling, transporting, or shipping illegally taken Mississippi gopher frogs;

(3) Unauthorized destruction or alteration of the hydrology of the frog's wetland breeding sites. These actions would include activities that alter the localized watershed that supplies water to the ponds or alter the water-holding capacity at existing breeding sites. Unauthorized actions that could alter the hydrology of breeding sites would include discharge of fill material, draining, ditching, bedding, clear-cutting within the wetland, diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.), and unauthorized use of vehicles within the wetland; and,

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, pesticides, and gasoline) into isolated wetlands or upland habitats supporting the species. This includes any application of terrestrial or aquatic pesticide that results in the mortality of adult frogs or tadpoles, regardless if the pesticide was applied in accordance with the labeling instructions. This includes drift from aerial applications and runoff from surface applications.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public. You should direct questions regarding whether specific activities may constitute a violation of section 9 to the Field Supervisor of our Mississippi Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. For endangered species, you may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. You may request copies of the regulations regarding listed wildlife from, and address questions about prohibitions and permits to, the U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 200, Atlanta, Georgia 30345, or telephone 404/679–4176; facsimile 404/679–7081.

National Environmental Policy Act

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

You may request a list of all references cited in this document, as well as others, from the Mississippi Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Linda V. LaClaire, Mississippi Field Office (*see* **ADDRESSES** section) (601/321–1126).

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 Code of Federal Regulations, as follows:

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 adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 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						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, Mississippi gopher.	*Rana capitol sevosa*	U.S.A. (AL, FL, LA, MS).	Wherever found west of Mobile and Tombigbee Rivers in Al, MS, and LA.	E	718	NA	NA
*	*	*	*	*	*		*

Dated: November 26, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–29923 Filed 12–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 112801A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2001 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by November 30, 2001. Therefore, the General category fishery will be closed effective 11:30 p.m. on November 30, 2001. This action is being taken to prevent overharvest of the total adjusted General category quota of 919.7 metric tons (mt).

DATES: Effective 11:30 p.m. local time on November 30, 2001, through May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27 (a)(1). The 2001 fishing year General category quota and effort control specifications were issued on July 13, 2001 (66 FR 37421, July 18, 2001).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The adjusted 2001 fishing year BFT quota specifications issued pursuant to § 635.27 set a total adjusted General category quota of 919.7 mt, including the New York bight set-aside, of large medium and giant BFT to be harvested from the regulatory area during the 2001 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by November 30, 2001. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time November 30, 2001. The intent of this closure is to prevent overharvest of the quota established for the General category.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26. Vessels permitted in the Charter/Headboat category may continue to fish for and retain BFT under the Angling category regulations. The current Angling category daily retention limit, effective from November 1, 2001 through May 31, 2002 is one large school or small medium BFT (measuring from 47 to less than 73 inches (from 69 to less than 119 cm) curved fork length) (66 FR 31844, June 13, 2001). In addition, Angling and Charter/Headboat category vessels may retain one large medium or giant ''trophy'' BFT, measuring 73 inches (185 cm) or greater, per fishing year (June 1 through May 31).

Classification

This action is taken under § 635.28 (a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 28, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–29981 Filed 11–29–01; 4:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010208032–1109–02; I.D. 112601D]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Harvested for New York

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

ACTION: Commercial quota harvest; closure.

SUMMARY: NMFS announces that the Atlantic bluefish commercial quota available to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the Atlantic bluefish fishery may not land Atlantic bluefish in New York for the remainder of calendar year 2001, unless additional quota becomes available through a transfer. Regulations governing the Atlantic bluefish fishery require publication of this notification to advise the State of New York that the quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing Atlantic bluefish in New York.

DATES: Effective 0001 hours, December 3, 2001, through 2400 hours, December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281–9103.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

The initial total commercial quota for Atlantic bluefish for the 2001 calendar year was set equal to 9,583,010 lb (4,348,008 kg)(66 FR 23625, May 9, 2001). The percent allocated to vessels landing Atlantic bluefish in New York is 10.3851 percent, or 995,204 lb (451,544 kg). This quota was subsequently increased on November 15, 2001, (66 FR 57398) to 1,095,204 lb (496,784 kg) as the result of a 100,000 lb (45,360 kg) transfer of bluefish quota from the Commonwealth of Virginia.

Section 648.161 (b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing Atlantic bluefish in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New York has attained its quota for 2001.

The regulations at § 648.4 (b) provide that Federal permit holders agree as a condition of the permit not to land Atlantic bluefish in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 3, 2001, further landings of Atlantic bluefish in New York by vessels holding Atlantic bluefish commercial Federal fisheries permits are prohibited for the remainder of the 2001 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 3, 2001, federally permitted dealers are also advised that they may not purchase Atlantic bluefish from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

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

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

Dated: November 28, 2001.

Jonathan M. Kurland,

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

[FR Doc. 01–29980 Filed 11–29–01; 4:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 233
Tuesday, December 4, 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 352

[Docket No. 00–086–1]

Untreated Oranges, Tangerines, and Grapefruit from Mexico Transiting the United States to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow untreated oranges, tangerines, and grapefruit from Mexico to be moved overland by truck or rail to Corpus Christi and Houston, TX, for export to another country by water. We are proposing this action in response to requests by the port authorities of Corpus Christi and Houston, TX. We are also proposing to require that untreated oranges, tangerines, and grapefruit moving from Mexico through Brownsville, Corpus Christi, Galveston, or Houston, TX, for export by water to another country be shipped in sealed, refrigerated containers. We are proposing this action to provide additional protection against the possible introduction of fruit flies via untreated oranges, tangerines, and grapefruit from Mexico that transit the United States.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by February 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–086–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–086–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–086–1'' on the subject line.

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: Mr. Ron Sponaugle, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The plant quarantine safeguard regulations in 7 CFR part 352 relieve restrictions for certain products or articles that are classified as prohibited or restricted products or articles under our other regulations in title 7. Such articles include fruits and vegetables that are moved into the United States for: (1) A temporary stay where unloading or landing is not intended, (2) unloading or landing for transshipment and exportation, (3) unloading or landing for transportation and exportation, or (4) unloading and entry at a port other than the port of first arrival. Fruits and vegetables that are moved into the United States under these circumstances are subject to inspection and must be handled in accordance with conditions assigned under the safeguard regulations to prevent the introduction and dissemination of plant pests.

Authorized Ports

The regulations in § 352.30 address the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries.

The regulations currently allow untreated oranges, tangerines, and grapefruit from Mexico to enter the United States at the ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX. The fruit may then be moved, under certain conditions, by truck or railcar to seaports at Brownsville and Galveston, TX, for export by water to another country.

The port authorities of Corpus Christi and Houston, TX, have requested that those ports be added to regulations as ports eligible to export untreated Mexican oranges, tangerines, and grapefruit by water.

The port of Corpus Christi is located midway between the ports of Brownsville and Galveston along the Texas coast. Corpus Christi is the fifth largest U.S. port in terms of trade volume (*i.e.*, 86.8 million short tons of commodities in 1997). The port of Corpus Christi has 295,500 square feet of covered dockside storage and a 100,000-square-foot refrigerated facility. This new facility includes refrigerator and freezer rooms, a treatment facility, and rail and truck docks that are temperature-controlled.

The port of Houston is located on Galveston Bay, approximately 50 miles northwest of the port of Galveston. Houston is the largest U.S. port in terms of trade volume (*i.e.*, approximately 175 million short tons of commodities in 2000). The port of Houston has 128,400 square feet of covered dockside storage, 672,000 square feet of warehouse storage, and a 200,000-square-foot waterfront refrigerated facility. The waterfront refrigerated facility has refrigerator and freezer rooms, a treatment facility, humidity-controlled storage, and enclosed truck and rail bays.

We have considered these requests and have concluded that the risk posed by allowing untreated oranges, tangerines, and grapefruit to transit the United States for export at the ports of Corpus Christi and Houston, TX, would be no different than the risk currently posed by in-transit shipments of untreated oranges, tangerines, and grapefruit moved from Mexico to Brownsville and Galveston, TX, for export. Based on this finding, we are

proposing to amend the regulations to allow untreated oranges, tangerines, and grapefruit from Mexico to be moved overland by truck or rail to Corpus Christi and Houston, TX, for export to another country by water.

Pest Safeguards for Trucks and Railcars

The regulations currently allow untreated oranges, tangerines, and grapefruit from Mexico to be moved in trucks to a location shipside, or to approved refrigerated storage pending lading aboard ship, in Brownsville or Galveston, TX. Trucks may also be used to move untreated oranges, tangerines, and grapefruit alongside refrigerator cars or aircraft at approved ports of entry listed in § 352.30(b)(2) for movement to a foreign country. Trucks must be of the van-type and must be kept closed from the time they enter into the United States until unloading is to commence. Alternatively, the regulations provide that loads of untreated oranges, tangerines, and grapefruit on trucks may be covered with a tarpaulin that is tightly tied down and that may not be removed or loosened from time of entry into the United States until unloading is to commence.

We believe the regulations pertaining to trucks, as described above, do not provide adequate protection against the introduction of fruit flies into the United States, given that fruit flies are known to exist in some areas in Mexico where oranges, tangerines, and grapefruit are grown, and given that there are citrus-producing areas within the areas that untreated oranges, tangerines, and grapefruit from Mexico may transit while en route to a port of export. We are proposing to revise those regulations to require that untreated oranges, tangerines, and grapefruit being moved by truck from Mexico must be enclosed in sealed, refrigerated containers of the type commonly used by the maritime or commercial trucking industry. This requirement would help to reduce the risk that fruit flies could be introduced into the United States via in-transit shipments of untreated Mexican oranges, tangerines, and grapefruit.

We are also proposing to amend the regulations in § 352.30(b)(4) to reflect the proposed addition of Corpus Christi and Houston, TX, as ports approved to handle untreated oranges, tangerines, and grapefruit from Mexico. The regulations currently provide that shipments of such fruit may be entered at Nogales, AZ, only for direct rail routing to El Paso, TX, after which they may traverse only the territory bounded on the west by a line drawn from El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Brownsville, TX, through Galveston, TX, and Kinder, LA, to Memphis, TN, and then to Louisville, KY, and due east from Louisville. This area includes railroad routes from Brownsville to Galveston, TX, and routes running directly northward from Galveston. We are proposing to amend the regulations to make it clear that the routing of such shipments may also include railroad routes from Brownsville to Corpus Christi and Houston, TX, and routes running directly northward from Houston.

Miscellaneous

We are also proposing to update the regulations in § 352.30(e) to reflect recent changes to the regulations in § 319.56–2(h). The regulations in § 352.30(e) currently state that oranges, tangerines, and grapefruit that are moving in transit to foreign countries may be imported into the United States from certain municipalities in Sonora, Mexico, that are listed in § 319.56–2(h) of the regulations. Such importations must be in accordance with applicable conditions in §§ 319.56 through 319.56–8 of the regulations.

The regulations in § 319.56–2(h) list areas in Mexico that are free of certain fruit flies. Currently, those areas include municipalities in the States of Baja California Sur and Chihuahua in addition to Sonora. When these additional States were added to § 319.56–2(h), their addition should have been reflected in § 352.30(e), but that did not occur. Therefore, we are proposing to remove the reference to the State of Sonora from the regulations in § 352.30(e) in order to make it clear that oranges, tangerines, and grapefruit that are moving in transit to foreign countries may be imported into the United States from any municipality in Mexico that is listed in § 319.56–2(h) of the regulations.

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.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

The current regulations allow, among other things, untreated oranges, tangerines, and grapefruit from Mexico to enter the United States at six specified land border ports along the U.S.-Mexican border and to be moved overland by truck to maritime ports in Brownsville and Galveston, TX, for ocean export to third countries.

APHIS has received requests from the port authorities of Corpus Christi and Houston to add the maritime ports of Corpus Christi and Houston, TX, to the list of maritime ports authorized to receive untreated oranges, tangerines, and grapefruit from Mexico that have been trucked from land border ports along the U.S.-Mexican border for ocean export to third countries.

Between 1994 and 1999, the volume of in-transit shipments of untreated Mexican citrus was equivalent to a small percentage of the total volume of Mexican citrus entering into U.S. commerce (see Table 1).

TABLE 1.—U.S. IMPORTS OF FRESH CITRUS FROM MEXICO 1994–1999

Year	Mexican citrus entering U.S. commerce		Mexican citrus in-transit through the United States
	Value (in U.S. dollars)	Quantity (in kilograms)	Quantity (in kilograms)
1994	34,160,043	125,057,000	308,698 (0.25% of imports)
1995	34,874,375	148,652,000	435,021 (0.29% of imports)
1996	38,268,862	140,822,000	1,417,929 (1.01% of imports)
1997	42,790,699	164,587,000	45,951 (0.03% of imports)
1998	42,553,048	171,630,000	510,450 (0.30% of imports)
1999	84,408,899	211,197,000	519,878 (0.25% of imports)

The availability of two additional maritime ports in Texas could become an accommodating factor for Mexico's in-transit trade with third countries, since, on average, more than 90 percent of untreated Mexican citrus transiting through the United States between 1995 and 1999 entered the country through a Texas maritime, air, or land port (see table 2).

TABLE 2.—FRESH UNTREATED MEXICAN CITRUS IN TRANSIT THROUGH THE UNITED STATES

Year	Mexican citrus in transit entering a Texas port (in kilograms)	Mexican citrus in transit entering other ports (in kilograms)
1994	282,021 (91%).	26,677
1995	390,713 (90%).	44,308
1996	1,290,013 (91%).	127,916
1997	45,951 (100%).	0
1998	483,032 (95%).	27,418
1999	413,229 (80%).	106,649

This proposed rule would benefit exporters and shippers in the area around the ports of Corpus Christi and Houston, TX, and may provide the local populations with additional income opportunities, the amount of which would depend on the volume of the in-transit untreated Mexican oranges, tangerines, and grapefruit exported from the ports of Corpus Christi and Houston, TX. Mexican exporters and foreign importers of the untreated oranges, tangerines, and grapefruit may benefit from the availability of additional ports that could handle their shipments.

This proposed rule would also require that untreated oranges, tangerines, and grapefruit from Mexico that are moving through Brownsville, Corpus Christi, Galveston, or Houston, TX, for export by water to another country be shipped in sealed, refrigerated containers. We do not expect that this proposed requirement would have any significant effects on exporters or shippers of citrus fruit from Mexico because untreated citrus intended for export to another country is almost always shipped from Mexico in refrigerated containers in order to ensure that the quality of fruit is maintained during land transit and movement by sea to a foreign destination.

Movement from Mexico to the fruits' final destination in a foreign country can take several days, and sometimes more than a week, depending on the destination. Since this proposed change reflects current standard industry shipping practices, APHIS does not believe that any entities would be adversely affected by the proposed requirement. Nonetheless, we invite interested persons to submit information regarding the potential economic effects of this proposed requirement.

Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Small entities at the ports of Corpus Christi and Houston, TX, would be affected by the proposed rule to the extent that they would benefit from handling in-transit shipments of untreated oranges, tangerines, and grapefruit arriving at their port. However, neither the number of firms that may be affected nor the proportion that can be considered small is known. Net benefits to U.S. firms overall are expected to be minimal because it is unlikely that the availability of Corpus Christi and Houston, TX, as export ports for untreated Mexican citrus would significantly affect the volume of in-transit oranges, tangerines, and grapefruit from Mexico moving through the United States.

Summary

This proposed rule would benefit the Mexican exporters and the foreign importers of untreated oranges, tangerines, and grapefruit, as well as the ports of Corpus Christi and Houston, TX, which could handle in-transit shipments of Mexican oranges, tangerines, and grapefruit. It is likely that small entities at the ports of Corpus Christi and Houston, TX, may share in these benefits, but their number and the extent to which they may benefit are not known. Overall, U.S. firms would benefit to the extent that the trade is not simply a diversion from one maritime port to another, but rather that additional in-transit trade in untreated Mexican oranges, tangerines, and grapefruit occurs.

This proposed rule contains no new information collection or recordkeeping requirements (see ''Paperwork Reduction Act'' below).

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

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

List of Subjects in 7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 352 as follows:

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

1. The authority citation for part 352 would continue to read as follows:

Authority: 7 U.S.C. 2260, 7711–7714, 7731, and 7734; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

2. Section 352.30 would be amended as follows:

a. By revising paragraphs (b)(3)(iii) and (b)(4)(i).

b. In paragraph (c)(1), by removing the words ''or Galveston'' and adding in their place the words ''Corpus Christi, Galveston, or Houston''.

c. By revising paragraph (c)(3).

d. By revising paragraph (e).

§ 352.30 Administrative instructions: Certain oranges, tangerines, and grapefruit from Mexico.

* * * * *

(b) * * *

(3) * * *

(iii) *Trucks.* Trucks may be used to haul such fruit from Mexico to shipside, or to approved refrigerated storage pending lading aboard ship, in Brownsville, Corpus Christi, Galveston, or Houston, TX, or alongside refrigerator cars or aircraft at the ports named in paragraph (b)(2) of this section for movement to a foreign country. The fruit hauled in such trucks must be enclosed in sealed, refrigerated containers of the type commonly used by the maritime or commercial trucking industry.

(4) *Bonded rail movement*—(i) *Routing.* Shipments of such fruit may move by direct route, in Customs bond and under Customs seal, without diversion or change of Customs entry en route, from the port of entry to the port of exit en route to Canada or to an approved North Atlantic port in the United States for export to another foreign country, as follows: The fruit may be entered at Nogales, AZ, only for direct rail routing to El Paso, TX, after which it shall traverse only the territory bounded on the west by a line drawn from El Paso, TX, to Salt Lake City, UT, and then to Portland, OR, and on the east by a line drawn from Brownsville, TX, through Galveston, TX, and Kinder, LA, to Memphis, TN, and then to Louisville, KY, and direct northward routes therefrom. Such fruit may also enter the United States from Mexico at any port listed in paragraph (b)(2) of this section for direct eastward rail movement in Customs bond and under Customs seal, without diversion en route, for reentry into Mexico.

* * * * *

(c) * * *

(3) *Exportation from Brownsville, Corpus Christi, Galveston, or Houston by water.* (i) Such fruit laden in refrigerated holds for export from Brownsville, Corpus Christi, Galveston, or Houston, TX, must be stowed in closed compartments if the ship is to call at other Gulf or South Atlantic ports in the United States. The compartments are not to be opened while the ship is in such other Gulf or South Atlantic ports.

(ii) Such fruit for export from Brownsville, Corpus Christi, Galveston, or Houston, if not laden in refrigerated holds, must be stowed in closed compartments separate from other cargoes. Bulkheads of such compartments shall be kept closed. The hatches of compartments containing such fruit shall be closed and the tarpaulin battened down and sealed with Plant Protection and Quarantine Programs seals. The seals must remain unbroken while the ship is in any Gulf or South Atlantic port in the United States or its waters. Vents and ventilators leading to compartments in which the fruit is stowed must be screened with fine mesh screening. Advance notice of arrival of ships carrying untreated Mexican oranges, tangerines, or grapefruit shall be given to the inspector at such Gulf or South Atlantic port of call.

* * * * *

(e) *Untreated fruit from certain municipalities in Mexico.* Oranges, tangerines, and grapefruit in transit to foreign countries may be imported from certain municipalities in Mexico listed in § 319.56–2(h) of this chapter in accordance with the applicable conditions in §§ 319.56 through 319.56–8 of this chapter.

* * * * *

Done in Washington, DC, this 28th day of November, 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30000 Filed 12–3–01; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2001–27]

RIN 3069–AB09

Multiple Federal Home Loan Bank Memberships

AGENCY: Federal Housing Finance Board.

ACTION: Solicitation of comments; extension of public comment period.

SUMMARY: On October 3, 2001, the Federal Housing Finance Board (Finance Board) published a solicitation of comments in the **Federal Register** (66 FR 50366 (October 3, 2001)) on the implications for the Federal Home Loan Bank System (FHLBank System) raised by the structural changes that have been occurring in its membership base. The solicitation was prompted by the submission of several petitions, each requesting that the Finance Board permit a single depository institution to become a member of two Federal Home Loan Banks concurrently. The petitions also raised a number of other broad issues affecting the FHLBank System.

The Finance Board has received a number of requests for an extension of the January 2, 2002 deadline for written comments on the solicitation. In order to provide interested parties ample opportunity to comment, the Finance Board is extending the comment period for the solicitation from January 2, 2002 to March 4, 2002.

DATES: The comment period on the solicitation is extended to March 4, 2002.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or to *bakere@fhfb.gov.* Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991, Office of Policy, Research and Analysis; Arnold Intrater, Acting General Counsel, (202) 408–2536, Neil R. Crowley, Deputy General Counsel, (202) 408–2990, or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Dated: November 29, 2001.

By the Board of Director of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–29978 Filed 12–3–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; CFE Company Model CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to CFE Company Model CFE738–1–1B turbofan engines. This proposal would require replacing the high pressure turbine (HPT) stage 1 aft cooling plate and HPT stage 2 disk at or before they reach new reduced life cycle limits. This proposal is prompted by analysis of the existing life cycle limits by the engine manufacturer. The actions specified by the proposed AD are intended to prevent failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by January 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No.2001–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9-ane-adcomment@faa.gov''*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

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 should 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 action may be changed in light of the comments received.

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 2001–NE–04–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

CFE Company, the manufacturer of the CFE738–1–1B turbofan engine, recently notified the FAA that it has updated its life limits for critical rotating parts based on data developed since the original certification of the engine. Based on that new data, the manufacture has reduced the predicted safe life limit of the HPT stage 1 aft cooling plates and the HPT stage 2 disks to below previously published values. There have not been any part failures reported, and no parts in the field currently exceed the new reduced limits. This condition, if not corrected, could result in failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk due to exceeding the life limit.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other CFE Company model CFE738–1–1B turbofan engines of the same type design, the proposed AD would require replacing HPT stage 1 aft cooling plates, part number (P/N) 6083T38P07 before accumulating 3,500 cycles-since-new (CSN) and HPT stage 2 disks P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11 before accumulating 2,700 CSN.

Economic Analysis

There are approximately 331 CFE Company model CFE738–1–1B turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 247 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 450 work hours per engine to accomplish the proposed actions (225 work hours to replace the HPT stage 1 aft cooling plate and 225 work hours to replace the HPT stage 2 disk), and that the average labor rate is $60 per work hour. Required parts would cost approximately $32,170 per engine ($11,775 for the HPT stage 1 aft cooling plate and $20,395 for the HPT stage 2 disk). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,614,990.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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:

CFE Company: Docket No. 2001–NE–04–AD.

Applicability

This airworthiness directive (AD) is applicable to CFE Company model CFE738–1–1B turbofan engines with high pressure turbine (HPT) stage 1 aft cooling plates, part number (P/N) 6083T38P07, and HPT stage 2 disks, P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11, installed. These engines are installed on, but not limited to Dassault-Breguet Falcon 2000 series airplanes.

Note 1: This AD applies to each engine 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 engines 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

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk due to exceeding the life limit, do the following:

(a) Replace the HPT stage 1 aft cooling plate at or before the cooling plate accumulates 3,500 cycles-since-new (CSN).

(b) Replace HPT stage 2 disks, P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11; at or before the disk accumulates 2,700 CSN.

(c) After the effective date of this AD, do not install any HPT stage 1 aft cooling plate, P/N 6038T38P07, that exceeds 3,500 CSN.

(d) After the effective date of this AD, do not install any HPT stage 2 disk, P/N 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, or 6083T92P11, that exceeds 2,700 CSN.

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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

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

Issued in Burlington, Massachusetts, on November 27, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–29947 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. Tay Model 650–15 and 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc. Tay Model 650–15 and 651–54 turbofan engines. This proposal would require revisions to the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Section of the Engine Manual for Rolls-Royce plc. Tay model 650–15 and 651–54 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. An FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by February 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No.2001–NE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

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 should 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 action may be changed in light of the comments received.

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 2001–NE–36–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A recent FAA study analyzing 15 years of accident data for transport category airplanes identified several failure mode root causes that can result in serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that initiated and propagated to failure. Cracks can originate from causes such as unintended excessive stress from the original design, or they may initiate from stresses induced from material flaws, handling, or damage from machining operations. The failure of rotating parts can present a significant safety hazard to the airplanes by release of high energy fragments that could injure passengers or crew by penetration of the cabin, damage flight control surfaces, sever flammable fluid lines, or otherwise compromise the airworthiness of the airplane.

Accordingly, the certifying authority responsible for the state of design for these engines, with FAA concurrence, has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. This intervention strategy is to conduct enhanced, nondestructive inspections of rotating parts which could most likely result in a safety hazard to the airplane in the event of a part fracture. The need for additional rule making is also being considered by the FAA. Future ADs may be issued introducing additional intervention strategies to further reduce or eliminate uncontained engine failures.

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The certifying authority, with close cooperation of the engine manufacturer, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. As a result of this AD, the inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section. Furthermore, the FAA intends that additional mandatory enhanced inspections resulting from this AD serve as an adjunct to the existing inspections. The FAA has determined that the enhanced inspections will significantly improve the probability of crack detection while the parts are disassembled during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manual.

Additionally, this AD allows for air carriers operating under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and entities with whom those air carriers make arrangements to perform this maintenance, to verify performance of the enhanced inspections by retaining the maintenance records that include the inspections resulting from this AD, provided that the records include the date and signature of the person performing the maintenance action. These records must be retained with the maintenance records of the part, engine module, or engine until the task is repeated. This will establish a method of record preservation and retrieval typical to those in existing continuous airworthiness maintenance programs. Instructions must be included in an air carrier's maintenance manual providing procedures on how this record preservation and retrieval system will be implemented and integrated into the air carrier's record keeping system.

For engines or engine modules that are approved for return to service by an authorized FAA-certificated entity and that are acquired by an operator after the effective date of this AD, the mandatory enhanced inspections need not be done until the next piece-part opportunity. For example, there is no need for an operator to disassemble to piece-part level an engine or module returned to service by an FAA-certificated facility simply because that engine or module was previously operated by an entity not required to comply with this AD. Furthermore, the FAA intends for operators to perform the enhanced inspections of these parts at the next piece-part opportunity following the initial acquisition, installation, and removal of the part following the effective date of this AD. For piece parts that have not been approved for return to service prior to the effective date of this AD, the FAA does intend that the mandatory enhanced inspections required by this AD be performed before such parts are approved for return to service. Piece parts that have been approved for return to service prior to the effective date of this AD may be installed; however, enhanced inspection will be required at the next piece-part opportunity.

This proposal would require, within the next 30 days after the effective date of this AD, revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) (chapter 05–20–01–800–001) of the Engine Manuals, as follows:

Rolls Royce plc. Tay model 650–15, and 651–54 series turbofan engines, respectively, and, for air carriers, the approved continuous airworthiness maintenance program. Rolls Royce plc., the manufacturer of Rolls Royce plc. Tay model 650–15, and 651–54 turbofan engines, used on 14 CFR part 25 airplanes, has provided the certifying authority, responsible for the state of design of these aircraft engines with a detailed proposal, with FAA concurrence, that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined below in the compliance section, rather than at specific time inspection intervals.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc. Tay Model 650–15 and 651–54 turbofan engines of the same type design that are used on Boeing 727 and Fokker 100 airplanes registered in the United States, the proposed AD would require revisions to the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manual of the Engine Manual for Rolls-Royce plc. Tay model 650–15, and 651–54 series turbofan engines to include

required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Economic Analysis

There are approximately 700 engines of the affected design in the worldwide fleet. The FAA estimates that 448 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately twenty work hours per engine to accomplish the proposed inspections , and that the average labor rate is $60 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $537,600.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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:

Rolls-Royce, plc.: Docket No. 2001–NE–36–AD:

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce plc. Tay Model 650–15 and 651–54 turbofan engines. These engines are installed on, but not limited to Boeing 727 and Fokker 100 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (c) 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

Compliance with this AD is required as indicated, unless already done. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manuals publication number (P/N) T–TAY–3RR, and T–TAY–5RR of the Engine Manuals, P/N E–TAY–3RR, and E–TAY–5RR as applicable, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: ''GROUP A PARTS MANDATORY INSPECTION TASK 05–20–01–800–001

(1) General: A full inspection of Group A Parts must be effected whenever the following conditions are satisfied.

(i) When the component has been completely disassembled to piece-part level in accordance with the appropriate disassembly procedures contained in the Engine Manual.

and

(ii) The part has accumulated in excess of 100 flight cycles in service or since the last piece-part inspection.

or

(iii) The component removal was for damage or a cause directly related to its removal.

(2) Mandatory inspections for individual Group A Parts are specified below: For time limits manual T–211(524)–7RR (reference engine manual M–211(524)–7RR) only, insert the following Table:

Part nomenclature	Part No.	Inspected per overhaul manual task
Low Pressure Compressor Rotor Disc	All	72–31–11–200–000
I. P. Compressor Rotor—Stage 1 Disc	All	72–33–31–200—000
I. P. Compressor Rotor—Stage 2 Disc	All	72–33–32–200–000
I. P. Compressor Rotor—Stage 3 Disk	All	72–33–33–200–000
L. P. and I. P. Compressor Drive Shaft	All	72–33–40–200–000
H. P. Compressor Rear Drive Shaft	All	72–37–31–200–000
L. P. Compressor Rotor Drive Shaft	All	72–37–32–200–002
H. P. Compressor Stage 1 Rotor Disc	All	72–37–33–200–001
H. P. compressor Stages 2 and 3 Rotor Discs	All	72–37–33–200–002
H. P. Compressor Stages 4, 5, 6, and 7 Rotor Discs	All	72–37–34–200–000
H. P. Compressor Stages 8, 9, 10, and 11 Rotor Discs	All	72–37–35–200–000/–001
H. P. Stage 12 Rotor Disc	All	72–37–36–200–001
H. P. Turbine Shaft	All	72–41–31–200–000
H. P. Stage 1 Rotor Disc	All	72–41–32–200–000
H. P. Turbine Stage 2 Rotor Disc	All	72–41–33–200–001
L. P. Turbine Shaft	All	72–52–21–200–003
L. P. Turbine Stage 1 Rotor Disc	All	72–52–22–200–000
L. P. Turbine Stage 2 Rotor Disc	All	72–52–23–200–000
L. P. Turbine Stage 3 Rotor Disc	All	72–52–24–200–000''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLM and applicable Engine Manual.

Alternative Method of Compliance

(c) 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 Engine Certification Office. Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The records of the mandatory inspections required as a result of revising the TLM and the applicable Engine Manual and the air carrier's continuous airworthiness maintenance program as provided by paragraph (a) of this AD shall be maintained by FAA-certificated air carriers which have an approved continuous airworthiness maintenance program in accordance with the record keeping system currently specified in their manual required by § 121.369 of the Federal Aviation Regulations (14 CFR 121.369); or, in lieu of the record showing the current status of each mandatory inspection required by § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)), certificated air carriers may establish an approved alternate system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated.

Note 3: These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS and the MSS of the Instructions for Continued Airworthiness in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals as provided in paragraph (a) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Issued in Burlington, Massachusetts, on November 27, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–29949 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 112701A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a special 2-day Council meeting on December 19-20, 2001, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday and Thursday, December 19 and 20, 2001. The meeting will begin at 9:00 a.m. on both days.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777-2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Wednesday, December 19, 2001

Following introductions, the Council will discuss, with the intent to approve, skate species overfishing definition alternatives. Once approved, the definitions will be included in the Draft Environmental Impact Statement and public hearing document to be developed for the Northeast Skate Complex Fishery Management Plan (FMP). A Groundfish Committee Report will follow, during which the Council intends to approve the Draft Supplemental Environmental Impact Statement (DSEIS) for Framework Adjustment 36 to the Northeast Multispecies FMP for submission to NMFS for review by the Secretary of Commerce. The draft document will include a range of alternatives for meeting the goals of Amendment 7 to the Northeast Multispecies FMP. The Council will select alternatives and possibly identify a preferred alternative to be included in the Framework 36 DSEIS. Actions proposed are intended to reduce Gulf of Maine cod fishing mortality and discards as well as reduce fishing mortality on Georges Bank cod. Some alternatives may also reduce fishing mortality on other stocks and may affect the recreational sector. Measures include, but are not limited to the following: gear modifications, mesh size changes, closed area modifications, changes to the days-at-sea clock, days-at-sea reductions, alternative trip limits, a cod minimum size increase, limitations in the number of allowed gillnets, night closures, and changes to the blocks of time out of the fishery. Other issues that may be included in the framework are an extension or change to the Western Gulf of Maine Closed Area; tuna purse seine access to groundfish closed areas; a controlled access program for Closed Area II to harvest yellowtail flounder; an increase in the Cultivator Shoals whiting fishery trip limit; and a change in the area authorized for the northern shrimp fishery. There will be a 45-day comment period on the Framework 36 DSEIS document, as cleared by NOAA and the Environmental Protection Agency. The comment period will begin the day of publication of the Notice of Availability for the DSEIS in the **Federal Register**. Final decisions on the Framework 36 action and the FSEIS will be made at the March, 2002 Council meeting. Public comments on the framework action will be accepted at this meeting. The Council may also request that NMFS take interim action to extend the Western Gulf of Maine Closure and/or other measures necessary to protect groundfish stocks while Framework 36 measures are developed. Discussion of groundfish issues will continue through the afternoon session on December 19, 2001.

Thursday, December 20, 2001

The meeting will reconvene with a brief open session followed by a closed session of the Council to discuss internal administrative matters. Prior to meeting adjournment, there will be another brief open session to review the proceedings of the closed meeting. Any outstanding business will be addressed following this agenda item.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those

issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. If the Regional Administrator concurs with the adjustment proposed by the Council, the Regional Administrator may publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 28, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–29995 Filed 12–03–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 233

Tuesday, December 4, 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

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, recertification and Presidential Rank Awards for SES members.

EFFECTIVE DATE: On publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Human Resources Management, Executive Resources and Services Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents the USDA PRB's.

Food Safety/Marketing & Regulatory Programs

Elsa Murano, Chairperson
Bill Hawks, MRP
Margaret Glavin, FSIS
Bobby Acord, APHIS
Kenneth Clayton, AMS
David Shipman, GIPSA
Ruthie Jackson, FNS
Alberta Frost, FNS
John Golden, OGC

Research, Education & Economics

Joseph Jen, Chairperson
R. Ron Bosecker, NASS
Floyd Horn, ARS
Susan Offutt, ERS
Colien Hefferan, CSREES
Frances Zorn, FNS

Office of the Secretary

James Moseley, Chairperson
Dale Moore, OSEC
Larry Wachs, OBPA
David Winningham, Civil Rights
J. Michael Kelly, OGC
Patricia Healy, OCFO
Alternate: Priscilla Carey, OO

Natural Resources & Environment

Patricia Healy, OCFOv
Mark Rey, Chairperson
Ira Hobbs, OCIO
Besty Kuhn, ERS
Roger Conway, OCE
Alternates: Hubert Hamer, NASS, Priscilla Carey, OO

Food Nutrition & Consumer Services; Rural Development; and, Farm & Foreign Agricultural Services

Eric Bost, Chairperson
Michael Neruda, RD
Hunt Shipman, F&FAS
Christine Pytel, NRCS
Ira Hobbs, OCIO
Ronald Hill, OGC
Judith Riggins, FSIS
Alternate: Kyle Jane Coulter, CSREES

Staff Offices & Administration

Lou Gallegos, Chairperson
Edward McPherson, OCFO
Elsa Murano, FSIS
J. Michael Kelly, OGC
Keith Collins, OCE
Ira Hobbs, OCIO
Stephen Dewhurst, OBPA
Clyde Thompson, FS

Dated: November 26, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–29998 Filed 12–3–01; 8:45 am]

BILLING CODE 3410–96–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–106–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection that is used to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

DATES: We invite you to comment on this docket. We will consider all comments we receive that are postmarked, delivered, or e-mailed by February 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–106–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–106–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–106–1'' on the subject line.

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: For information on the regulations for the introduction of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests, contact Ms. Shirley Ingebritsen, Regulatory Analyst,

Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737-1236; (301) 734–5874. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests.

OMB Number: 0579–0085.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction or spread of plant pests into or through the United States.

As part of that responsibility, APHIS regulates the introduction (importation, interstate movement, and release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests.

In administering the regulations, the Biotechnology Permits Branch of Plant Protection and Quarantine, APHIS, collects certain information through its permitting and notification processes. The information enables us to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

The information we seek with our notification and permit processes includes, among other things, a complete description of the organism or product, the safeguards that will be used in preventing escape, the destination or field test locations, and field test results that describe any unusual or harmful occurrences.

Without the information we obtain through our notification and permit application processes, we would be unable to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products. Therefore, collecting the information is vital to preventing the introduction or spread of harmful plant pests into or through the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 3.18565 hours per response.

Respondents: U.S. importers and shippers of genetically engineered organisms and products and agricultural companies that produce or test genetically engineered organisms or products or that engage in product research and development.

Estimated annual number of respondents: 239.

Estimated annual number of responses per respondent: 13.1841.

Estimated annual number of responses: 3,151.

Estimated total annual burden on respondents: 10,038 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of November, 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30002 Filed 12–3–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[01–04–A]

Opportunity for Designation in the Des Moines (IA), Georgia, Cedar Rapids (IA), Montana, Oregon, and Lake Village (IN) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in June 2002. GIPSA is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies:

Central Iowa Grain Inspection Service, Inc. (Central Iowa); Georgia Department of Agriculture (Georgia); Mid-Iowa Grain Inspection, Inc. (Mid-Iowa); Montana Department of Agriculture (Montana); Oregon Department of Agriculture (Oregon); and Schneider Inspection Service, Inc. (Schneider).

DATES: Applications and comments must be postmarked or sent by telecopier (FAX) on or before January 2, 2002.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW, Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647-S, 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail janhart@gipsadc.usda.gov.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act),

authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations being Announced for Renewal.

Official agency	Main office	Designation start	Designation end
Central Iowa	Des Moines, IA	09/01/1999	06/30/2002
Georgia	Atlanta, GA	08/01/1999	06/30/2002
Mid-Iowa	Cedar Rapids, IA	10/01/1999	06/30/2002
Montana	Helena., MT	09/01/1999	06/30/2002
Oregon	Salem, OR	10/01/1999	06/30/2002
Schneider	Lake Village, IN	08/01/1999	06/30/2002

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Central Iowa.

Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines.

Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: North Central Farm Service, Chapin, Franklin County; and Farmer's Coop Society, Rockwell, Cerro Gordo County (located inside D.R. Schaal Agency's area).

Central Iowa's assigned geographic area does not include the following grain elevators inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. A.V. Tischer and Son, Inc.: West Central Coop, Boxholm, Boone County; and

2. Omaha Grain Inspection Service, Inc.: Hancock Elevator, Elliot, Montgomery County; and Hancock Elevator (two elevators), Griswold, Cass County.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Georgia, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Iowa, is assigned to Mid-Iowa.

Bounded on the North by the northern Winneshiek and Allamakee County lines;

Bounded on the East by the eastern Allamakee County line; the eastern and southern Clayton County lines; the eastern Buchanan County line; the northern and eastern Jones County lines; the eastern Cedar County line south to State Route 130;

Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and

Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Bremer County; the southern Bremer County line; the western Fayette and Winneshiek County lines.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Montana, is assigned to Montana.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, the entire State of Oregon, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois, Indiana, and Michigan, is assigned to Schneider.

In Illinois and Indiana:

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

Berrien, Cass, and St. Joseph Counties, Michigan.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Cargill, Inc., and Farmers Grain, both in Winamac, Pulaski County, Indiana

(located inside Titus Grain Inspection, Inc.'s, area).

Schneider's assigned geographic area does not include the export port locations inside Schneider's area which are serviced by GIPSA.

2. *Opportunity for designation.* Interested persons, including Central Iowa, Georgia, Mid-Iowa, Montana, Oregon, and Schneider, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning July 1, 2002, and ending June 30, 2005. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

3. *Request for Comments.* GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Central Iowa, Georgia, Mid-Iowa, Montana, Oregon, and Schneider official agencies. Commenters are encouraged to submit pertinent data concerning these official agencies including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–30003 Filed 12–3–01; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[01–02–S]

Designation for the Circleville (OH), Farwell (TX), and Hoagland (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Columbus Grain Inspection, Inc. (Columbus); Farwell Grain Inspection, Inc. (Farwell); and Northeast Indiana Grain Inspection, Inc. (Northeast Indiana)

EFFECTIVE DATES: February 1, 2002.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *janhart@gipsadc.usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 2001, **Federal Register** (66 FR 29765), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by June 30, 2001.

Columbus, Farwell, and Northeast Indiana were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined that Columbus, Farwell, and Northeast Indiana are able to provide official services in the geographic areas specified in the June 1, 2001, **Federal Register**, for which they applied. Subsequently, Columbus applied for additional territory in Ohio, and was granted designation for the area specified in the October 1, 2001, **Federal Register** (66 FR 49915.) Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start-end
Farwell	Farwell, TX 806–481–9052 Additional Service Location: Casa Grande, AZ.	2/01/2002–12/31/2004
Columbus	Circleville, OH 740–474–3519 Additional Service Location: Bucyrus, OH.	2/01/2002–12/31/2004
Northeast Indiana	Hoagland, IN 219–639–6390	2/01/2002–12/31/2004

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–30004 Filed 12–3–01; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Office of Inspector General; Performance Review Board Membership

The following individuals are eligible to serve on the Performance Review Board (PRB) in accordance with the Department of Commerce Senior Executive Service Performance Appraisal System and the Office of Inspector General's PRB Charter:

Edward L. Blansitt, Deputy Inspector General

Elizabeth T. Barlow, Counsel to the Inspector General

Jill A. Gross, Assistant Inspector General for Inspections & Evaluations

Judith J. Gordon, Assistant Inspector General for Systems Evaluation

Debbie Cureton, Assistant Inspector General for Auditing, National Science Foundation

Peter McClintock, Deputy Inspector General, Small Business Administration

James Ebbitt, Deputy Inspector General, U.S. Agency for International Development

Denise A. Yaag,

Executive Secretary, Performance Review Board, Office of Inspector General.

[FR Doc. 01–29941 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–55–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 4, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Michele Mire, or Crystal Crittenden, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474, (202) 482–4711, or (202) 482–0989 respectively.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On January 31, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 1999 through November 30, 2000. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 66 FR 8378. The preliminary results are currently due no later than December 1, 2001.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results by 30 days until no later than December 31, 2001. See Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 28, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–30016 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A 427–009]

Industrial Nitrocellulose From France: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On October 1, 2001, the Department of Commerce initiated an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one manufacturer/exporter, Bergerac, N.C. The period of review is August 1, 2000, through July 31, 2001. We are rescinding this review after receiving a timely withdrawal from the parties requesting this review.

EFFECTIVE DATE: December 4, 2001.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu or Richard Rimlinger, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0198 or (202) 482–4477, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

Background

On August 31, 2001, Bergerac, N.C. (Bergerac), SNPE North America, Inc. (SNPE), and Tevco, Inc. (Tevco), requested that the Department conduct an administrative review of Bergerac's shipments of industrial nitrocellulose from France for the period August 1, 2000, through July 31, 2001. On October 1, 2001, the Department published in the **Federal Register** a notice of initiation of this administrative review. See *Initiation* of *Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* (66 FR 49924).

On October 15, 2001, Bergerac, SNPE, and Tevco withdrew their request for a review and asked the Department to rescind the administrative review.

Rescission of Reviews

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because Bergerac, SNPE, and Tevco submitted their request for rescission within the 90-day time limit and there were no requests for a review from other interested parties, we are rescinding this review. As such, we will issue appropriate appraisement instructions directly to the Customs Service.

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 28, 2001.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–30017 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Assistant Secretarial Business Development Mission

Gaborone, Botswana; Capetown, Johannesburg and Durban, South Africa.
February 7–15, 2002.
Recruitment closes on December 21, 2001.
For Further information contact: Caroline McCall, U.S. Commercial Service.
Telephone (202) 482–2499; or email *Caroline.McCall@mail.doc.gov.*

Home Renovation Matchmaker

Toronto and Montreal, Canada.
March 18–22, 2002.
Recruitment closes February 8, 2002.
For further information contact: Monica McFarlane, U.S. Department of Commerce.
Telephone (202) 482–3364; or email *Monica.McFarlane@mail.doc.gov.*

Information Technologies Matchmaker

Toronto and Montreal, Canada.
May 6–9, 2002.
Recruitment closes on March 29, 2002.
For further information contact: Bill Kutson, U.S. Department of Commerce.
Telephone: (202) 482–2839; or email *William.Kutson@mail.doc.gov.*

Benelux Environmental Technologies Trade Mission

The Hague, Netherlands, and Brussels, Belgium.
March 4–8, 2001.
Recruitment closes on January 18, 2001.
For further information contact: David Fiscus, U.S. Commercial Service.
Telephone (202) 482–1599; or email *David.Fiscus@mail.doc.gov.*

Benelux Information and Communications Technology Trade Mission

Amsterdam, Netherlands, and Brussels, Belgium.
May 13–17, 2001.
Recruitment closes on April 10, 2002.
For further information contact: David Fiscus, U.S. Commercial Service.
Telephone (202) 482–1599; or email *David.Fiscus@mail.doc.gov.*

Medical Device Trade Mission

Beijing, Chengdu, and Hong Kong, China.
September 15–24, 2002.
Recruitment closes on July 12, 2002.
For further information contact: Lisa Huot, U.S. Department of Commerce.
Telephone (202) 482–2796; or email: *lisa_hout@ita.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Nisbet, U.S. Department of Commerce. Telephone 202–482–5657, or e-Mail *Tom_Nisbet@ita.doc.gov.*

Dated: November 28, 2001.

Thomas H. Nisbet,

Director, Promotion Planning and Support, Office of Export Assistance and Business Outreach.

[FR Doc. 01–30015 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.000817236–1268–03; I.D. 100401C]

General Grant Administration Terms and Conditions of the Coastal Ocean Program: Announcement of Opportunity

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice for financial assistance and funding opportunity for project grants and cooperative agreements.

SUMMARY: It is the intent of NOAA/NOS/CSCOR/COP to provide direct financial assistance in the form of discretionary research grants and cooperative agreements under its program for the management of coastal ecosystems. This document describes the general grant administration terms and conditions of the CSCOR/COP program for fiscal year 2002. Additionally, this document solicits proposals under program elements, (b) Cumulative Coastal Impacts and (d) Synthesis and Ecological Forecasting, described in this notice. It is the CSCOR/COP's intent to also issue supplemental Announcements of Opportunities (AOs) to request proposals on specific projects throughout the year on an as-needed basis. Any future AOs will be issued through the **Federal Register**. Information regarding these announcements will be made available on the CSCOR/COP Internet Site and CSCOR/COP's e-mail list. These announcements will provide specific program descriptions.

CSCOR/COP supports research on critical issues that exist in the Nation's estuaries, coastal waters, and the Great Lakes and translates research findings into accessible information for coastal managers, planners, lawmakers, and the public. CSCOR/COP's projects are multi-disciplinary, large in scale, and long in duration (usually 3 to 5 years.) Projects covering more than 1 year will usually be funded on an annual basis.

DATES: Effective December 4, 2001. Proposals for multiple stressors projects will be due by 3 p.m. e.s.t. on February 19, 2002. Proposals for synthesis projects will be due by 3 p.m. e.s.t. on March 5, 2002. The deadline for receipt of proposals is firm. Note that late-arriving applications provided to a delivery service, on or before the day prior to the closing date, with delivery guaranteed before 3 p.m. e.s.t. on the closing date, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below (see **ADDRESSES**) guaranteed prior to the specified closing date and time; and in any event, the proposals are received in the COP office no later than 2 business days following the closing date.

ADDRESSES: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, Room 8243, Silver Spring, MD 20910–3281. Proposals for synthesis should be mailed to the address above, attn. SYNTHESIS. Proposals for multiple stressor studies should be mailed to the address above, ATTN: MULTISTRESS.

FOR FURTHER INFORMATION CONTACT: *Technical information for synthesis proposals*: Elizabeth Turner, (603) 862–4680, e-mail: Elizabeth.Turner@noaa.gov.

Technical information for cumulative stressors: Kenric Osgood, (301) 713–3338/x163, e-mail: Kenric.Osgood@noaa.gov.

Business Management Information: Leslie McDonald, CSCOR/COP Grants Administrator,(301)713–3338/x155, e-mail Leslie.McDonald@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

NOAA and COP Standard Form Applications with instructions are accessible on the COP Internet site (http://www.cop.noaa.gov) under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission. Forms may be viewed, and in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures. Blue ink for original signatures is recommended but not required. If you are unable to access this information, you may call CSCOR/COP at 301–713–3338 to leave a mailing request.

General information about the COP's projects and publications is also available on the CSCOR/COP Internet Site. For information concerning the NOAA Coastal Ocean Program Decision Analysis Series reports, see: http://www.cop.noaa.gov/pubs/das.html.

Background

Program Description

NOAA's CSCOR/COP provides predictive capability for managing coastal ecosystems through sponsorship of research. CSCOR/COP seeks to deliver the highest quality science in a timely manner for important coastal decisions. It supports research on critical issues that exist in the Nation's estuaries, coastal waters, and Great Lakes and translates its findings into accessible information for coastal managers, planners, lawmakers, and the public. The COP also supports educational activities at the graduate and undergraduate level to facilitate the development of qualified professionals in the fields of coastal science, management, and policy.

Benefits of the CSCOR/COP

Continued population pressures on the Nation's coastal areas and ongoing changes in the environment will continue to stress our coastal waters, bays, estuaries, and the Great Lakes. CSCOR/COP has focused on developing information for longer range United States management and policy at large and complex scales. CSCOR/COP research will help the United States respond to the major challenges of the next century and to balance the needs of economic growth with those of conserving the environment and its coastal resources.

Program Elements

The CSCOR/COP Program Elements are listed here. Funding for some programs may be limited to ongoing projects. Prospective applicants are urged to check the CSCOR/COP Internet Site listed earlier under **SUPPLEMENTARY INFORMATION**: Electronic Access, and future **Federal Register** notices for other possible funding announcements in Program Elements (b) and (c), listed below in this document, that may appear at later dates.

(a) *Coastal Ecosystem Oceanography.* CSCOR/COP supports the conservation and management of marine ecosystems through sponsorship of improved ecological and oceanographic predictions for resource management. Studies focus on (1) understanding critical processes that control the abundance, distribution, and replenishment of fishery resources; (2) determining critical habitat processes that influence fishery ecosystems; and (3) quantifying ecosystem species interactions to develop models that can be used in management decisions. Current efforts support studies dealing with Bering Sea pollock, cod and haddock on Georges Bank, and salmon in the Pacific Northwest.

(b) *Cumulative Coastal Impacts.* CSCOR/COP sponsors a series of regional watershed projects on the causes and impacts of multiple stresses on coastal ecosystems. Studies focus on (l) developing indicators of stress; (2) predicting impacts of multiple stressors (3) valuing natural resources in ecological and economical terms; and (4) predicting the outcomes of management strategies. Current efforts are located in Chesapeake Bay, Florida Bay and the Keys, the Great Lakes, coastal areas of South Carolina and the Pacific Northwest, and coral reefs in Florida and Hawaii.

At this time, proposals are requested describing comprehensive studies of up to 5 years in duration to investigate the impacts of multiple stresses in estuarine, coastal, or Great Lakes ecosystems. The CSCOR/COP anticipates supporting an integrated multi-investigator, interdisciplinary project that will develop capabilities for understanding, predicting, and managing the effects of multiple stressors in coastal systems. A separate announcement of availability of funding for proposals in coral reef research (under CSCOR/COP's Coral Reef Regional Ecosystem Study program) may be released later this year.

Many of the estuaries, bays, and large lakes of the United States suffer the impacts of multiple anthropogenic stressors. The most pervasive stressors being nutrient enrichment (leading to eutrophication), habitat modification (including benthic, water column, and watershed changes), resource exploitation, invasive species, and toxic contamination. In addition to anthropogenic impacts, short-term and mesoscale environmental variability also impact coastal ecosystems. Traditional management approaches have largely targeted single sources of stress (e.g., nitrogen, phosphorus, toxic compounds, habitat modification, invasive species, etc.). Scientists and resource managers are becoming increasingly aware that management practices must address the interaction of multiple stressors, and must be integrated over the entire ecosystem (i.e., from watershed to receiving water bodies).

Research Objectives

The objectives that should be addressed in projects proposed under this Program Element are: (1) quantification of the effects of eutrophication in concert with other anthropogenic and natural stressors; (2) identification of indicators of cumulative stress at individual, population, and ecosystem levels; (3) evaluation of the effectiveness of potential mitigation strategies, and (4) Extension of the approaches, results, models and techniques developed in this project to other coastal ecosystems.

Desirable research programs will: (1) conduct integrated studies of the effects of multiple stressors on ecological processes within a system; (2) examine the role of land use and watershed loadings of these stressors; (3) model the ecological effects of natural and/or anthropogenic stresses from the organismal to ecosystem level; and (4) conduct an economic evaluation of present and proposed management practices to mitigate coastal environmental stress.

Prospective applicants should refer to Part I, Requirements for Proposal Submission, which appear later in this notice.

(c) *Harmful Algal Blooms (HABs) and Hypoxia.* The CSCOR/COP sponsors studies on the ecology and oceanography of harmful algal blooms (HABs), focusing on identifying and modeling linkages between the physiology, ecology, behavior and toxicity of HABs and local/regional circulation patterns and water quality. Results from these studies will improve the general knowledge of problematic species in the U.S. coastal waters and provide a foundation for development of regional HAB forecasting capabilities.

The latter eventually providing a means to assess the effectiveness of prevention, control, and mitigation strategies developed in the programs. Current regional efforts are located in the Gulf of Maine, eastern Long Island, the coastal regions of the mid-Atlantic States, and the western coast of Florida.

Eutrophication and resulting hypoxia have become common problems affecting living marine resources and recreational uses of coastal waters. The CSCOR/COP supports research examining the influences of nutrient loading, physical forcing, climate change, and extent of hypoxic conditions (i.e., the ''dead zone'') on the ecosystem and fisheries of the northern Gulf of Mexico.

Pending congressional appropriations, separate program announcements for research opportunities in the ecology and oceanography of harmful algal blooms, and the monitoring HABs and HAB event response may be issued later this year.

(d) *Synthesis and Ecological Forecasting*. The CSCOR/COP is committed to providing decision makers with high quality scientific information and predictive tools in formats appropriate to promoting near-term improvements in coastal ecosystem management. This announcement solicits proposals for projects of 1 to 2 years in duration to produce comprehensive syntheses of coastal ecosystem research with the overall goal of developing ecological forecasting capabilities.

The CSCOR/COP and other Federal agencies continue to support multi-disciplinary coastal ecosystem studies to improve our understanding of the physical, biological, and chemical processes in these complex systems. In general, these types of large scale projects have been committed to producing data and information products such as technical reports, peer-reviewed publications, data bases, and numerical and conceptual models. However, the delivery of comprehensive information products and technologies to the appropriate management community for application to specific coastal management issues remains the challenge to scientific programs that have been largely focused on research.

The next step in ecosystem research is the development of ecological forecasts, i.e., the capability to predict the effects and interactions of environmental variability and anthropogenic stressors on coastal ecosystems, and the impacts of management actions on ecosystems and coastal economies.

This announcement requests proposals for projects concentrating exclusively on the synthesis of results and information generated by coastal ecosystem studies that have concluded, or are near completion. The overall goal should be to advance and/or develop predictive capabilities, i.e., ecological forecasts.

The accurate prediction of ecosystem parameters or conditions will facilitate improved resource management decisions. Some examples of forecasting needs include: predictive models of impacts of multiple stressors on coastal systems, fisheries, and economies; onset, duration, and impacts of hypoxic and/or anoxic conditions; vulnerability to, and impacts of invasive species on, specific ecosystems; occurrence and impacts of emerging finfish, shellfish, and aquatic plant diseases.

For the purpose of this announcement, coastal ecosystem studies are defined as multi-disciplinary, multi-year research programs that have examined the effects of multiple anthropogenic stressors and/or natural variability and events on coastal ecosystems. The COP is especially interested in syntheses of coastal ecosystem studies that consider one or more of the following study components: coastal stressors and impacts (including land use and watershed loadings to receiving water body); coastal processes and their influences on regional or national marine resources; environmental valuation; economic impact analysis; and risk assessment. Comparative analyses among different coastal systems will be considered, as well as detailed syntheses that are more regionally based. All proposed comparative analyses, syntheses, and forecasts must have clear application to one or more coastal resource management issues, and be tractable within the time and budget proposed.

Some examples of synthesis products and ecological forecasts are: case studies of regions with explicit applications to important management issues; applications of ecosystem models to management-generated questions; risk analysis of management scenarios; and region-specific management recommendations based on study results. Active transfer of technology to managers involving specialized workshops, alternative media, or other approaches will also be considered.

Proposals should provide detailed descriptions of the management issue(s) to be addressed, the target audience or users of the synthesis, results and information to be integrated, approaches to synthesis, specific information products, and predictive/forecasting capability to be developed. Proposals must describe research results to be used and how that information will be accessed. Synthesis could include the identification of and justification for appropriate variables that need to be included in long-term monitoring for the purposes of ecological forecasting. Where appropriate, letters indicating access to data, results, and information not yet in the public domain and generated by investigators not named in the proposal should be addended. Explicit identification of the end user group(s) is required. Active participation of one or more members of the management (or other user community) is also required; either as a co-investigator or official collaborator.

The funding associated with this announcement is intended to support higher order synthesis activities, not basic data interpretation, or sample collection and analysis. It is assumed that the subject ecosystem study has been completed or is very near completion, and that basic results and conclusions have been documented and/or published. No field work, monitoring, laboratory analyses, or other new data acquisition will be considered.

Part I: Schedule and Proposal Submission

The guidelines for proposal preparation provided here are mandatory for all proposals submitted to CSCOR/COP in response to this, and all AOs. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. This announcement and additional background information are available on the COP Internet Site listed earlier under **SUPPLEMENTARY INFORMATION**: Electronic Access.

Proposals should describe activities for the full project period, as specified in the Program Element description. Proposals should be written to allow adequate review of the details of such things as identification of the issue or problem, scientific objectives, methodology and approaches to synthesis, description of information products and applications, and integration and/or applications to other projects or programs. Upon conclusion of external peer and panel merit review, meritorious proposals will be recommended for funding.

Full Proposals

Letters of intent and/or partial proposals are not requested under this notice. Applications submitted in response to this announcement require an unbound original proposal and 19

copies at time of submission. This includes color or high-resolution graphics, unusually-sized materials (not 8.5 inches x 11 inches, or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of original proposal copies provide for a timely review process because of the large number of technical reviewers. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

The project description section should not exceed 20 pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart (as specified in Required Elements). The type must be a clear and readily legible 12-point size with no more than 6 lines in a vertical space of 1 inch. Margins at the top, bottom, and each side of all pages should be a minimum of 1 inch (2.5 cm).

Required Elements

All recipients are to follow closely the instructions and requirements in the preparation of the standard NOAA Application Forms and Kit requirements listed in Part II: General Grant Terms and Conditions, paragraph (9) of this document. Each proposal must also include the following ten elements:

(1) *Standard Form 424*. At time of proposal submission, all applicants shall submit the Standard Form, SF-424 (Rev 7–97), ''Application for Federal Assistance,'' to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Title page*. The title page identifies the project's title starting with the appropriate acronym (SYNTHESIS or MULTSTRESS, for the two programs solicited in this announcement) a short title (<50 characters), the proposed project period, and the lead principal investigator's name, affiliation, complete address, phone, FAX, and E-mail information. The requested funding for each fiscal year should be included on the title page. The title page should be signed by the lead principal investigator. Multi-investigator proposals must include the names and affiliations of each investigator on the title page. Multi-institution proposals must also identify the lead investigator from each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are needed on the title page from the additional institutions. Lead investigator and separate budget information is not needed on the title page for institutions that are proposed to received funds through a subcontract to the lead institution.

(3) *One-page abstract/project summary*. The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the CSCOR/COP Internet site under the Grants Support Section.

The summary should appear on a separate page, headed with the proposal title, institution(s), principal investigator(s), total proposed cost, and project period, and should be written in the third person. The summary is used to help compare proposals quickly and allows the applicants to summarize these key points in their own words.

(4) *Statement of work/project description*. The project description section should not exceed 20 pages. The page limit is inclusive of figures and other visual materials, but exclusive of references and milestone chart (as described here). Project management should be clearly defined with descriptions of the responsibilities and contributions of each principal investigator (if more than one). It is important to provide a full scientific justification for the proposed research and approach; do not simply reiterate justifications presented in this document. This section should include the following:

(a) The objectives for the period of proposed work and the expected results and significance.

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to CSCOR/COP Program Element objectives;

(d) Specific plans for making information products available to the scientific and coastal management communities;

(e) A clear statement describing project management and identification of the contributions and responsibilities of each investigator within a team (if more than one principal investigator;

(f) Potential coordination with other investigators or stakeholders;

(g) Intent to adhere to NOAA's specific requirements that environmental data be submitted to the National Oceanographic Data Center.

(5) *References cited*. Reference information is required. Each reference must include the names of all authors in the same sequence in which they appear in the publication, the article title, volume number, page numbers, and year of publication. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside of the 20-page project description.

(6) *Milestone chart*. Time lines of major tasks covering the duration of the proposed project.

(7) *Budget*. At the time of original application, all proposers are required to submit a COP Summary Proposal Budget Form for each fiscal year increment (i.e., 2002, 2003, etc.). Multi-institution proposals must include budget forms from each institution. This is in lieu of the Standard Form 424A, ''Budget Information (Non-Construction).''

Use of the COP Summary Proposal Budget form will provide for a detailed annual budget and the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. This form can be found on the COP Internet Site under Grants Support, Section D; or may be requested by contacting the COP Grants Office listed earlier in this document under **FOR FURTHER INFORMATION CONTACT**.

All applicants shall include a budget justification that supports all proposed budget object class categories. The COP will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant. The SF–424A, Budget Information (Non-Construction) Form, is not required for proposal submission and shall be requested from only those applicants subsequently recommended for funding after the competitive review process has been completed.

(8) *Biographical sketch*. All principal and co-investigators must provide two-page summaries that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications. Additional lists of publications, lectures, etc., should not be included;

(c) A list of all persons (including their organizational affiliation) in alphabetical order who have

collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If there are no collaborators, this should be so indicated;

(d) A list of persons (including their organizational affiliation) with whom the individual has had an association as thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c, d, and e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(9) *Current and pending support.* Describe all current and pending support for all principal and co-investigators, including subsequent funding in the case of continuing grants. All current support from whatever source (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and co-investigators should be included, even if they receive no salary support from the project(s). The total award amount for the entire award period covered (including indirect costs) should be shown as well as the number of person-months per year to be devoted to the project, regardless of source of support.

(10) *Proposal format and assembly.* Clamp the original proposal in the upper left-hand corner, but leave it unbound. Use 1-inch (2.5-cm) margins at the top, bottom, left and right of each page. Use a clear and easily legible type face in standard 12-point size with no more than six lines in a vertical space of 1 inch. Print on one side of each page only. Proposals that deviate from the prescribed format will be returned to the sender without further consideration.

Part II: General Grant Terms and Conditions

(1) *Program Authority(s).* 16 U.S.C 1456c, 33 U.S.C 1121 et seq.; 33 U.S.C 883a et seq.; 33 U.S.C 1442; and Pub. L. 105-383.

(2) *Catalog of Federal Domestic Assistance (CFDA)*: 11.478 Coastal Ocean Program.

(3) *Funding Availability.* On average, annual funding for each Announcement of Opportunity is approximately $l,000,000. Each CSCOR/COP project generally consists of several coordinated investigations with separate awards, ranging from $5,000 to $500,000. Actual funding levels will depend upon the final budget appropriations for the fiscal year. Future individual AOs will be released with specific applicable dollar amounts. It is anticipated that two to three synthesis proposals will be funded at approximately $700,000 per year for up to 2 years, and one to two multiple stressor projects will be funded at approximately $1,000,000 per year for up to 5 years.

The financial history of CSCOR/COP grants, interagency agreements, and intra-NOAA funding transfers is as follows: FY97 $10.00 million; FY98 $8.5 million; FY99 $8.5 million, FY00 $15 million, and FY01 $15.5 million. Publication of this notice does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

If an application for a financial assistance award is selected for funding, CSCOR/COP has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

(4) *Matching Requirements.* None.

(5) *Type of Funding Instrument.* They are project grants and cooperative agreements, interagency agreements and transfers, and intra-NOAA funding transfers.

In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant or cooperative agreement under the terms of this notice. Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer, provided legal authority exists for the Federal applicant to receive funds from another agency. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from the applicants, the Economy Act (31 U.S.C. Section 1535) is not an appropriate basis. Support may be solely through COP or partnered with other Federal offices and agencies.

(6) *Eligibility Criteria.* CSCOR/COP funding opportunities are open to all interested, qualified, non-Federal, and Federal researchers. Eligible applicants are institutions of higher education, other non-profits, state, local, and Indian Tribal Governments, and Federal agencies. Researchers must be affiliated with a not-for-profit institution, and proposals must be submitted through a not-for-profit institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research. Foreign researchers must subcontract with United States proposers. Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Proposals deemed acceptable from Federal researchers will be funded through a mechanism other than a grant or cooperative agreement, where legal authority allows for such funding. DOC requirements will prevail if there is a conflict between DOC requirements and institutional requirements.

(7) *Award Period.* Typically, CSCOR/COP's projects average 1 to 5 years in length. Projects covering more than 1 year will typically be funded on an annual basis. Projects submitted under Program Element (b) can be up to 5 years in duration; projects submitted under Program Element (d) should be 1 to 2 years in duration.

(8) *Application Forms.* When applying for financial assistance under a published AO, applicants will be able to obtain both the standard NOAA application forms and COP-specific application forms at the COP Internet Site. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures. Blue ink is suggested, but not required. If you are unable to access this information, you may also call (301)713–3338 to leave a mail request. At time of submission, the applicant will follow the proposal requirements presented in the funding announcement.

At time of original application for financial assistance, all proposers are required to submit the Standard Form 424 (Rev July 1997), ''Application for Federal Assistance'' and a COP Summary Proposal Budget Form for each fiscal year increment in lieu of the Standard Form 424A (Rev July 1997), ''Budget Information for Non-Construction Programs.'' Applicants shall also include a budget narrative/

justification that supports all proposed budget categories. The SF–424A shall be requested only from those recipients subsequently recommended for award.

Multi-institution proposals must include COP Summary Proposal Budget Forms from each institution. Applications not adhering to these stated guidelines will be returned to the applicant without further review.

In addition, other forms required as part of a complete application package from only those recipients subsequently recommended for award include: the Standard Form 424–B, ''Assurances for Non-Construction Programs''; the CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''; the CD–512, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' (this certification is to remain with the recipient and is not forwarded to the Grants Officer); and the SF–LLL,''Disclosure of Lobbying Activities'' (if applicable).

(9) *Project Funding Priorities*. Priority considerations will be given to proposals that promote balanced coverage of the science objective stated in this and later AOs; avoid duplication of completed or ongoing work, and increase geographic diversity. Additional and/or other priorities may be detailed in other CSCOR/COP AOs.

(10) *Evaluation Criteria*. Unless otherwise stated in an individual funding announcement, the following criteria and evaluation weightings will be used for evaluating both solicited and unsolicited proposals:

(a) Scientific Merit (20 percent). Intrinsic scientific value of the proposed work and the likelihood that it will lead to fundamental advancements, new discoveries or will have substantial impact on progress in that field;

(b) Research Performance Competence (20 percent). Capability of the investigator and collaborators to complete the proposed work as evidenced by past research accomplishments, previous cooperative work, timely communication, and the sharing of findings, data, and other research products;

(c) Relevance (20 percent). Likelihood that the research will make substantial contributions or develop products leading to improved management of coastal resources;

(d) Technical Approach (20 percent). Presence of focused science objectives and completeness and efficiency of the strategy for making measurements and observations in support of the objectives. The approach is sound and logically planned throughout the cycle of the proposed work;

(e) Linkages (10 percent). Adequacy of connections to existing or planned studies, or demonstrated cooperative arrangements to provide or use data or other research results to achieve the objectives.

(f) Costs (10 percent): Adequacy of the proposed resources to accomplish the proposed work, and the appropriateness of the requested funding with respect to the total available funds.

(l1) *Selection Procedures*. All proposals will be evaluated and scored individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or by independent peer panel review. Both Federal and non-Federal experts in the field may be used in this process. The peer mail reviewers will be several individuals with expertise in the subjects addressed by particular proposals. Each mail reviewer will see only certain individual proposals within his or her area of expertise, and score them individually on a scale of one to five, where scores represent respectively: Excellent (1), Very Good (2), Good (3), Fair (4), and Poor (5).

The peer panel will comprise 6 to 12 individuals, with each individual having expertise in a separate area, so that the panel as a whole, covers a range of scientific expertise. The panel will have access to all mail reviews of proposals, and will use the mail reviews in discussion and evaluation of the entire slate of proposals. No consensus advice will be given by the independent peer mail review or the review panel.

The program officer(s) will neither vote or score proposals as part of the independent peer panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of ''Fair'' or ''Poor'' will not be given further consideration, and proposers will be notified of non-selection.

For the proposals rated by the panel as either ''Excellent,'' ''Very Good,'' or ''Good'', the program officers will (a) select the proposals to be recommended for funding by applying the project funding priorities listed earlier in this section, paragraph (9) *Project Funding Priorities*; and specific objectives published in the AO; (b) determine the total duration of funding for each proposal; and (c) determine the amount of funds available for each proposal. As a result of consideration of the project funding priorities, awards may not necessarily be made in rank order. Recommendations for funding are then forwarded to the selecting official, the Director of CSCOR/COP.

Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer. Declined applications will be held in the CSCOR/COP for the required five years in accordance with the current retention requirements, and then destroyed.

(12) *Award Conditions*. Institutions accepting awards agree to meet programmatic award conditions as specified by NOAA and CSCOR/COP. Those conditions include:

(a) Submission of annual progress reports, comprehensive final reports, and semi-annual financial reports as outlined on the CSCOR/COP Internet Site.

(b) All environmental data and associated metadata furnished in electronic format to the National Oceanographic Data Center (NODC). Refer to (13) Other Requirements, paragraph (c), Data Archiving, referenced later in this document.

(c) All mathematical model code, parameters, and guidelines developed as a result of a CSCOR/COP award must be made available in electronic format to the CSCOR/COP Program Manager. Refer to (13) Other Requirements, paragraph (c), Data Archiving, referenced later in this document.

(d) Copies of all technical reports and publications resulting from a CSCOR/COP award will be forwarded to the CSCOR/COP.

(13) *Other Requirements*. (a) The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** (66 FR 49917–49922, Volume 190, October 1, 2001) are applicable to this solicitation.

(b) Intergovernmental Review. Applications under this program are not subject to Executive Order l2372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is not significant for purposes of E.O. 12866. Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 603(a). It has been determined that this notice does not contain policies with

Federalism implications as that term is defined in E.O. 13132.

(c) Data Archiving. Any data collected in projects supported by CSCOR/COP must be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in an electronic format to be determined by the institution, the NODC, and Program Officer. It is the responsibility of the institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by CSCOR/COP must be made available to the general research community at no or modest handling charge (to be determined by the institution, Program Officer, and DOC). For more details, refer to CSCOR/COP data policy posted at the COP home page.

(d) Please note that NOAA is developing a policy on internal overhead charges, NOAA scientists considering submission of proposals should contact the appropriate CSCOR/COP Program Manager for the latest information.

(e) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648-0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.McDonald@noaa.gov. Copies of these forms and formats can be found on the COP home page under Grants Support sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: November 28, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–29996 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–JS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998.

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified or eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits. Certain limits have been reduced for carryforward that was applied to the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998, you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	1,198,235 kilograms.
219	13,310,481 square meters.
225	9,320,789 square meters.
300/301	5,696,039 kilograms.

Category	Twelve-month restraint limit
313–O [1]	24,151,725 square meters.
314–O [2]	84,331,784 square meters.
315–O [3]	38,318,793 square meters.
317–O [4]/617/326–O [5]	37,010,430 square meters of which not more than 5,173,219 square meters shall be in Category 326–O.
331pt./631pt. [6]	1,316,862 dozen pairs.
334/335	311,446 dozen.
336/636	822,942 dozen.
338/339	1,591,012 dozen.
340/640	1,959,373 dozen.
341	1,245,778 dozen.
342/642	489,843 dozen.
345	569,777 dozen.
347/348	2,155,312 dozen.
351/651	636,796 dozen.
359–C/659–C [7]	1,967,722 kilograms.
359–S/659–S [8]	2,071,285 kilograms.
360	1,743,836 numbers.
361	1,743,836 numbers.
369–S [9]	1,271,446 kilograms.
433	11,504 dozen.
443	85,344 numbers.
445/446	60,769 dozen.
447	18,139 dozen.
448	21,019 dozen.
604–A [10]	935,466 kilograms.
611–O [11]	6,201,444 square meters.
613/614/615	35,108,300 square meters.
618–O [12]	8,285,146 square meters.
619/620	12,148,120 square meters.
625/626/627/628/629–O [13].	39,183,798 square meters.
634/635	391,875 dozen.
638/639	2,037,751 dozen.
641	2,987,463 dozen.
643	460,861 numbers.
644	610,342 numbers.
645/646	1,088,538 dozen.
647/648	4,271,956 dozen.
Group II	
201, 218, 220, 224, 226, 227, 237, 239pt. [14], 332, 333, 352, 359–O [15], 362, 363, 369–O [16], 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. [17], 469pt. [18], 603, 604–O [19], 624, 633, 652, 659–O [20], 666pt. [21], 845, 846 and 852, as a group	108,765,392 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,012,212 square meters equivalent.
In Group II subgroup	
435	50,253 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 369–S: only HTS number 6307.10.2005.

[10] Category 604–A: only HTS number 5509.32.0000.

[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[12] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[13] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[14] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[15] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[16] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[17] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[18] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[19] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[21] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 15, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29905 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Jamaica and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a previously restrained category has been modified and its limit has been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for the period January 1, 2002 through December 31, 2002.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331pt./631pt. [1]	1,000,691 dozen pairs.
338/339/638/639	1,975,563 dozen.
340/640	923,825 dozen of which not more than 781,698 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [2].
341/641	1,160,041 dozen.
345/845	286,245 dozen.
347/348/647/648	2,132,374 dozen.
352/652	3,186,167 dozen.
445/446	56,829 dozen.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 28, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 2002 and extends through December 31, 2002:

Category	Guaranteed access Level
331pt./631pt. [1]	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.

Category	Guaranteed access Level
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 (52 FR 6049) shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–29906 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified or eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	3,840,716 square meters.
225	13,442,505 square meters.
313	9,601,789 square meters.
314	1,600,298 square meters.
315	4,800,895 square meters.
317	9,601,789 square meters.
326	3,840,716 square meters.
333/334/335	423,328 dozen of which not more than 224,519 dozen shall be in Categories 333/335.
336	95,844 dozen.
338	559,450 dozen.
339	2,343,330 dozen.
340	529,518 dozen.
341	341,528 dozen.
342	154,504 dozen.
345	94,477 dozen.
347/348	1,316,314 dozen.
351	123,535 dozen.
359–C/659–C [1]	618,026 kilograms.
359–V [2]	206,010 kilograms.
611	3,840,716 square meters.
625/626/627/628/629	9,601,789 square meters.
633/634/635	920,252 dozen.
638/639	2,844,327 dozen.
640	203,753 dozen.
641	244,823 dozen.
642	199,713 dozen.
645/646	477,618 dozen.
647/648	963,498 dozen.
659–S [3]	206,010 kilograms.

Category	Twelve-month restraint limit
Group II	
400–414, 433–438, 440–448, 459pt.[4] and 469pt.[5], as a group	1,631,924 square meters equivalent.
Sublevel in Group II	
445/446	88,038 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 15, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29907 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2002 through December 31, 2002.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see 63 FR 17156, published on April 8, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997, as amended and extended by exchange of notes on June 22, 2000 and July 5, 2000, between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
433	22,298 dozen.
434	11,149 dozen.
435	30,432 dozen.
443	187,531 numbers.
448	66,894 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral

agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated April 2, 1998, (63 FR 17156). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[Doc.01–29911 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified or eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group 218–220, 225–227, 313–326, 611–O [1], 613/614/615/617, 619 and 620, as a group	176,479,316 square meters equivalent.
Sublevels within the group	
218	10,125,516 square meters.
219	49,052,499 square meters.
220	49,052,499 square meters.
225	49,052,499 square meters.
226	49,052,499 square meters.
227	49,052,499 square meters.
313	58,502,980 square meters.
314	70,383,508 square meters.
315	49,052,499 square meters.
317	49,052,499 square meters.
326	9,485,648 square meters.
611–O	5,691,389 square meters.
613/614/615/617	56,306,809 square meters.
619	7,588,519 square meters.
620	9,485,648 square meters.
Other specific limits	
200	426,987 kilograms.
237	574,510 dozen.
300/301	4,528,684 kilograms.
331pt./631pt. [2]	796,687 dozen pairs.
333/334/335	356,472 dozen of which not more than 213,946 dozen shall be in Category 333.
336/636	692,296 dozen.
338/339	1,716,366 dozen.
340/640	1,999,232 dozen.
341/641	2,591,080 dozen of which not more than 924,369 dozen shall be in Category 341.
342/642	618,698 dozen.
345	237,988 dozen.
347/348	727,399 dozen.

Category	Twelve-month restraint limit
351/651	385,097 dozen.
363	6,032,871 numbers.
435	16,418 dozen.
438–W [3]	13,436 dozen.
442	20,008 dozen.
445/446	31,758 dozen.
604	1,985,726 kilograms.
634/635	1,209,334 dozen.
638/639	712,387 dozen.
645/646	544,876 dozen.
647/648	2,564,131 dozen of which not more than 1,794,889 dozen shall be in Category 647–K [4] and not more than 1,794,889 dozen shall be in Category 648–K [5]
Group II	
201, 224, 239pt [6], 332, 352, 359pt. [7], 360–362, 369pt. [8], 400–414, 433, 434, 436, 438–O [9], 440, 443, 444, 447, 448, 459pt. [10], 469pt. [11], 603, 618, 624–629, 633, 643, 644, 652, 659pt. [12], 666pt. [13], 845, 846 and 852, as a group	26,226,560 square meters equivalent.

[1] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[4] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[5] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[8] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[9] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[11] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[12] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540.

[13] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see the November 15, 2000 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29908 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified and their limits have been revised. Certain other previously

restrained categories have been eliminated. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	2,536,947 dozen.
331pt./631pt. [1]	2,258,500 dozen pairs.
333/334	397,417 dozen of which not more than 57,054 dozen shall be in Category 333.
335	258,679 dozen.
336	941,351 dozen.
338/339	2,804,331 dozen.
340/640	1,245,287 dozen.
341/641	1,123,714 dozen.
342/642	814,222 dozen.
345	242,473 dozen.
347/348	2,852,582 dozen.
351/651	888,070 dozen.
352/652	3,487,683 dozen.
359–C/659–C [2]	1,206,576 kilograms.
361	2,711,415 numbers.
369–S [3]	614,610 kilograms.
433	3,572 dozen.
443	43,189 numbers.
445/446	29,499 dozen.
447	8,201 dozen.
611	8,137,171 square meters.
633	52,464 dozen.
634	650,938 dozen.
635	392,295 dozen.
636	2,453,219 dozen.
638/639	2,880,811 dozen.
643	1,253,149 numbers.
645/646	1,016,713 dozen.
647/648	1,721,220 dozen.
659–H [4]	2,021,422 kilograms.
Group II	
200–220, 224–227, 300–326, 332, 359pt. [5], 360, 362, 363, 369pt. [6], 400–414, 434–438, 442, 444, 448, 459pt. [7], 469pt. [8], 603, 604, 613–620, 624–629, 644, 659–O [9], 666pt. [10], 845, 846 and 852, as a group.	191,448,987 square meters equivalent.
Sublevel in Group II	
604	2,874,614 kilograms.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[8] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[10] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC, administrative arrangements notified to the Textiles Monitoring Body and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 14, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be

filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29909 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Romania

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 2002 through December 31, 2002 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see 49 FR 493, as amended, published on January 4, 1984.

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified and their limits have been revised, and a previously restrained category has been eliminated. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month limit
313	2,899,725 square meters.
314	2,174,794 square meters.
315	5,233,646 square meters.
333	207,232 dozen.
334	501,022 dozen.
335	257,485 dozen.
338/339	1,133,143 dozen.
340	494,611 dozen.
341	200,862 dozen.
347/348	884,405 dozen.
352	315,275 dozen.
359pt. [1]	1,130,885 kilograms.
360	2,922,519 numbers.
361	1,948,347 numbers.
369pt. [2]	428,581 kilograms.
410	183,962 square meters.
433/434	10,189 dozen.
435	10,658 dozen.
442	12,343 dozen.
443	95,220 numbers.
444	44,888 numbers.
447/448	24,754 dozen.
604	1,756,083 kilograms.
638/639	1,103,357 dozen.
640	151,748 dozen.
647/648	261,947 dozen.
666pt. [3]	199,327 kilograms.

[1] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[2] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[3] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated December 5, 2000) to the extent of any unfilled balances. In the event

the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated December 29, 1983, as amended, (49 FR 493). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29910 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a previously restrained category has been eliminated and certain categories have been modified and their limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	356,306 dozen.
239pt. [1]	243,980 kilograms.
331pt. [2]	83,227 dozen pairs.
334	89,829 dozen.
335	270,206 dozen.
338/339	1,867,662 dozen of which not more than 1,091,479 dozen shall be in Category 338 and not more than 1,213,589 dozen shall be in Category 339.
340	1,307,086 dozen.
341	328,668 dozen.
342	202,256 dozen.
347/348	1,264,512 dozen of which not more than 790,318 dozen shall be in Category 347 and not more than 614,694 dozen shall be in Category 348.
435	7,350 dozen.
604	1,131,213 kilograms.
631pt. [3]	503,927 dozen pairs.
634	342,950 dozen.
635	350,954 dozen.
638	1,259,602 dozen.
639	4,015,193 dozen.
640	278,659 dozen.
641	454,523 dozen.
642	472,478 dozen.
645/646	193,191 dozen.
647	799,624 dozen.
648	1,650,312 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on

January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29912 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	457,490 dozen.
314	6,829,666 square meters.
331/631pt. [1]	1,007,287 dozen pairs.
333/633	86,117 dozen.
334/634	1,009,168 dozen.
335	440,061 dozen.
336/636	590,238 dozen.
338/339	2,018,339 dozen.
340/640	1,719,189 dozen.
341/641	2,829,885 dozen of which not more than 1,886,590 dozen shall be in Category 341 and not more than 1,886,590 dozen shall be in Category 641.
342/642	1,035,042 dozen.
345/845	271,807 dozen.
347/348	1,523,067 dozen.
351/651	521,763 dozen.
352/652	2,152,891 dozen.
359–C/659–C [2]	2,072,836 kilograms.
360	2,276,556 numbers.
363	19,510,581 numbers.
369–S [3]	1,220,666 kilograms.
434	7,817 dozen.
435	16,751 dozen.
440	11,167 dozen.
611	8,916,511 square meters.
635	592,048 dozen.
638/639	1,438,000 dozen.
644	807,334 numbers.
645/646	322,933 dozen.
647/648	1,731,454 dozen.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 13, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be

filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29913 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories have been modified or eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002.

Category	Twelve-month restraint limit
Level not in a Group	
239pt. [1]	2,596,494 kilograms.
Levels in Group I	
200	1,694,632 kilograms.
218	25,667,876 square meters.
219	9,038,048 square meters.
300	6,778,536 kilograms.
301–P [2]	6,778,536 kilograms.
301–O [3]	1,355,710 kilograms.
313–O [4]	31,633,166 square meters.
314–O [5]	72,304,377 square meters.
315–O [6]	45,190,235 square meters.
317–O/326–O [7]	18,971,298 square meters.
363	29,373,653 numbers.
369–S [8]	451,902 kilograms.
604	1,057,298 kilograms of which not more than 677,853 kilograms shall be in Category 604–A [9].
611–O [10]	13,807,176 square meters.
613/614/615	68,296,669 square meters of which not more than 39,767,408 square meters shall be in Categories 613/615 and not more than 39,767,408 square meters shall be in Category 614.
617	24,662,685 square meters.
619	10,167,802 square meters.
620	10,167,802 square meters.
625/626/627/628/629	19,919,861 square meters of which not more than 15,816,582 square meters shall be in Category 625.
Group II	
237, 331pt.[11], 332–348, 351, 352, 359pt. [12], 433–438, 440, 442–448, 459pt. [13], 631pt. [14] 633–648, 651, 652, 659–H [15], 659pt. [16], 845, 846 and 852, as a group	387,228,301 square meters equivalent.
Sublevels in Group II	
331pt./631pt.	742,838 dozen pairs.
334/634	881,210 dozen.
335/635	683,151 dozen.
336/636	451,902 dozen.
338/339	2,427,341 dozen.
340	406,713 dozen.
341/641	960,293 dozen.
342/642	836,020 dozen.
345	429,308 dozen.
347/348	1,153,345 dozen.
351/651	338,926 dozen.
659–H	1,807,218 kilograms.
433	10,253 dozen.
434	12,657 dozen.
435	57,512 dozen.
438	18,984 dozen.
442	22,046 dozen.
638/639	2,860,795 dozen.
640	745,637 dozen.
645/646	451,902 dozen.
647/648	1,608,772 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[5] Category 314–O: all HTS numbers except 5209.51.6015.

[6] Category 315–O: all HTS numbers except 5208.52.4055.

[7] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Categories 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[12] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[13] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[14] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[15] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directives dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

The conversion factors for Category 659–H and merged Categories 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29914 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a certain previously restrained category has been eliminated. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 2002 through December 31, 2002, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group	
219, 313–O [1], 314–O [2], 315–O [3], 317–O [4], 326–O [5], 617, 625/626/627/628/629, as a group	250,805,808 square meters of which not more than 57,314,241 square meters shall be in Category 219; not more than 70,050,738 square meters shall be in Category 313–O; not more than 40,756,793 square meters shall be in Category 314–O; not more than 54,766,944 square meters shall be in Category 315–O; not more than 57,314,241 square meters shall be in Category 317–O; not more than 6,368,247 square meters shall be in Category 326–O, and not more than 38,209,497 square meters shall be in Category 617.
Sublevel in Fabric Group	
625/626/627/628/629	25,800,964 square meters of which not more than 10,320,384 square meters shall be in Category 625; not more than 10,320,384 square meters shall be in Category 626; not more than 10,320,384 square meters shall be in Category 627; not more than 10,320,384 square meters shall be in Category 628; and not more than 10,320,384 square meters shall be in Category 629.
Limits not in a group	
200	2,418,310 kilograms.
300/301	11,774,577 kilograms.
335	508,390 dozen.
336/636	1,197,541 dozen.
338/339/638/639	7,456,388 dozen of which not more than 6,710,750 dozen shall be in Categories 338–S/339–S/638–S/639–S [6].
340/640	1,993,889 dozen of which not more than 567,087 dozen shall be in Categories 340–Y/640–Y [7].
341/641	1,969,058 dozen of which not more than 689,171 dozen shall be in Categories 341–Y/641–Y [8].
342/642	1,333,112 dozen.
347/348	7,253,032 dozen of which not more than 2,522,919 dozen shall be in Categories 347–T/348–T [9].
351/651	1,208,839 dozen.
352/652	4,136,198 dozen.
361	2,541,952 numbers.
369–S [10]	2,627,894 kilograms.
410/624	1,173,610 square meters of which not more than 821,528 square meters shall be in Category 410.
448	40,270 dozen.
604	3,033,361 kilograms.
611	75,885,184 square meters.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[8] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[10] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29915 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, a certain previously restrained category has been eliminated and certain limits have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2002 period. The 2002 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,836,053 square meters.
226/313	3,139,695 square meters.
315	–0–
317	50,649,664 square meters.
326	2,963,877 square meters.
334/634	374,182 dozen.
335/635	241,044 dozen.
336/636	324,290 dozen.
338/339	925,479 dozen of which not more than 616,985 dozen shall be in Categories 338–S/339–S [1].
340/640	573,747 dozen.
341/641	502,404 dozen.
342/642	399,131 dozen.
347/348	687,499 dozen of which not more than 343,749 dozen shall be in Categories 347–T/348–T [2].
351/651	286,874 dozen.
352	528,847 dozen.
361	–0–
363	9,879,589 numbers.
369–O [3]	120,706 kilograms.
369–S [4]	137,525 kilograms.
638/639	374,182 dozen.
647/648	536,329 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 2, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be

filled, such products shall no longer be charged to any limit.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29916 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

November 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Uruguay and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 27, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	227,875 dozen.
335	196,167 dozen.
410	3,106,344 square meters of which not more than 1,775,056 square meters shall be in Category 410–A [1] and not more than 2,859,807 square meters shall be in Category 410–B [2].
433	18,549 dozen.
434	27,672 dozen.
435	55,886 dozen.
442	39,534 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 2, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–29917 Filed 12–3–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States (2000 ed.).

SUMMARY: The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States (2000 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2001 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and

Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the Headquarters, U.S. Marine Corps, Military Law Branch, 2 Navy Annex, Washington, DC 20380–1775, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Major D.T. Brannon, USMCR, Executive Secretary, Joint Service Committee on Military Justice, Headquarters, U.S. Marine Corps (JAM), 2 Navy Annex, Washington, DC 20380–1775, (703) 614–4250, (703) 614–5775 fax.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2001, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comment on its 2001 draft annual review of the Manual for Courts-Martial. On 19 July 2001, the public meeting was held. Three individuals attended and two provided oral comment. The JSC received two letters commenting on the proposed amendments.

Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the proposed changes: Incorporate the JSC's role in the Preamble of the MCM: require that matters in aggravation be alleged in the specification; clarify the 100-mile rule; recommend that the staff judge advocate include the Article 32 investigating officer's recommendations in the pretrial advice to the convening authority; acknowledge that the speedy trial rules apply at a rehearing; consider the accused's periods of unauthorized absence as excludable delay; clarify the military judge's responsibility to control courtroom spectators and the accused's right to a public trial; clarify when evidence of an accused's impaired mental state may be admissible; clarify assessment of sentence on rehearing; conform the Military Rules of Evidence to the 1 December 2000 amendments to the Federal Rules of Evidence; amend the Punitive Articles to clarify the two distinct categories of carnal knowledge and sodomy in cases involving children; require that the materiality of false testimony, in a perjury prosecution be submitted to the members for decision; and clarify the reckless endangerment Article to make the sample specification consistent with the elements.

Discussion of Comments and Changes

In response to the request for public comment the JSC received written comment from one individual and oral written comment on behalf of one organization. The JSC considered the combined public comments and is satisfied that the proposed amendments are appropriate to implement without additional modification except as indicated herein. The JSC will forward the public comments and the proposed amendments, as modified, to the Department of Defense.

The written comments from the individual recommended a technical correction to the proposed changes and propose additional changes to the MCM. In proposed Mil.R.Evid. 803(6), the writer recommended correcting the typographical error of ''area'' to ''are'' in the third sentence. The writer also suggested four substantive modifications to proposed Mil.R.Evid. 902(11):

1. Certification should not be limited to ''domestic'' records due to the worldwide operation of the U.S. Armed Forces.
2. The declaration should be sworn.
3. The declaration should include a form affidavit.
4. The declaration should have more definitive guidelines on the timeliness of production to opposing counsel.

The writer also proposed that the MCM be amended to require that members be instructed on the legal effect of Article 58b, UCMJ, and the statutory provisions for dropping officers from the rolls. Finally, the writer proposed amending R.C.M. 1001(c)(1)(B) to allow the accused to present evidence on the effect of a punitive discharge on military retirement pay and benefits if the accused is retirement eligible or within 2 years of being retirement eligible at the time of referral of charges. *See United States* v. *Luster,* 55 M.J. 67 (2001).

The JSC has considered these comments and adopts the technical correction changing the word ''area'' to ''are'' in the third sentence to its proposed amendment to Mil.R.Evid. 803(6). The JSC declined to modify its proposed amendment to Mil.R.Evid. 902(11) because the JSC's proposal was designed to conform the Military Rules of Evidence to the Federal Rules of Evidence and keep military practice in line with Federal practice to the extent practicable, as required by Article 36, Uniform Code of Military Justice. The JSC declined the writer's invitation to amend the MCM to require the mandatory instruction and to amend R.C.M. 1001 (c)(1)(B) as those recommendations were outside the scope of the public comment.

The oral and written comment provided by the organization mirrored those submitted during the JSC 2000 Annual Review and invitation for public comment. The organization believes the rulemaking process is inadequate. Specifically, the organization suggests that the JSC's invitation for public proposals may discourage participation due to is admonition that ''[i]ncomplete submissions may not be considered.'' The organization also asserts that DOD's proposal to publish DOD Directive 5500.17 (1996 ed.) as an appendix to the MCM does not reflect current JSC practice and conflicts with the version published in the CFR. The organization recommends updating DOD Directive 5500.17 (1996 ed.) and publishing it in the MCM and CFR. Additionally, the organization asserts that the Notice of Proposed Changes as published in the **Federal Register** is inadequate because it fails to provide an adequate discussion of the rationale behind the proposal and the anticipated effect of the change. The organization submitted additional comments regarding the proposed substantive changes as follows:

a. R.C.M. 405(g)(1)(A)—Revisit the rationale for the 100-mile rule and reconsider the regulations pertaining to the ''reasonable availability'' of military attorneys as individual military counsel (IMC).

b. R.C.M. 707(b)(3)(D)—On sentence rehearings, allow assembly of the court or reception of evidence to serve as events that stop the speedy trial clock instead of the proposed Art. 39(a) session.

c. R.C.M. 916(k)(2)—Change the wording of the proposal stating that evidence of partial mental responsibility is admissible whenever relevant to an issue before the court.

d. R.C.M. 1107(e)(1)(B)(4)—Prohibit the convening authority (CA) from reassessing a sentence where part of the findings have been set aside by an appellate court because the CA is not the appropriate official to determine and impose a sentence.

e. ¶ 57(c)(2)(B)—Review other offenses which contain elements, such as ''materiality'' of a statement under Art. 131, to determine if the rationale is applicable to other elements of the offenses. In light of *United States* v. *New*, 55 M.J. 95 (2001), consider whether a regulatory clarification regarding ''lawfulness'' of an order as an

element of offenses Art. 90, 91 and 92 is appropriate.

The JSC has considered these comments and has determined that the rulemaking process is adequate, satisfies statutory requirements, and does not discourage public participation. Encouraging commentators to submit specific, detailed recommendations assists the JSC better understand the scope and purpose of submitted recommendations. Pragmatically, vague, or inartfully worded recommendations might not be addressed within the time available for review and might therefore be unnecessarily delayed. Recommendations for matters that are outside the scope of the issues submitted for public comment may not meet the requirements of DOD Directive 5500.17 (1996 ed.) for JSC consideration. While it is not the intent of the JSC to discourage comment, the invitation for public comment does properly encourage relevant and focused input to the matters proposed for change.

The JSC declined the organization's invitation to change its proposed amendments.

a. The JSC determined that the 100-mile rule is an appropriate factor to be considered when determining the availability of witnesses for Article 32 pre-trial investigations.

b. The JSC determined that an Article 39(a) session is an appropriate means of stopping the speedy trial clock at a rehearing on sentencing.

c. The JSC determined that R.C.M. 916(k)(2) provides the military judge the appropriate authority to determine whether the evidence shows a lack of mental responsibility so as to warrant a specific instruction on the issue.

d. The JSC determined that the reassessment of a sentence is an appropriate quasi-judicial function of the convening authority who is limited to a sentence no more severe than originally adjudged and whose actions are reviewable by the service Judge Advocate General or the service courts of criminal appeals with Article 66, UCMJ authority.

e. The JSC determined that the organization's final recommendation is outside the scope of the invited public comment. The organization's final proposal regarding the question of whether other offenses have elements solely determined by a military judge instead of the fact finder will be considered within the normal course of JSC annual review process under DOD Directive 5500.17 (1996 ed.).

Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Court-Martial are as follows:

Amend paragraph 4 of the Preamble by adding a new third subparagraph to read as follows:

''The Department of Defense Joint Service Committee (JSC) on Military Justice reviews the Manual for Courts-Martial and proposes amendments to the Department of Defense for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Directive 5500.17, ''The Roles and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' a copy of which is included in this Manual as Appendix 26. DoD Directive 5500.17 includes provisions allowing public participation in the annual review process.''

Amend R.C.M. 307(c)(3) to read as follows:

''*Specification.* A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication. Except for aggravating factors under R.C.M 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required.''

Amend subparagraph (ix) of the Discussion accompanying R.C.M. 307(c) to read as follows:

''(ix) *Matters in aggravation.* Matters in aggravation that do not increase the maximum authorized punishment ordinarily should not be alleged in the specification. Prior convictions need not be alleged in the specification to permit increased punishment. Aggravating factors in capital cases should not be alleged in the specification. Notice of such factors is normally provided in accordance with R.C.M. 1004(b)(1).''

Amend the analysis accompanying R.C.M. 307(c)(3) by inserting the following at the end thereof:

''*200 Amendment:* The Rule was amended by modifying language in the Discussion at (H)(ix), and pulling it into the text of the Rule, to emphasize that facts that increase maximum authorized punishments must be alleged and proven beyond a reasonable doubt. *Jones v. United States,* 526 U.S. 227 (1999). *See also Apprendi v. New Jersey,* 530 U.S. 466 (2000). R.C.M 1003(d) prior convictions and R.C.M 1004 capital aggravating factors were excluded because the rule in *Apprendi* exempts prior convictions and distinguishes capital sentencing schemes. R.C.M. 1004 capital aggravating factors were also excluded to avoid complication Part IV of the Manual and because R.C.M. 1004 already establishes a separate scheme for satisfying an accused's Constitutional rights in this area. *See Walton v. Arizona,* 497 U.S. 639 (1990) (capital aggravating factors are not separate penalties or offenses but are standards to guide the making of the choice between the alternative verdicts of death and life imprisonment).''

Insert the following discussion to accompany R.C.M. 405(g)(1)(A):

''A witness located beyond the 100-mile limit is not *per se* unavailable. To determine if a witness beyond 100 miles is reasonably available, the significance of the witness' live testimony must be balanced against the relative difficulty and expense of obtaining the witness' presence at the hearing.''

Amend the analysis accompanying R.C.M. 405(g)(1) by inserting the following before the Discussion of subsection (2):

''*2000 Amendment:* The discussion to subsection (g)(1)(A) is new. It was added in light of the decision in *United States v. Marie,* 43 M.J. 35 (1995) that a witness beyond 100 miles from the site of the investigation is not *per se* unavailable.''

Amend the second paragraph of the Discussion accompanying R.C.M. 406(b) to read as follows:

''The advice need not set forth the underlying analysis or rationale for its conclusions. Ordinarily, the charge sheet, forwarding letterr, and endorsements, and report of investigation are forwarded with the pretrial advice. In addition, the pretrial advice should include when appropriate: A brief summary of the evidence; discussion of significant aggravating, extenuating, or mitigating factors; any recommendations for disposition of the case by commanders or others who have forwarded the charges; and the recommendation of the Article 32 investigating officer. However, there is no legal requirement to include such information, and failure to do so is not error.''

Amend the analysis accompanying R.C.M. 406(b) by inserting the following at the end thereof:

''*200 Amendment:* The Dicussion to R.C.M. 406(b) was amended to add as additional, non-binding guidance that the SJA should include the recommendation of the Article 32 investigating officer.''

Amend R.C.M. 707(b)(3)(D) to read as follows:

''*Rehearings.* If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803.''

Amend the analysis accompanying R.C.M. 707(b) by inserting the following before the Discussion of subsection (c):

''*200 Amendment:* Subsection (3)(D) was amended in light of *United States* v. *Becker,* 53 M.J. 229 (2000, to clarify that the 120-day time period applies to sentence-only rehearings. The amendment also designates the first session under R.C.M. 803 as the point where an accused is brought to trial in a sentence-only rehearing.''

Amend R.C.M. 707(c) to read as follows:

''(c) *Excludable delay.* All periods of time during which appellate courts have issued stays in the proceedings, or the accussed is absent without authority, or the accused is

hospitalized due to incompetence, or is otherwise in the custody of the Attorney General, shall be excluded when determining whether the period in subsection (a) of this rule has run. All other pretrial delays approved by a military judge or the convening authority shall be similarly excluded.''

Delete the Discussion accompanying R.C.M. 707(c).

Amend the analysis accompanying R.C.M. 707(c) by inserting the following before the Discussion of subsection (d):

''*200 Amendment:* Subsection (c) was amended to treat periods of the accused's unauthorized absence as excludable delay for purposes of speedy trial. *See United States* v. *Dies,* 45 M.J. 376 (1966). THe Discussion was deleted as superfluous.''

Amend R.C.M. 707(d) to read as follows:

''(d) *Remedy.* A failure to comply with this rule will result in dismissal of the affected charges, or, in a sentence-only rehearing, sentence relief as appropriate.

(1) *Dismissal.* Dismissal will be with or without prejudice to the government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: The seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a reprosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.

(2) *Sentence relief.* In determining whether or how much sentence relief is appropriate, the military judge shall consider, among others, each of the following factors: The length of the delay, the reasons for the delay, the accused's demand for speedy trial, and any prejudice to the accused from the delay. Any sentence relief granted will be applied against the sentence approved by the convening authority.''

Insert the following Discussion accompanying R.C.M. 707(d):

''*See* subsection (c)(1) and the accompanying Discussion concerning reasons for delay and procedures for parties to request delay.''

Amend the analysis accompanying R.C.M. 707(d) by inserting the following before the Discussion of subsection (e):

''*200 Amendment:* Subsection (d) was amended in light of *United States* v. *Becker*, 53 M.J. 229 (2000), to provide for sentence relief as a sanction for violation of the 120-day rule in sentence-only rehearings. The amendment sets forth factors for the court to consider to determine whether or to what extent sentence relief is appropriate and provides for the sentence credit to be applied to the sentence approved by the convening authority.''

Amend R.C.M. 806(b) to read as follows:

''(b) *Control of spectators and closure.*

(1) *Control of spectators.* In order to maintain the dignity and decorum of the proceedings or for other good cause, the military judge may reasonably limit the number of spectators in, and the means of access to, the courtroom, and exclude specific persons from the courtroom. When excluding specific persons, the military judge must make findings on the record establishing the reason for the exclusion, the basis for the military judge's belief that exclusion is necessary, and that the exclusion is as narrowly tailored as possible.

(2) *Closure.* Courts-martial shall be open to the public unless (1) there is a substantial probability that an overriding interest will be prejudiced if the proceedings remain open; (2) closure is no broader than necessary to protect the overriding interest; (3) reasonable aalternatives to closure were considered and found inadequate; and (4) the military judge makes case-specific findings on the record justifying closure.''

The following Discussion is added to R.C.M. 806(b)(1):

''The military judge must ensure that the dignity and decorum of the proceedings are maintained and that the other rights and interests of the parties and society are protected. Public access to a session may be limited, specific persons excluded from the courtroom, and, under unusual circumstances, a session may be closed.

Exclusion of specific persons, if unreasonable under the circumstances, may violate the accused's right to a public trial, even though other spectators remain. Whenever specific persons or some members of the public are excluded, exclusion must be limited in time and scope to the minimum extent necessary to achieve the purpose for which it is ordered. Prevention of overcrowding or noise may justify limiting access to the courtroom. Disruptive or distracting appearance or conduct may justify excluding specific persons. Specific persons may be excluded when necessary to protect witnesses from harm or intimidation. Access may be reduced when no other means is available to relieve a witness' inability to testify due to embarrassment or extreme nervousness. Witnesses will ordinarily be excluded from the courtroom so that they cannot hear the testimony of other witnesses. *See* Mil.R.Evid. 615.''

The following Discussion is added to R.C.M. 806(b)(2):

''The military judge is responsible for protecting both the accused's right to, and the public's interest in, a public trial. A court-martial session is ''closed'' when no member of the public is permitted to attend. A court-martial is not ''closed'' merely because the exclusion of certain individuals results in there being no spectators present, so long as the exclusion is not so broad as to effectively bar everyone who might attend the sessions and is there for a proper purpose.

A session may be closed over the objection of the accused or the public upon meeting the Constitutional standard set forth in this Rule. *See also* Mil.R.Evid. 412(c), 505(i), and 513(e)(2).

The accused may waive his right to a public trial. The fact that the prosecution and defense jointly seek to have a session closed does not, however, automatically justify closure, for the public has a right in attending courts-martial. Opening trials to public scrutiny reduces the chance of arbitrary and capricious decisions and enhances public confidence in the court-martial process.

The most likely reason for a defense request to close court-martial proceedings is to minimize the potentially adverse effect of publicity on the trial. For example, a pretrial Article 39(a) hearing at which the admissibility of a confession will be litigated may, under some circumstances, be closed, in accordance with this Rule, in order to prevent disclosure to the public (and hence to potential members) of the very evidence that my be excluded. When such publicity may be a problem, a session should be closed only as a last resort.

There are alternative means of protecting the proceedings from harmful effects of publicity, including a thorough *voir dire* (*see* R.C.M. 912), and, if necessary, a continuance to allow the harmful effects of publicity to dissipate (*see* R.C.M. 906(b)(1)). Alternatives that may occasionally be appropriate and are usually preferable to closing a session include: directing members not to read, listen to, or watch any accounts concerning the case; issuing a protective order (*see* R.C.M. 806(d)); selecting members from recent arrivals in the command, or from outside the immediate area (*see* R.C.M. 503(a)(3)); changing the place of trial (*see* R.C.M. 906(b)(11)); or sequestering the members.''

Amend the analysis accompanying R.C.M. 806(b) by inserting the following before the Discussion of subsection (c):

''*200 Amendment:* Subsection (b) was divided to separate the provisions addressing control of spectators and closure and to clarity that exclusion of specific individuals is not a closure. The rules for control of spectators now is subsection (b)(1) were amended to require the military judge to articulate certain findings on the record prior to excluding specific spectators. *See United States* v. *Short,* 41 M.J. 42 (1994). The rules on closure now in subsection (b)(2) and the Discussion were amended in light of military case law that has applied the Supreme Court's Constitutional test for closure to courts-martial. *See ABC, Inc. v. Powell,* 47 M.J. 363 (1997); *United States* v. *Hershey,* 20 M.J. 433 (C.M.A. 1985); *United States* v. *Grunden,* 2 M.J. 116 (C.M.A. 1977).''

Amend the Discussion accompanying R.C.M. 916(k)(1) to read as follows:

''*See* R.C.M. 706 concerning sanity inquiries; R.C.M. 909 concerning the capacity of the accused to stand trial; and R.C.M. 1102A concerning any post-trial hearing for an accused found not guilty only by reason of lack of mental responsibility.''

Amend the analysis accompanying R.C.M. 916(k)(1) by inserting the following before the Discussion of subsection (2):

''*200 Amendment:* The Discussion to R.C.M. 916(k)(1) was amended to add a cross-reference to R.C.M. 1102A.''

Amend R.C.M. 916(k)(2) to read as follows:

''(2) *Partial mental responsibility.* A mental condition not amounting to a lack of mental responsibility under subsection (k)(1) of this rule is not a affirmative defense.''

Insert the following discussion to accompany R.C.M. 916(k)(2):

''Discussion, Evidence of a mental condition not amount to a lack of mental responsibility may be admissible as to

whether the accused entertained a state of mind necessary to be proven as an element of the offense. The defense must notify the trial counsel before the beginning of trial on the merits if the defense intends to introduce expert testimony as to the accused's mental condition. *See* R.C.M. 701(b)(2).''

Amend the analysis accompanying R.C.M. 916(k) (2) by inserting the following before the Discussion of subsection (3):

''*200 Amendment:* Subsection (k)(2) was modified to clarify that evidence of an accused's impaired mental state may be admissible. *See United States* v. *Schap,* 49 M.J. 317, 322 (1998); *United States* v. *Berrie,* 33 M.J. 337 (C.M.A. 1991); *Ellis* v. *Jacob,* 26 M.J. 90 (C.M.A. 1988).''

Amend R.C.M. 1103(f)(2) to read as follows:

''(2) Direct a rehearing as to any offense of which the accused was found guilty if the finding is supported by the summary of the evidence contained in the record, provided that the convening authority may not approve any sentence imposed at such a rehearing more severe than or in excess of that adjudged by the earlier court-martial.''

Amend the analysis accompanying R.C.M. 1103(f) by inserting the following before the Discussion of subsection (g):

''*200 Amendment:* Subsection (f)(2) was amended to reflect amendments to Article 63, UCMJ, in the National Defense Authorization Act for Fiscal Year 1993, Pub.L.No. 102–484, 106 Stat. 2315, 2506 (1992). The revisions provide that subsection (f)(2) sentencing limitations are properly applicable only to the sentence that may be approved by the convening authority following a rehearing. Subsection (f)(2) as revised does not limit the maximum sentence that may be adjudged at the rehearing. *See United States* v. *Gibson,* 43 M.J. 343, 346 n.3 (1995); *United States* v. *Lawson*, 34 M.J. 38 (CMA. 1992) Cox, J., concurring); *United States* v. *Greaves,* 48 M.J. 885 (A.F.Ct.Crim.App. 1998), *rev. denied,* 51 M.J. 365 (1999).''

Insert the following new subsection (iv) after R.C.M. 1107(3)(1)(B)(iii) to read as follows:

''(iv) *Sentence reassessment.* If a superior authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty.''

Amend the Discussion to R.C.M. 1107(e)(1)(B)(iii) to read as follows;

''A sentence rehearing, rather than a reassessment, may be more appropriate in cases where a significant part of the government's case has been dismissed. The convening authority may not take any actions inconsistent with directives of superior competent authority. Where that directive is unclear, appropriate clarification should be sought from the authority issuing the original directive. ''

Amend the analysis accompanying R.C.M. 1107(e)(1) by inserting the following before the Discussion of subsection (2):

''*200 Amendment:* The Discussion to R.C.M. 1107(e)(1)(B)(iii) was moved to new subsection (1)(B)(iv) to expressly recognize that, in cases where a superior authority has approved some findings of guilty and has authorized a rehearing as to other offenses, the convening authority may, unless otherwise directed, reassess a sentence based on approved findings of guilty under the criteria established by *United States* v. *Sales,* 22 M.J. 305 (C.M.A. 1986), and dismiss the remaining charges. *See United Stats* v. *Harris,* 53 M.J. 86 (2000). The power of convening authorities to reassess had been expressly authorized in paragraph 92*a* of MCM, 1969. The authorizing language was moved to the Discussion following R.C.M. 1107(e)(1)(B)(iii) in MCM, 1984. The Discussion was amended to advise practitioners to apply the criteria for sentence reassessment established by *United States* v. *Sales,* 22 M.J. 305 (C.M.A. 1986). *Sea also United States* v. *Harris,* 53 MJ. 86 (2000); *United States* v. *Eversole,* 53 M.J. 132 (2000). The Discussion was further amended to encourage practitioners to seek clarification from superior authority where the directive to the convening authority is unclear.''

Amend R.C.M. 1108(b) to read as follows:

''(b) *Who may suspend and remit.* The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial, except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f), suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole that has been ordered executed. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years. The commander of the accused who has the authority to convene a court-martial of the kind which adjudged the sentence may suspend or remit any part of amount of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial which does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The ''unexecuted part of any sentence'' includes that part which has been approved and ordered executed but which has not actually been carried out.''

Amend the analysis accompanying R.C.M. 1108 by inserting the following at the end thereof:

''200 Amendment: Subsection (b) was amended to conform to the limitations on Secretarial authority to grant clemency for military prisoners serving a sentence of confinement for life without eligibility for parole contained in section 553 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106–398, 114 Stat. 1654, Oct 30, 2000.''

Amend R.C.M. 1305(c) to read as follows:

''(c) *Authentication.* The summary court-martial shall authenticate the record by signing the original record of trial.''

Amend the analysis accompanying R.C.M. 1305(c) by inserting the following prior to the Discussion of subsection (d):

''*200 Amendment:* This subsection was amended to require that summary courts-martial authenticate the original record of trial, as is currently the procedure for special and general courts-martial.''

Amend R.C.M. 1306(b)(1) to read as follows:

''(1) *Who shall act.* Except as provided herein, the convening authority shall take action in accordance with R.C.M. 1107. The convening authority shall not take action before the period prescribed in R.C.M. 1105(c)(2) has expired, unless the right to submit matters has been waived under R.C.M. 1105(d).''

Amend the analysis accompanying R.C.M. 1306(b) by inserting the following prior to the discussion of subsection (c):

''*200 Amendment:* The cross-reference to subsection R.C.M. 1105(c)(3) is amended to R.C.M. 1105(c)(2) to conform to the 1987 Change 3 amendment that re-designated R.C.M. 1105(c)(3) as R.C.M. 1105(c)(2).''

Amend Mil.R.Evid. 103(a0(2) to read as follows:

''(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Once the military judge makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. The standard provided in this subdivision does not apply to errors involving requirements imposed by the Constitution of the United States as applied to members of the armed forces except insofar as the error arises under these rules and this subdivision provides a standard that is more advantageous to the accused than the constitutional standard.''

Amend the analysis accompanying Mil.R.Evid. 103(a) by inserting the following prior to the Discussion of subsection (b):

''*200 Amendment:* Subdivision (a)(2) was modified based on the amendment to Fed.R.Evid. 103(a)(2), effective 1 December 2000, and is virtually identical to its Federal Rule counterpart. It is intended to provide that where an advance ruling is definitive, a party need not renew an objection or offer of proof at trial, otherwise renewal is required.''

Amend Mil.R.Evid. 404(a) to read as follows:

''(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) *Character of accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the

same, or if evidence of a pertinent trait of character of the alleged victim of the crime is offered by an accused and admitted under Mil.R.Evid. 404(a)(2), evidence of the same trait of character, if relevant, or the accused offered by the prosecution;

(2) *Character of alleged victim.* Evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide or assault case to rebut evidence that the alleged victim was an aggressor;

(3) *Character of witness.* Evidence of the character of a witness, as provided in Mil.R.Evid. 607, 608, and 609.''

Amend the analysis accompanying Mil.R.Evid. 404(a) by inserting the following prior to the Discussion of subsection (b):

''*200 Amendment:* Subdivision (a) was modified based on the amendment to Fed.R.Evid. 404(a), effective 1 December 2000, and is virtually identical to its Federal Rule counterpart. It is intended to provide a more balanced presentation of character evidence when an accused attacks the victim's character. The accused opens the door to an attack on the same trait of his own character when he attacks an alleged victim's character, giving the members an opportunity to consider relevant evidence about the accused's propensity to act in a certain manner. The words ''if relevant'' are added to subdivision (a)(1) to clarify that evidence of an accused's character under this rule must meet the requirements of Mil.R.Evid. 401 and Mil.R.Evid. 403. The drafters believe this addition addresses the unique use of character evidence in courts-martial. The amendment does not permit proof of the accused's character when the accused attacks the alleged victim's character as a witness under Rule 608 or 609, nor does it affect the standards for proof of character by evidence of other sexual behavior or sexual offenses under Rules 412–415.''

Amend Mil.R.Evid. 701 to read as follows:

''If the witness if not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based in scientific, technical, or other specialized knowledge within the scope of Rule 702.''

Amend the analysis accompanying Mil.R.Evid. 701 by inserting the following at the end thereof:

''200 *Amendment:* Rule 701 was modified based on the amendment to Fed.R.Evid. 701, effective 1 December 2000, and is taken from the Federal Rule without change. It prevents parties from proferring an expert as a lay witness in an attempt to evade the gatekeeper and reliability requirements of Rule 702 by providing that testimony cannot qualify under Rule 701 if it is based on ''scientific, technical or other special knowledge with the scope of Rule 702.''''

Amend Mil.R.Evid. 702 to read as follows:

''If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.''

amend the analysis accompanying Mil.R.Evid. 702 by inserting the following at the end thereof:

''*200 Amendment:* Rule 702 was modified based on the amendment to Fed.R.Evid. 702, effective 1 December 2000, and is taken from the Federal Rule without change. It provides guidance for courts and parties as to the factors to consider in determining whether an expert's testimony is reliable in light of *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993) and *Kumho Tire Co.* v. *Carmichael,* 526 U.S. 137 (1999) (holding that gatekeeper function applies to all expert testimony, not just testimony based on science).''

Amend Mil.R.Evid. 703 to read as follows:

''The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert, at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the members by the proponent of the opinion or inference unless the military judge determines that their probative value in assisting the members to evaluate the expert's opinion substantially outweighs their prejudicial effect.''

Amend the analysis accompanying Mil.R.Evid. 703 by inserting the following at the end thereof:

''*200 Amendment:* Rule 703 was modified based on the amendment to Fed.R.Evid. 703, effective 1 December 2000, and is virtually identical to its Federal Rule counterpart. It limits the disclosure to the members of inadmissible information that is used as the basis of an expert's opinion. *Compare* Mil.R.Evid. 705.''

Amend Mil.R.Evid. 803(6) to read as follows:

''*Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Mil.R.Evid. 902(11) or any other statute permitting certification in a criminal proceeding in a court of the United States, unless the source of the information or the method or circumstances of preparation indicate a lack of trust worthiness. The term ''business'' as used in this paragraph includes the armed forces, a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Among those memoranda, reports, records, or data compilations normally admissible pursuant to this paragraph are enlistment papers, physical examination papers, outline-figure and fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.''

Amend the analysis accompanying Mil.R.Evid. 803(6) by inserting the following prior to the Discussion of subsection (7):

''*200 Amendment:* Rule 803(6) was modified based on the amendment to Fed.R.Evid. 803(6), effective 1 December 2000. It permits a foundation for business records to be made through certification to save the parties the expense and inconvenience or producing live witnesses for what is often perfunctory testimony. The Rule incorporates federal statutes that allow certification in a criminal proceeding in a court of the United States. (*See, E.g.*, 18 U.S.C. Section 3505, Foreign records of regularly conducted activity.) The Rule does not include foreign records of regularly conducted business activity in civil cases as provided in its Federal Rule counterpart. This Rule works together with Mil.R.Evid. 902(11).''

Insert Mil.R.Evid. 902(11) to read as follows:

''(11) *Certified domestic records of regularly conducted activity.* The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Mil.R.Evid. 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.''

Insert the following new analysis accompanying Mil.R.Evid. 902(11) after the Discussion of subsection (10):

''*200 Amendment:* Rule 902(11) was modified based on the amendment to Fed.R.Evid. 902(11), effective 1 December 2000, and is taken from Federal Rule without change. It provides for self-authentication of domestic business records and sets forth procedures for preparing a declaration of a custodian or other qualified witness that will

establish a sufficient foundation for the admissibility of domestic business records. This Rule works together with Mil.R.Evid. 803(6).''

The amendment to the Federal Rules of Evidence, effective in United States District Courts, 1 December 2000, creating Rule 901(12) is not adopted.

Amend the analysis accompanying Nil.R.Evid. 1102 by inserting the following at the end thereof:

''*200 Amendment:* The amendment to the Federal Rules of Evidence, effective in United States District Courts, 1 December 2000, creating Rule 902(12) is not adopted. Federal Rules 301, 302, and 415, were not adopted because they were applicable only to civil proceedings.''

Amend Part IV, para. 45(b)(2) by deleting para. 45(b)(2)(C) and inserting the following after para. 45(b)(2)(b):

''(Note: Add one of the following elements)

(c) That at the time of the sexual intercourse the person was under the age of 12.

(d) That at the time of the sexual intercourse the person had attained the age of 12 but was under the age of 16.''

Amend the analysis accompanying Part IV, para. 45(b) by inserting the following prior to the Discussion of subsection (c):

''b. *Elements.*

200 Amendment: Paragraph 45(b)(2) was amended to add two distinct elements of age based upon the 1994 amendment to paragraph 45(e). *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.''

Amend Part IV, para. 45(f) to read as follows:

''f. *Sample specifications.*

(1) *Rape.*

In that _____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20__, rape _____, (a person under the age of 12) (a person who had attained the age of 12 but was under the age of 16).

(2) *Carnal Knowledge.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20__, commit the offense of carnal knowledge with _____, (a person under the age of 12) (a person who attained the age of 12 but was under the age of 16).''

Amend the analysis accompanying Part IV, para. 45(f) by inserting the following at the end of subsection (e):

''*200 Amendment:* Paragraph 45(f)(2) was amended to aid practitioners in charging the two distinct categories of carnal knowledge created in 1994. For the same reason paragraph 45(f)(1) was amended to allow for contingencies of proof because carnal knowledge is a lesser-included offense of rape if properly pleaded. *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.''

Amend part IV, para. 51(b) to read as follows:

''(1) That the accused engaged in unnatural carnal copulation with a certain other person or with an animal.

(Note: Add any of the following as applicable)

(2) That the act was done with a child under the age of 12.

(3) That the act was done with a child who had attained the age of 12 but was under the age of 16.

(4) That the act was done by force and without the consent of the other person.''

Amend the analysis accompanying Part IV, para. 51(b) by inserting the following prior to the Discussion of subsection (c):

''b. *Elements.*

200 Amendment. Paragraph 51(b) was amended by adding two factors pertaining to age based upon the 1994 amendment to paragraph 51(e) that created two distinct categories of sodomy involving a child. *See also* concurrent change to R.C.M. 307(c)(3) and accompanying analysis.''

Amend Part IV, para. 51(f) to read as follows:

''f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required, on or about ____20__, commit sodomy with _____, (a child under the age of 12) (a child who had attained the age of 12 but was under the age of 16) (by force and without the consent of the said_____).''

Amend the analysis accompanying Part IV, para. 51(f) by inserting the following at the end of subsection (e):

''*200 Amendment:* Paragraph 51(f) was amended to aid practitioners in charging the two distinct categories of sodomy involving a child created in 1994. *See also* concurrent change to R.C.M. 307(c)(3) and accompany8ing analysis.''

Amend Part IV, para. 57(c) (2) (B) to read as follows:

''(b) *Material matter.* The false testimony must be with respect to a material matter, but that matter need not be the main issue in the case. Thus, perjury may be committed by giving false testimony with respect to the credibility of a material witness or in an affidavit in support of a request for a continuance, as well as by giving false testimony with respect to a fact which a legitimate inference may be drawn as to the existence or nonexistence of a fact in issue.''

Amend the analysis accompanying Part IV, para 57(c) (2) (B) by inserting the following before the Discussion of subsection (d):

''*200 Amendment:* Subsection (2)(b) was amended to comply with *United States* v. *Gaudin,* 515 U.S. 506 (1995), which held that when materiality is a statutory element of an offense, it must be submitted to the jury for decision. Materiality cannot be removed from the members' consideration by an interlocutory ruling that a statement is material. *See also Gaudin* at 521 (''It is commonplace for the same mixed question of law and fact to be assigned to the court for one purpose, and to the jury for another.''); and at 517 (''The prosecution's failure to provide minimal evidence of any other element, of course raises a question of 'law' that warrants dismissal.'').''

Amend Part IV, para. 100a(c)(1) to read as follows:

''(1) *In general.* This offense is intended to prohibit and therefore deter reckless or wanton conduct that wrongfully creates a substantial risk of death or grievous bodily harm to others.''

Amend Part IV, para. 100a(f) to read as follows:

''f. *Sample specification.*

In that _____(personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, wrongfully and (recklessly) (wantonly) engage in conduct, to wit: (describe conduct), conduct likely to cause death or grievous bodily harm to _____.''

Amend the analysis accompanying Part IV, para. 100a by inserting the following at the end thereof:

''*200 Amendment:* The sample specification was amended to add the word ''wantonly'' to make the sample specification consistent with the elements. The phrase ''serious bodily harm'' has been changed to read ''grievous bodily harm'' in the sample specification to parallel the language in the elements. Similarly, in the *Explanation,* the phrase ''serious injury'' was modified to read ''grievous bodily harm.'' The format of the sample specification was also modified to follow the format of other sample specification in the MCM.''

Insert DoD Directive 5500.17, ''The Roles and Responsibilities of the Joint Service Committee (JSC) on Military Justice'' as Appendix 26.

Dated: November 28, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–29922 Filed 12–3–01; 8:45 am]

BILLING CODE 5001–08–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 and delete systems of records.

SUMMARY: The Department of the Army is proposing to consolidate two existing Privacy Act systems of records its inventory of systems of records subject to the Privacy Act of 1974. The records systems are A0600 ARPC, Career Management Files of Dual Component Personnel and A0600–8–104g TAPC, Career Management Individual Files. As a result of the consolidation, A0600 ARPC will be deleted.

DATES: This proposed action will be effective without further notice on January 3, 2002, 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: November 28, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

A0600 ARPC

SYSTEM NAME:

Career Management Files of Dual Component Personnel (December 23, 1997, 62 FR 67055).

REASON:

Records are now being maintained under the Department of the Army system of records notice A0600–8–104g TAPC, entitled 'Career Management Individual and Dual Component Personnel Files'.

AMENDMENT
A0600–8–104g TAPC

SYSTEM NAME:

Career Management Individual Files (March 23, 1999, 64 FR 13972).

CHANGES:

* * * * *

SYSTEM NAME:

Add to entry 'Dual Component Personnel Files'.

SYSTEM LOCATION:

Add a new address to entry 'Dual Component Personnel files are located at the U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add a new paragraph 'Any reserve or warrant officer on active duty as a regular Army enlisted; any reserve officer on active duty as a regular Army warrant officer. All reserve officers, warrant officers, and enlisted members.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to beginning of paragraph 'Name, rank, Social Security Number, basic entry date, promotion eligibility date to the beginning of paragraph'. Add 'academic reports; qualification records' after efficiency reports. Add 'mandatory removal date'' after development actions. Add 'general orders concerning'' after classification data. Add 'records and reports' after similar documents.

* * * * *

PURPOSE(S):

Add to entry 'when they will be considered for promotion; military education that needs to be completed for eligibility' after Army career in first sentence. Add to end of entry 'Specific only to Dual Component Members: To make determinations if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer of enlisted person and to apprise individuals of changes in the reserve program affecting them.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are restricted to officially designated individuals in the performance of their assigned duties. Automated data are stored in vaults in secure buildings.'

* * * * *

RECORD SOURCE CATEGORIES:

Add to entry 'Army records, reports' after individual.

* * * * *

A0600–8–104g TAPC

SYSTEM NAME:

Career Management Individual and Dual Component Personnel Files.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474. Decentralized segments exist at the General Officer Management Office, Judge Advocate General's Office, the Chief of Chaplains Office, and the Medical Service Corps. Official mailing addresses may be obtained from U.S. Total Army Personnel Command.

Dual Component Personnel files are located at the U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army members in enlisted grades E–5 through E–9, all warrant and commission officers.

Any reserve or warrant officer on active duty as a regular Army enlisted; any reserve officer on active duty as a regular Army warrant officer. All reserve officers, warrant officers, and enlisted members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, Social Security Number, basic entry date, promotion eligibility date; orders; record briefs; statements of preference; school credit papers; transcripts; details; career personnel actions; correspondence from individual concerned; original copy of efficiency report; academic reports; qualification records; appeal actions; assignment memoranda and requests for orders; memoranda concerning professional development actions; mandatory removal date; classification data; general orders concerning service awards; service agreements; variable incentive pay data; memoranda of interviews; assignment applications; resumes of qualifications, personal background and experience supporting service member's desires, nominative action by career managers; academic reports; copies of admonition/reprimands imposed under Article 15, UCMJ, letters of appreciation/commendation/recommendation; reports/letters from accredited educational and training organizations; and similar documents, records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–39, Dual Component Personnel Management Program; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

To manage member's Army career, when they will be considered for promotion; military education that needs to be completed for eligibility, including assignments, counseling, and monitoring professional development.

Specific only to Dual Component members: To make determinations if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer of enlisted person and to apprise individuals of changes in the reserve program affecting them.

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:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are restricted to officially designated individuals in the performance of their assigned duties. Automated data are stored in vaults in secure buildings.

RETENTION AND DISPOSAL:

Career branch individual files disposition pending until National Archives and Records Administration is approved, treat as permanent.

Reserve officer career management files are forwarded with the individual's personnel file when transferred to Army Reserve, entry to active duty National Guard, Standby or Retired Reserve, however, upon final separation the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0474.

Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200 for Dual Component individuals.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, 200 Army Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, 200 Stovall Street, Alexandria, VA 22332–0474. Individuals should designate Officer or Enlisted status.

For information concerning dual component personnel: Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, 200 Army Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, 200 Stovall Street, Alexandria, VA 22332–0474. Individuals should designate Officer or Enlisted status.

For information concerning dual component personnel: Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records; reports; enlistment, appointment, or commission related forms pertaining to the service member having a current active duty status; academic, training, and qualifications records acquired incident to military service; correspondence, forms, documents and other related papers originating in or collected by the military department for management purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–29920 Filed 12–3–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record 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 January 3, 2002 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 systems being amended are set forth below followed by the notices, as amended, published in their 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: November 28, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0601–141 DASG

SYSTEM NAME:

Army Medical Procurement Applicant Files (December 23, 1997, 62 FR 67055).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Applications for Appointment to Army Medical Department'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Potential healthcare professional applicants, to include civilian, active duty and reserve duty personnel, applying for appointment in the U.S. Army and the U.S. Army Reserve with or without concurrent call to active duty.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Health Care Recruiter interview, resume, Curriculum Vitae, autobiography, letters of recommendation, selection/non-selection letters, Special Orders, correspondence to, from, and about applicant; Selection Board/Committee results, Statement of Interests, Objectives and Motivation, Letter of Appointment, service agreement, Application for Appointment, oath of office, professional degrees, license certifications, quality assurance documents, prior service records, physical examination, National Practitioner, and birth certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–100, Appointment of Commissioned and Warrant Officers in the Regular Army; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To evaluate and applicant's acceptability and potential for appointment in the U.S. Army Reserve of the Army Medical Department; to evaluate qualifications for assignment to various career areas; to determine educational and experience background for award of constructive service credit; to determine dates of service and seniority to document service agreement with the U.S. Army; to provide, statistical information for effective management of the Army Medical Department Recruiting Program.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records of selected applicants are held for 1 year before being destroyed by shredding; those for applicants not selected are held 1 year and then destroyed.'

* * * * *

A0601–141 DASG

SYSTEM NAME:

Applications for Appointment to Army Medical Department.

SYSTEM LOCATION:

Primary location: Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

SECONDARY LOCATIONS:

Army Medical Department Health Care Recruiting Teams/Stations. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential healthcare professional applicants, to include civilian, active duty and reserve duty personnel, applying for appointment in the U.S. Army and the U.S. Army Reserve with or without concurrent call to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health Care Recruiter interview, resume, Curriculum Vitae, autobiography, letters of recommendation, selection/non-selection letters, Special Orders, correspondence to, from, and about applicant; Selection Board/Committee results, Statement of Interests, Objectives and Motivation, Letter of Appointment, service agreement, Application for Appointment, oath of office, professional degrees, license certifications, quality assurance documents, prior service records, physical examination, National Practitioner, and birth certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–100, Appointment of Commissioned and Warrant Officers in the Regular Army; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate and applicant's acceptability and potential for appointment in the U.S. Army Reserve of the Army Medical Department; to evaluate qualifications for assignment to various career areas; to determine educational and experience background for award of constructive service credit; to determine dates of service and seniority to document service agreement with the U.S. Army; to provide, statistical information for effective management of the Army Medical Department Recruiting Program.

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:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By applicant's name.

SAFEGUARDS:

Records are restricted to designated officials having a need-to-know in the performance of official duties.

RETENTION AND DISPOSAL:

Records of selected applicants are held for 1 year before being destroyed by shredding; those for applicants not selected are held 1 year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full names, Social Security Number, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this

record system should address written inquiries to the Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full name, Social Security Number, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; academic transcripts; faculty evaluations; employer evaluations; military supervisor evaluations; American Testing Program; Educational Testing Service; selection board/committee records; prior military service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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 may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 01–29921 Filed 12–3–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 4, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 28, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart I—Immigration Status Confirmation.

Frequency: On Occasion.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 7,310.

Burden Hours: 23,209.

Abstract: Collection of this information, used for immigration status confirmation, reduces the potential of fraud and abuse caused by ineligible aliens receiving Federally subsidized student finanicial assistance under Title IV of the Higher Education Act (HEA) of 1965, as amended. The respondent population is comprised of 7,310 postsecondary institutions who participate in administration of the Title IV, HEA programs.

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.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–29928 Filed 12–03–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 4, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by

office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 28, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: An Assessment of the Rehabilitation Services Administration (RSA) Pre-Service Training Program.

Frequency: One Time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,878.

Burden Hours: 885.

Abstract: The study assesses the impact of RSA's Pre-Service Training Program on the supply of qualified Rehabilitation Counselors needed by state agencies and identifies possible policy options. The study will administer surveys to state vocational rehabilitation agency personnel including Human Resource Development coordinators, supervisors, and counselors, and university-based training programs and former students who received grants from RSA.

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.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–29929 Filed 12–03–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.250C]

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choices, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal or State reservations.

Applications Available: December 14, 2001.

Deadline for Transmittal of Applications: June 17, 2002.

Estimated Available Funds: $1,900,000.

The Administration has requested $25,998,000 for this program for FY 2002. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 5–6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR part 371.

Priorities: We give preference to applications that meet the following competitive priorities.

Competitive Preference Priority 1—Continuation of Previously Funded Tribal Programs

Under section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741), we give preference to applications that meet the following competitive priority (*see* 34 CFR 75.105(b)(2)(iv)).

In making new awards under this program, we give priority consideration to applications for the continuation of tribal programs that have been funded under this program.

Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria.

Competitive Preference Priority 2—Employing and Advancing in Employment Qualified Individuals With Disabilities

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408).

Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. These points are in addition to any points the application earns under the selection criteria.

Selection Criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its web site: *http://www.ed.gov/pubs/edpubs.html*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250C.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Pamela Martin or Suzanne Tillman, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2650. Telephone: for Pamela Martin (202) 205–8494; for Suzanne Tillman (202) 205–8303. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact 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.gov/nara/index.html*

Program Authority: 29 U.S.C. 773(b).

Dated: November 29, 2001.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–30026 Filed 12–3–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3013–001 and ER01–889–009]

California Independent System Operator Corporation; Notice of Filing

November 27, 2001.

Take notice that on November 21, 2001, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Compliance filing in the above-captioned proceedings.

Copies of the filing were served upon the individuals listed on the service lists in Docket Nos. ER01–3013 and ER01–889.

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 December 12, 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–29973 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–27–000]

LG&E Power Inc., American Power, Incorporated, and Progress Ventures, Inc.; Notice of Filing

November 21, 2001.

Take notice that on November 19, 2001, LG&E Power Inc., American Power, Incorporated and Progress Ventures, Inc., (collectively, the Applicants) filed an application pursuant to section 203 of the Federal Power Act for authorization for LG&E Power Inc.''s and American Power, Incorporated's (collectively, the Sellers) sale to Progress Ventures, Inc. (the Buyer) of certain jurisdictional facilities associated with Sellers' sale to Buyer of the limited liability company membership interests of LG&E Power Monroe LLC.

The Applicant states that copies of this application were served on the Georgia Public Service Commission, North Carolina Utilities Commission, South Carolina Public Service Commission and the Florida Public Service Commission.

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 January 18, 2002. 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–29972 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–460–001]

Total Peaking Services, LLC; Notice of Compliance Filing

November 28, 2001.

Take notice that on November 21, 2001, Total Peaking Services, L.L.C. submitted revised tariff sheets in response to the Commission's June 4, 2001 Order on Order No. 637 Compliance Filing. The June 4 Order held that Total Peaking was in compliance with Order No. 637 and required Total Peaking to file actual tariff sheets in place of the *pro forma* sheets previously submitted. The tariff sheets submitted in response to the Commission's Order are as follows:

Revised Sheet No. 65
Revised Sheet No. 67
Revised Sheet No. 82
Revised Sheet No. 86
Revised Sheet No. 97
Revised Sheet No. 98

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–29977 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–5–000]

Transok, LLC; Notice of Petition for Rate Approval

November 28, 2001.

Take notice that on November 15, 2001, Transok, LLC (Transok) submitted for filing a revised fuel factor for its Palo Duro System for Fuel Year 2002 as calculated under the terms of Transok's filed fuel tracker. Transok seeks an effective date of January 1, 2002.

Transok states that it is serving notice of the filing and the revised fuel percentage on all current shippers and on the Oklahoma Corporation Commission.

Pursuant to section 284.123(b)(2), if the Commission does not act within 150 days of the filing date, these rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford interested parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motions must be filed with the Secretary of the Commission on or before December 14, 2001. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–29976 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1520–004, et al.]

CP&L Holdings, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 27, 2001.

Take notice that the following filings have been made with the Commission:

1. CP&L Holdings, Inc., et al.

[Docket Nos. ER00–1520–004, ER01–2966–000 and ER01–2966–002]

Take notice that on November 20, 2001, Progress Energy, Inc. (Progress Energy), on behalf of Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC), tendered for filing a revised rate schedule sheet (Revised Sheet) from Progress Energy's First Revised Rate Schedule FERC No. 1—System Integration Agreement (SIA) between CP&L and FPC in compliance with the Commission's Order issued in these dockets on November 7, 2001.

Progress Energy respectfully requests that the Revised Sheet become effective August 24, 2001.

Copies of the filing were served upon the Commission's official service list and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation

[Docket No. ER01–2163–002]

Take notice that on November 20, 2001, American Electric Power Service Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in compliance with the Commission's July 26, 2001 Order, 96 FERC ¶ 61,136.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Tenaska Georgia Partners, L.P.

[Docket No. ER01–2728–001]

Take notice that on November 21, 2001, Tenaska Georgia Partners, L.P. (Tenaska Georgia) tendered for filing a Refund Report detailing the calculation of the refunds provided by Tenaska Georgia to Exelon Power Team, formerly known as PECO Energy Company (Exelon), on October 26, 2001, for revenues collected under a Power Purchase Agreement between Tenaska Georgia and Exelon dated August 24,

1999, for the period the rate was charged Exelon without Commission authorization.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Avista Corporation

[Docket No. ER02–376–000]

Take notice that on November 20, 2001, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 36.13, an executed Revised Generation Interconnection Agreement between Avista and Plummer Forest Products.

On August 28, 2001 in Docket No. ER01–2512–000, the Commission accepted for filing an interconnection agreement between Avista and Plummer Forest Products to become effective on April 30, 2001. Subsequently, Plummer Forest Products replaced its diesel generators with wood-fired steam generators. The revisions to the IA submitted in this filing consist of revisions to Exhibit J, the description of generation facilities to conform the change in facilities.

Avista is requesting an effective date of August 27, 2001.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER02–377–000]

Take notice that on November 20, 2001, American Electric Power Service Corporation tendered for filing an executed Letter Agreement between Indiana Michigan Power Company and Indeck-Niles, LLC.

AEP requests an effective date of January 19, 2002.

Copies of Indiana Michigan Power Company's filing have been served upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. American Electric Power Service Corporation

[Docket No. ER02–378–000]

Take notice that on November 20, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection Agreement between Central Power and Light Company and BP Chemical Inc. 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 Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of January 19, 2002.

Copies of this filing has been served upon BP Chemical Inc. and the Public Utility Commission of Texas.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER02–379–000]

Take notice that on November 20, 2001, Western Resources, Inc.'s (WR's) filed a Notice of Termination of its Market Based Rate Tariff Agreement with the Allegheny Energy Service Corporation, American Electric Power Service Corp., Arizona Public Service Company, Coral Power L.L.C., Engage Energy US, L.P., Otter Tail Power Company, Rainbow Energy Marketing Corporation, and The Board of Municipal Utilities of Sikeston, Missouri.

WR requests that the termination be made effective on November 19, 2001.

Notice of the proposed termination has been served upon Allegheny Energy Service Corporation, American Electric Power Service Corp., Arizona Public Service Company, Coral Power L.L.C., Engage Energy US, L.P., Otter Tail Power Company, Rainbow Energy Marketing Corporation, and The Board of Municipal Utilities of Sikeston, Missouri, and the Kansas Corporation Commission.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Company

[Docket No. ER02–380–000]

Take notice that on November 20, 2001, Tucson Electric Power Company (Tucson) tendered for filing one (1) Umbrella Service Agreement (for short-term firm service) and one (1) Service Agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The details of the service agreements are as follows:

Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of September 4, 2001 by and between Tucson Electric Power Company and BP Energy Company—FERC Electric Tariff Vol. No. 2, Service Agreement No. 189. No service has commenced at this time.

Form of Service Agreement for Non-Firm Point-to Point Transmission Service dated as of September 4, 2001 by and between Tucson Electric Power Company BP Energy Company—FERC Electric Tariff Vol. No. 2, Service Agreement No. 190. No service has commenced at this time.

Tucson requests an effective date of November 1, 2001

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER02–381–000]

Take notice that on November 20, 2001, Southwestern Electric Power Company (SWEPCO) filed a Restated and Amended Power Supply Agreement (Restated Agreement) between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC). The Restated Agreement supersedes in its entirety the Restated and Amended Power Supply Agreement, dated June 30, 1997, as amended, between SWEPCO and NTEC.

SWEPCO seeks an effective date of June 15, 2000.

Copies of the filing have been served on NTEC and on the Public Utility Commission of Texas.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER02–382–000]

Take notice that on November 21, 2001, Tampa Electric Company (Tampa Electric) filed a notice of cancellation of its service agreements with Enron Power Marketing, Inc. (Enron) for firm point-to-point transmission service and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes that the cancellation be made effective on November 21, 2001.

Copies of the filing have been served on Enron and the Florida Public Service Commission.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas And Electric Company

[Docket No. ER02–383–000]

Take notice that on November 21, 2001, EL Paso Merchant Energy L.P. (previously known as Sonat Power Marketing, L.P.) filed a termination notice for generation sales service with Louisville Gas and Electric Company. The terminated services are FERC Electric Tariff Original Volume 1 for Generation Sales Service Agreement 601

accepted by the Commission in Docket ER98–1689–000 on January 9, 1998.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Avista Corp.

[Docket No. ER02–384–000]

Take notice that on November 21, 2001, Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service Agreements for Short-Term Firm and Non-Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Allegheny Energy Supply Company, LLC.

AVA requests the Service Agreements be given an effective date of June 26, 2001.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on Behalf of The Potomac Edison Company dba Allegheny Power

[Docket No. ER02–385–000]

Take notice that on November 21, 2001, Allegheny Energy Service Corporation on behalf of The Potomac Edison Company, dba Allegheny Power (Allegheny Power), filed FERC Electric Tariff, Original Volume No. 7 (Rate Schedule) with Allegheny Energy Supply Company, LLC for wholesale sales of power. Allegheny Power has requested a waiver of notice to make the Rate Schedule effective on January 1, 2002.

Copies of the filing have been provided to the customer and to the Maryland Public Service Commission.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER02–386–000]

Take notice that on November 21, 2001, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with PSEG Energy Resources & Trade LLC.

Wisconsin Electric respectfully requests an effective date of November 9, 2001 to allow for economic transactions.

Copies of the filing have been served on PSEG Energy Resources & Trade LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Xcel Energy Services Inc.

[Docket No. ER02–387–000]

Take notice that on November 21, 2001, Xcel Energy Services Inc. (XES), on behalf of Southwestern Public Service Company (Southwestern), submitted for filing a Transaction Agreement between Southwestern and Oklahoma Gas and Electric Company.

XES requests that this agreement become effective on January 1, 2002.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. HC Power Marketing LLC

[Docket No. ER02–388–000]

Take notice that on November 21, 2001, HC Power Marketing LLC (Seller) petitioned the Commission for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER02–389–000]

Take notice that on November 21, 2001, Commonwealth Edison Company (ComEd) filed an executed interconnection agreement with Indeck-Rockford II, L.L.C. enabling a new generation project near Rockford, Illinois to connect to ComEd's transmission system.

ComEd requests an effective date of November 22, 2001 for this agreement.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Edison Company

[Docket No. ER02–390–000]

Take notice that on November 21, 2001, Commonwealth Edison Company (ComEd) filed an executed interconnection agreement with Titan Land Development Company, L.L.C. enabling a new generation project near Pontiac, Illinois to connect to ComEd's transmission system.

ComEd requests an effective date of November 22, 2001 for this agreement.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER02–391–000]

Take notice that on November 21, 2001, Commonwealth Edison Company (ComEd) filed an executed interconnection agreement with Indeck-Bourbonnaise, L.L.C. enabling a new generation project near Bourbonnaise, Illinois to connect to ComEd's transmission system.

ComEd requests an effective date of November 22, 2001 for this agreement.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Company

[Docket No. ER02–392–000]

Take notice that on November 21, 2001, Commonwealth Edison Company (ComEd) filed an executed interconnection agreement with Kendall New Century Development, L.L.C. enabling a new generation project near Yorkville, Illinois to connect to ComEd's transmission system.

ComEd requests an effective date of November 22, 2001 for this agreement.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER02–393–000]

Take notice that on November 21, 2001, New England Power Company (NEP) submitted for filing Original Service Agreement No. 208 for Network Integration Transmission Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Public Service Company of New Hampshire (PSNH).

NEP states that a copy of this filing has been served upon PSNH and regulators in the State of New Hampshire.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. International Transmission Company

[Docket No. ER02–394–000]

Take notice that on November 21, 2001, International Transmission Company filed an amendment to the joint open access transmission tariff.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Electric Power Company

[Docket No. ER02–395–000]

Take notice that on November 21, 2001, Wisconsin Electric Power Company (Wisconsin Electric) tendered

for filing pursuant to section 35.12 of the Commission's regulations, 18 CFR 35.12, a Dynamic Scheduling Service Agreement between Wisconsin Electric and WPS Energy Services, Inc. (WPS Energy) for the provision of dynamic scheduling service to WPS Energy beginning October 15, 2001.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. ER02–396–000]

Take notice that on November 21, 2001, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing pursuant to section 35.13 of the Commission's regulations, 18 CFR 35.13, a Control Area Operations Coordination Agreement between Wisconsin Electric and Wisconsin Power & Light Company.

Wisconsin Electric requests that the agreement be made effective on January 1, 2001.

Comment date: December 12, 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, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–29940 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–32–000, et al.]

Entergy Nuclear Vermont Yankee, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 26, 2001.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Vermont Yankee, LLC

[Docket No. EG02–32–000]

Take notice that on November 20, 2001, Entergy Nuclear Vermont Yankee, LLC, 440 Hamilton Avenue, White Plains, NY 10601, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own the Vermont Yankee Nuclear Power Station, and certain ancillary facilities necessary for the purpose of being exclusively engaged in generating electricity and selling it at wholesale, located in Vernon and Brattleboro, Vermont. All electric energy sold by the applicant will be sold exclusively at wholesale. The applicant seeks a determination of its exempt wholesale generator status.

Comment date: December 17, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Dominion Equipment III, Inc.

[Docket No. EG02–33–000]

Take notice that on November 21, 2001, Dominion Equipment III, Inc. (DEQ) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

DEQ, a Delaware corporation, is a wholly owned subsidiary of Dominion Energy, Inc., a Virginia corporation, which in turn is a wholly owned subsidiary of Dominion Resources, Inc., also a Virginia corporation. DEQ will be exclusively engaged in the business of owning, operating and selling electricity exclusively at wholesale from an approximately 1180 MW electric generating facility located in Morrisville, Pennsylvania. The facility will be interconnected with PECO transmission facilities under the operational control of PJM.

Comment date: December 17, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Fairless Energy, LLC

[Docket No. EG02–34–000]

Take notice that on November 21, 2001, Fairless Energy, LLC (Fairless) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Fairless, a Delaware limited liability company, is a wholly owned subsidiary of Dominion Fairless Hills, Inc. (DFH), a Delaware corporation. DFH is a wholly owned subsidiary of Dominion Energy, Inc., a Virginia corporation, which in turn is a wholly owned subsidiary of Dominion Resources, Inc., also a Virginia corporation. Fairless will be exclusively engaged in the business of leasing, operating and selling electricity exclusively at wholesale from an approximately 1180 MW electric generating facility located in Bucks County, Pennsylvania. The facility will be interconnected with transmission facilities under the operational control of PJM Interconnection, L.L.C.

Comment date: December 17, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Dynegy Power Marketing, Inc.

[Docket No. ER01–1718–002]

Take notice that on November 21, 2001, Dynegy Power Marketing, Inc., acting as agent for Cabrillo Power I LLC, El Segundo Power, LLC and Long Beach Generation LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) a long-term agreement for power sales to the California Department of Water Resources pursuant to the Commission's Letter Order issued on June 13, 2001 in the above-referenced proceeding, and Order No. 614.

Comment date: December 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Dynegy Power Marketing, Inc., Illinova Energy Partners, Inc., Dynegy Power Services, Inc., Illinois Power Company, El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, Rockingham Power, LLC, Rocky Road Power, LLC, Dynegy Midwest Generation, Inc., Calcasieu Power, LLC, Dynegy Danskammer, L.L.C., Dynegy Roseton, L.L.C., Heard County Power, L.L.C., Riverside Generating Company, L.L.C., and Nicor Energy, LLC.

[Docket Nos. ER99–4160–002, ER94–1475–020, ER94–1612–025, ER99–3322–001, ER98–1127–004, ER98–1796–003, ER99–1115–004, ER99–1116–001, ER99–1567–001, ER99–2157–001, ER00–1895–001, ER00–1049–002, ER01–140–001, ER01–141–001, ER01–943–001, ER01–1044–001, and ER01–1169–001]

Take notice that on November 16, 2001, Dynegy Inc. (Dynegy), on behalf of the above-noted entities (Dynegy Affiliates), filed a notification of change in status (Notice) with the Commission in connection with the pending merger between Dynegy and Enron Corp. (Enron). The Notice provides that each of the Dynegy Affiliates will treat Portland General Electric Company as an affiliate during the pending merger.

Comment date: December 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Colton Power L.P.

[Docket Nos. ER01–2644–002 and ER01–3056–002]

Take notice that on November 19, 2001, Colton Power L.P. (Applicant) tendered for filing an amended market-based rate schedule under section 205 of the Federal Power Act, in order to comply with the Federal Energy Regulatory Commission's Letter Order issued on November 16, 2001 in Docket Nos. ER01–2644–000, ER01–2644–001, and ER01–3056–000.

Comment date: December 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. SeTrans RTO

[Docket Nos. RT01–100–000, RT01–77–000 and RT01–75–000]

Take notice that on November 20, 2001, the City of Tallahassee, Dalton Utilities, Entergy Services, Inc., acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc., Georgia Transmission Corporation, JEA (formerly, Jacksonville Electric Authority), MEAG Power, South Carolina Public Service Authority, South Mississippi Electric Power Association, and Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, submitted a Supplemental Status Report for the Regional Transmission Organization known as SeTrans. The purpose of the filing is multifold. First, it informs the Commission that the Entergy Companies have joined in the effort to develop the SeTrans RTO. Second, the SeTrans Sponsors are submitting the governance and scope elements of the SeTrans RTO model. Third, the SeTrans Sponsors are notifying the Commission of, and inviting the Commission to send representatives to, a meeting that will be held in Atlanta, Georgia on January 14–15, 2002, to form a Stakeholder Advisory Committee to assist in the development of SeTrans.

Comment date: December 20, 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, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–29939 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6132–006]

Facilitators Improving Salmonid Habitat (FISH); Notice of Extension of Time to Comment on Environmental Assessment

November 28, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application dated July 11, 2001, requesting the Commission's approval to surrender the Exemption from licensing and removal of a dam at the John C. Jones Project, located on the Marsh Stream, a tributary of the Penobscot River, near the towns of Winterport and Frankfort, in Waldo County, Maine, and has prepared an Environmental Assessment (EA) for the proposed and alternative actions. A notice issued October 5, 2001, established November 5, 2001, as the deadline for comments on the EA.

In response to our notice, several requests were made to extend our November 5, 2001, comment deadline by six months to prepare and present new information on recreational, public safety and environmental concerns and projected reduction of property values. The parties cite the need to gather additional information, which should be adequately done in 60 days; this is in addition to the several months that have passed since the August 7, 2001, application public notice issuance date. Accordingly, we are granting an extension of 60 days from the date of this notice to file additional information on our EA

Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''John C. Jones Project No. 6132–006'' to the first page of your comments. All timely filed comments will be considered in the Commission order addressing the proposed surrender of exemption and dam removal. 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 under the ''e-Filing'' link.

For further information, please contact Jack Hannula at (202) 219–0116.

David P. Boergers,

Secretary.

[FR Doc. 01–29974 Filed 12–3–01; 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

November 28, 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:* 12100–000.

c. *Date filed:* July 31, 2001.

d. *Applicant:* Mark R. Frederick.

e. *Name of Project:* Rollins Diversion Dam Project.

f. *Location:* On Bear River and Bear River Canal, in Placer and Nevada Counties, California. The dam is owned by the Nevada Irrigation District and the Bear River Canal is owned by Pacific Gas and Electric Company.

g. *Filed Pursuant:* To Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

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. Copies of this filing are on file with the Commission and are available for p;ublic inspection. 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 under the ''e-Filing'' link. Please include the project number (P–12100–000) 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) A proposed intake, (2) a proposed powerhouse containing one generating unit having an installed capacity of 900 kW, (3) a 80-foot-long, 12kV transmission line, and (4) appurtenant facilities.

The project would have an annual generation of 6.2 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

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. 01–29975 Filed 12–3–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Omar C. Wilhelms, Janice R. Wilhelms and Delores J. Meiners, all of Shannon, Illinois, as a group to retain voting shares of Shannon Bancorp, Inc., Shannon, Illinois, and thereby indirectly retain voting shares of First State Bank Shannon-Polo, Shannon, Illinois.

Board of Governors of the Federal Reserve System, November 28, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–29957 Filed 12–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. C&S Bancorporation, Savannah, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens & Southern Bank, Savannah, Georgia (in organization).

Board of Governors of the Federal Reserve System, November 28, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–29955 Filed 12–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Landesbank Baden-Wurttemberg, and Sparkassenverband Baden-Wurttemberg, both of State of Baden-Wurttemberg, Germany; to acquire 50.6 percent of the voting shares of Baden-Wurttembergische Bank AG, State of Baden-Wurttemberg, Germany, and indirectly acquire BW Capital Markets, Inc., New York, New York, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 28, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–29956 Filed 12–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Friday, December 7, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Proposed amendments to Regulation Z (Truth in Lending) addressing concerns related to

potentially abusive practices in home mortgage lending. (Proposed earlier for public comment, Docket No. R–1090)

2.Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: November 29, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30092 Filed 11–30–01; 12:26 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: At approximately 10:45 a.m., Friday, December 7, 2001, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 29, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30093 Filed 11–30–01; 12:26 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, December 10, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 30, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30094 Filed 11–30–01; 12:26 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197]

Submission for OMB Review; Comment Request Entitled GSAR Provision 552.237–70, Qualifications of Offerors

AGENCY: General Services Administration, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Qualifications of Offerors under the Service Contracting.

Public comments are particularly invited on: Whether the information collection generated by the General Services Administration Regulation (GSAR) Provision, Qualifications of Offerors, is necessary, to determine an offeror is responsible to work under a GSA contract and to properly determine an offeror's competency in performing comparable building service contracts; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. A request for public comments was published at 66 FR 43870, August 21, 2001. No comments were received.

DATES: Comments may be submitted on or before January 3, 2002.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of contracts for building services. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden.

Respondents: 6,722.
Annual Responses: 6,722.
Burden Hours: 6,722.
Obtaining Copies of Proposals: A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F street, NW., Room 4035, Washington, DC 20405, or be telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0197, Qualifications of Offerors, in all correspondence.

Dated: November 20, 2001.

Gloria M. Sochon,

Acting Director, Acquisition Policy Division.

[FR Doc. 01–29919 Filed 12–3–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Standard Tender of Service

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of issuance of the GSA Standard Tender of Service.

The General Services Administration (GSA) is reissuing the GSA Standard Tender of Service (STOS) that establishes a uniform basis for buying freight transportation. The Standard Tender of Service (STOS) was published in the **Federal Register** for comment on August 31, 2001 (66 FR 46124). Comments were due by October 30, 2001, but none were received. The STOS will be reissued as it was published in 66 FR 46124 and can be accessed at *http://www.kc.gsa.gov/fsstt/FRT/stos.htm.* The reissued STOS will effectively cancel the current STOS and all its supplements.

EFFECTIVE DATE: December 4, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Hoffman, Transportation Programs Branch, by phone at 703–305–7969 or by e-mail at *richard.hoffman@gsa.gov.*

Dated: November 27, 2001.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

[FR Doc. 01–29918 Filed 12–3–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–02]

Agency Forms Undergoing Paperwork Reduction Act Review; Correction

A notice announcing a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The State and Local Area Integrated Telephone Survey (SLAITS) was published in the **Federal Register** on November 27, 2001, (66 FR 59254). This notice is corrected as follows:

On page 59254, in the first column, the last paragraph, the OMB number should be changed from 0920–0416 to 0920–0406.

All other information and requirements of the November 27, 2001, notice remain the same.

Dated: November 28, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–29952 Filed 12–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Times and Dates: 8:30 a.m.–5 p.m., December 10, 2001; 8:30 a.m.–3 p.m., December 11, 2001.

Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024–2197, telephone 202/484–1000, fax 202/646–4456.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The Secretary is authorized by the Public Health Service Act, section 399G, (42 U.S.C. section 280f, as added by Public Law 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters to be Discussed: The Task Force will convene to discuss updates presented by CDC and other Federal agencies regarding new activities in FAS and FAE. Additional agenda items include: a joint session with the Interagency Coordinating Committee on Fetal Alcohol Syndrome, HHS; working group updates; discussion of future topics, and scheduling the next meeting.

Agenda items are subject to change as priorities dictate.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Executive Secretary, NTFFASFAE, National Center for Environmental Health, CDC, 4700 Buford Highway, NE., (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax: 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: November 28, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–29953 Filed 12–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting Cancelled

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting cancelled.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Time and Date: 8:30 a.m.–3:30 p.m., December 6, 2001.

Place: CDC, Auditorium B, Building 1, Clifton Road, Atlanta, Georgia 30333.

Status: Meeting Cancelled.

Federal Register *Citation of Previous Announcement:* [**Federal Register:** November 26, 2001 (Volume 66, Number 227)] [Notices] [Page 59022–59023] [DOCID:fr26no01–52]

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–19, 1600 Clifton Road, NE, Atlanta, Georgia 30333, email *dsy1@cdc.gov;* telephone 404/639–0078.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 28, 2001.

Joseph Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–29946 Filed 12–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Meeting Cancelled

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following: Meeting Cancelled.

Name: Interagency Committee on Smoking and Health.

Date and Time: 9 a.m.–5 p.m., December 13, 2001.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., 6th Floor, Washington, DC 20201.

Federal Register *Citation of Previous Announcement:* **Federal Register:** November 26, 2001 (Volume 66, Number 227)] [Notices] [Page 59023] [DOCID:fr26no01–53]

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet *www.cdc.gov/tobacco* in mid-January 2002, or from Ms. Monica L. Swann, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 28, 2001.

Joseph Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–29954 Filed 12–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan.

OMB No.: 0970–0075.

Description: The LIHEAP statute requires that States, including the District of Columbia, Tribes, tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. The 1994 reauthorization of the LIHEAP statute, the Human Service Amendments of 1994 (Pub. L. 103–252), requires that an annual application be submitted. A detailed application must be submitted every 3 years. Abbreviated applications may be submitted in alternate years. There have been minor changes in the Model Plan for clarity. There have been no substantive changes.

Respondents: State, Local or Tribal Governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	3	65
Abbreviated Model Plan	115	1	.33	38
Estimated Total Annual Burden Hours:				103

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following : Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 27, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–29993 Filed 12–3–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Division of Extramural Research and Training; Submission for OMB Review; Comment Request; Hazardous Waste Worker Training

Summary

Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National

Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 20, 2001, pages 33104–33105, 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: Hazardous Waste Worker Training—42 CFR part 65.

Type of Information Collection Request: Revision of OMB No. 0925–0348, expiration date January 31, 2002.

Need of Use of Information Collection: This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6).

The National Institute of Environmental Health Sciences (NIEHS) has been given major responsibility for initiating a worker safety and health training program under section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) for hazardous waste workers and emergency responders. A network of non-profit organizations that are committed to protecting workers and their communities by delivering high-quality, peer-reviewed safety and health curricula to target populations of hazardous waste workers and emergency responders has been developed. In 13 years (FY 1987–2000), the NIEHS Worker Training program has successfully supported 20 primary grantees that have trained nearly 1 million workers across the country and presented over 54,000 classroom and hands-on training courses, which have accounted for nearly 16 million contact hours of actual training. Generally, the grant will initially be for 1 year, and subsequent continuation awards are also for one year at a time. Grantees must submit a separate application to have the support continued for each subsequent year. Grantees are to provide information in accordance with S65.4(a), (b), (c), and 65.6(b) on the nature, duration, and purpose of the training, selection criteria for trainees' qualifications and competency of the project director and staff, cooperative agreements in the case of joint applications, the adequacy of training plans and resources, including budget and curriculum, and response to meeting training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulations (29 CFR 1910.120). As a cooperative agreement, there are additional requirements for the progress report section of the application. Grantees are to provide their information in hard copy as well as enter information into the WETP Grantee Data Management System. The information collected is used by the Director through officers, employees, experts, and consultants to evaluate applications based on technical merit to determine whether to make awards.

Frequency of Response: Semi-annually.

Affected Public: Not-for-profit institutions.

Type of Respondents: Grantees.

The annual reporting burden is as follows:

Estimated Number of Respondents: 18.

Estimated Number of Responses Per Responsent: 2.

Average Burden Hours Per Response: 10.

Estimated Total Annual Burden Hours Requested: 360.

The annualized costs to respondents are estimated at: $9,180. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

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 assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Joseph T. Hughes, Jr., Director, Worker Education and Training Program, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919) 541–0217 or E-mail your request, including your address to wetp@niehs.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: November 11, 2001.

Francine Little,

NIEHS Associate Director for Management.

[FR Doc. 01–29937 Filed 12–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 of Nursing Research Special Emphasis Panel.

Date: December 4, 2001.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: November 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29935 Filed 12–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel.

Date: December 11, 2001.

Time: 11:30 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: November 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29936 Filed 12–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel. Special Emphasis Panel—Site Visit Newark New Jersey.

Date: December 5–7, 2001.

Time: December 5, 2001, 7 am to 9:30 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Newark Airport, Newark International Airport, Newark, NJ 07114.

Time: December 6, 2001, 9 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Newark Airport, Newark International Airport, Newark, NJ 07114.

Time: December 7, 2001, 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Newark Airport, Newark International Airport, Newark, NJ 07114.

Contact Person: Merlyn M Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

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. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 27, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–29934 Filed 12–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant Of Exclusive License: Prophylactic and/or Therapeutic Vaccines Against HIV and HCV

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive worldwide license to practice the inventions embodied in U.S. Patent Application Serial Number 08/375,100, filed January 19, 1995, entitled ''Peptomers with Enhanced Immunogenicity'' now United States Patent Number 5,750,332 issued May 12, 1998 and U.S. Patent Application Serial Number 07/283,849 filed December 13, 1988, entitled ''Synthesis of Chloroacetyl and Bromoacetyl Modified Peptides for the Preparation of Synthetic Peptide Polymers, Conjugated Peptides and Cyclic Peptides' and now U.S. Patent Number 5,066,716 issued on November 18, 1991 to AriaVax, Inc. of Bethesda, Maryland, U.S.A. The United States as represented by the Department of Health and Human Services is an assignee of these patent rights.

DATE: Only written comments and/or applications for a license which are received by NIH on or before February 4, 2002 will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol A. Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7735 ext 232; Facsimile: (301) 402–0220; E-mail: salatac@od.nih.gov.

SUPPLEMENTARY INFORMATION: The patent application 08/375,100 describes the production of peptide multimers which maintain the conformation of the native proteins from which they are derived which are useful as therapeutic agents or immunogens and patent application 07/283,849 describes a method used to incorporate bromoacetyl and chloroacetyl moieties on amino groups of synthetic peptides. This synthetic method can be used to prepare synthetic

peptide polymers, conjugated peptides and cyclic peptides.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of use as prophylactic and/or therapeutic vaccines against HIV and HCV. AriaVax, Inc. will use the technology of the inventions named above to develop formulations that will elicit antibodies that block infection. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 26, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–29938 Filed 12–3–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption Issuance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of Permit.

SUMMARY: The Hawk Creek Wildlife Center, Inc., has been authorized, via permit number PRT–TE050080–0, by the U.S. Fish and Wildlife Service's (Service) Region 5 to transfer and possess one specific female ocelot, Felis pardalis.

FOR FURTHER INFORMATION CONTACT: Diane Lynch, Regional Endangered Species Permits Coordinator, at 413–253–8628.

SUPPLEMENTARY INFORMATION: The 30-day public comment period required by the Endangered Species Act (Act) of 1973, as amended, was waived in accordance with section 10(c) of the Act. The Service determined that due to the current facility's loss of its U.S. Department of Agriculture license, the need to immediately find new locations for the animals being held there, the relatively small timeframe an animal can be human imprinted, and the age (8 weeks old) of this animal, there was no reasonable alternative available to the applicant. This ocelot is captive bred and captive born. It will be used for educational purposes and will not be used for propagation. This animal is scheduled to be transferred to Hawk Creek Wildlife Center, Inc., by November 20, 2001.

Dated: November 21, 2001.

Richard O. Bennett,

Acting Regional Director,

[FR Doc. 01–29945 Filed 12–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coyote Springs Investments Multiple Species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare an Environmental Impact Statement (EIS) regarding the proposed Coyote Springs Investments Multiple Species Habitat Conservation Plan (MSHCP) and issuance of an incidental take permit (Permit) to take endangered and threatened species in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (Act). The Permit applicant is Coyote Springs Investments (Applicant). The application is related to potential development activities in Southern Lincoln County. The Applicants intend to request a Permit for federally listed threatened or endangered species as well as Evaluation List species. Evaluation List species include species that have been petitioned for listing; state listed species; species that have been nominated for inclusion by technical specialists; and other species of concern that co-occur with federally listed species. The species list is being refined as a part of the scoping process. In accordance with the Act, the Applicant will prepare a Habitat Conservation Plan (Plan), for, among other things, minimizing and mitigating any such take which could occur incidental to the proposed Permit activities.

The Service is furnishing this notice in order to: (1) Advise other Federal and State agencies, affected tribes, and the public of our intentions; (2) to announce the initiation of a 60-day public scoping period and (3) to obtain suggestions and information on the scope of issues to be included in the EIS.

DATES: Written comments from all interested parties must be received on or before February 4, 2002. Public scoping meetings will be held in Las Vegas, Nevada on December 11, 2001 at Texas Station Hotel, 2101 Texas Star Lane from 7 to 9 p.m. and in Alamo, Nevada on December 12, 2001 at the Alamo Annex, 100 South First West Street, from 7 to 9 p.m.

ADDRESSES: Comments and requests for information should be sent to Robert D. Williams, Field Supervisor, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502, telephone 775–861–6300, facsimile 775–861–6301. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: The proposed project area generally includes portions of Coyote Springs Valley in both Clark and Lincoln Counties, and consists of roughly 42,800 acres of fee and leased land located in portions of Townships 11, 12 and 13 South and Ranges 63 & 64 East. The project site occupies most of the eastern portion of Coyote Springs Valley straddling both the Pahranagat Wash and the Kane Springs Wash. It is bordered by the Delamar Mountains to the north, the Meadow Valley Mountains to the east, SR 168 and the Arrow Canyon Range to the south, and US 93 to the west.

Some of the Applicant's future activities have the potential to impact species subject to protection under the Act. Section 10(a)(1)(B) permits non-Federal land owners to take endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood for the survival and recovery of the species in the wild, among other permit issuance criteria. An applicant for a Permit under section 10 of the Act must prepare and submit to the Service for approval a Plan containing, among other things, a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

The Applicant have initiated discussions with the Service regarding

the possibility of a Permit and associated MSHCP for their activities on lands to be covered by a Permit. General activities proposed for Permit coverage include residential and commercial development, construction, and maintenance activities.

The Service will conduct an environmental review of the Plan and prepare an EIS. The environmental review will analyze the proposal as well as a full range of reasonable alternatives and the associated impacts of each. The Service is currently in the process of developing alternatives for analysis.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to the Permit request are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the EIS should be directed to the Service (see **ADDRESSES**).

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR parts 1500 through 1508) and other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review during the third quarter of 2002.

Dated: November 28, 2001.

John Engbring,

Acting Deputy Manager, California/Nevada Operations Office.

[FR Doc. 01–30025 Filed 12–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Exchange of Lands on South Fox Island, MI

AGENCY: Fish and Wildlife Service, Interior, lead; National Park Service, Interior, cooperating; Michigan Department of Natural Resources, cooperating.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS) will discontinue all activities associated with developing an environmental impact statement (EIS) for a proposed exchange of lands on South Fox Island, Leelanau County, MI.

FOR FURTHER INFORMATION CONTACT: For the various agencies, the contacts are: Mr. Craig Czarnecki, U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823, telephone: (517) 351–8470, facsimile: (517) 351–1443; or Ms. Elyse LaForest, National Park Service, 15 State Street, Boston, MA 02109, telephone: (617) 223–5190, facsimile: (617) 223–5164; Mr. Doug Erickson, Michigan Department of Natural Resources, Wildlife Division, P.O. Box 30444, Lansing, MI 48909–7944; telephone: (517) 335–4316, facsimile: (517) 373–6705.

SUPPLEMENTARY INFORMATION: The actions that were being evaluated by this EIS were: (1) The approval by FWS of the exchange of 313 acres, acquired by the State with Federal Aid in Wildlife Restoration assistance, for lands with equal monetary and wildlife restoration values; (2) the approval by the NPS for the State to exchange 105 acres with NPS interest for private lands with equal or greater monetary and recreational value; and (3) the related exchange of 220 acres of unencumbered State-owned land for fee title and easements for private lands of equal value. We published a notice of intent to prepare the EIS in the May 16, 2001, **Federal Register** (66 FR 27154). That notice included further information on this proposed exchange of lands.

The FWS and NPS have received a written request from the Michigan Department of Natural Resources (DNR) to permanently discontinue efforts on development of the EIS to analyze the proposed exchange of land on South Fox Island, Leelanau County, MI, about 30 miles west northwest of Charlevoix, in Lake Michigan. Since the actions being considered were commenced at the request of the Michigan DNR, the FWS and NPS will honor the request to discontinue efforts on preparing the EIS as of this publication date. Any proposed exchange of land with FWS or NPS interest on South Fox Island is formally discontinued. Any future consideration of a similar land exchange would be a new action requiring the initiation of a new NEPA evaluation and appropriate compliance review. The Michigan DNR is presently considering a new proposal for a land trade of 218 acres of land that has no Federal interest. Such a proposal would not require Federal approval and would therefore not be subject to NEPA compliance.

November 28, 2001.

Marvin E. Moriarty,

Acting Regional Director, Region 3, Fort Snelling, MN.

[FR Doc. 01–29951 Filed 12–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; certification by designated school official.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 27, 2001 at 66 FR 39205, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service during that period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 3, 2002. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–7316. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Robert B. Briggs, Department Clearance Officer, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Certification by Designated School Official.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–538. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary Individuals or Households. This form is used to collect information from nonimmigrant students applying for an extension for the length of time of their legal status in the United States as a nonimmigrant student while transferring from one school to another and permission to accept or continue employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 165,000 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,890 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 29, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–30014 Filed 12–3–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 16, 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) 693–4158 or E-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, 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: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Report on Employment, Payroll, and Hours.

OMB Number: 1220–0011.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 373,500.

Number of Annual Responses: 4,482,000.

Estimated Time Per Response and Total Burden Hours:

CURRENT DESIGN REPORTING BURDEN

Form	Number of respondents	Frequency	Annual responses	Estimated response time	Annual burden hours
BLS–790 A—Mining	2,000	12	24,000	7	2,800
BLS–790 B—Construction	19,700	12	236,400	7	27,580
BLS–790 BM—Interstate Construction	400	12	4,800	15	1,200
BLS–790 C—Manufacturing	32,700	12	392,400	7	45,780
BLS–790 H—T.P.U.	18,000	12	216,000	7	25,200
BLS–790 H—Wholesale Trade	19,800	12	237,600	7	27,720
BLS–790 E—Retail Trade	69,000	12	828,000	7	96,600
BLS–790 H—Fire	25,900	12	310,800	7	36,260
BLS–790 H—Services, non-education	74,300	12	891,600	7	104,020
BLS–790 S—Services, education	300	12	3,600	7	420
BLS–790 G—Federal Government	10,300	12	123,600	5	10,300
BLS–790 G—State Gov., non-education	7,200	12	86,400	5	7,200
BLS–790 GS—State Gov., education	1,000	12	12,000	5	1,000
BLS–790 G—Local Government	12,100	12	145,200	5	12,100
BLS–790 GS—Local Gov., education	7,800	12	93,600	5	7,800
BLS–790 F1, F2, F3*	18,800	12	225,600	7	26,320
Total	319,300	.....	3,831,600	.....	432,300

PROBABILITY DESIGN REPORTING BURDEN

Form	Number of respondents	Frequency	Annual responses	Estimated response time	Annual burden hours
BLS–790 A—Mining	1,600	12	19,200	7	2,240
BLS–790 B—Construction	14,100	12	169,200	7	19,740
BLS–790 BM—Interstate Construction	0	12	0	15	0
BLS–790 C—Manufacturing	24,800	12	297,600	7	34,720
BLS–790 H—T.P.U.	0	12	0	7	0
BLS–790 H—Wholesale Trade	11,000	12	132,000	7	15,400
BLS–790 E—Retail Trade	0	12	0	7	0
BLS–790 H—Fire	0	12	0	7	0
BLS–790 H—Services, non-education	0	12	0	7	0
BLS–790 S—Services, education	0	12	0	7	0
BLS–790 G—Federal Government	0	12	0	5	0
BLS–790 G—State Gov., non-education	0	12	0	5	0
BLS–790 GS—State Gov., education	0	12	0	5	0
BLS–790 G—Local Government	0	12	0	5	0
BLS–790 GS—Local Gov., education	0	12	0	5	0
BLS–790 F1, F2, F3*	2,700	12	32,400	7	3,780
Total	54,200		650,400		78,880

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Current Employment Statistics (CES) program provides current monthly statistics on employment, hours, and earnings, by industry. The estimates produced from the data collected on the BLS–790 forms are fundamental inputs in the economic decision process at all levels of government, private enterprise, and organized labor.

The CES program is currently undergoing a sample redesign to transition from a quota-based to a probability sample. As industries are converted to the probability design, the number of establishments collected for the current design will be reduced.

Ira L. Mills,

DOL Clearance Officer.

[FR Doc. 01–29990 Filed 12–3–01; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 19, 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 on (202) 693–4129 or by E-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Lauren Wittenberg, OMB Desk Officer for Department of labor, 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.

Agency: Office of the Solicitor (SOL).

Type of Review: Extension of a currently approved collection.

Title: Equal Access to Justice Act.

OMB Number: 1225–0013.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Type of Response: Application for benefits.

Number of Respondents: 10.

Number of Annual Responses: 10.

Estimated Time Per Response: 5 hours.

Total Burden Hours: 50.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $20.

Description: The Equal Access to Justice Act provides for payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (29 CFR part 126) require the filing of an application.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–29991 Filed 12–3–01; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 15, 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 Hawze 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 PWBA, 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: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Exemption 86–128.

OMB Number: 1210–0059.

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit institutions.

Frequency: Annually.

Number of Respondents: 22,974.

Number of Annual Responses: 542,813.

Estimated time Per Response: Average of 15 minutes to 1 hour.

Total Burden Hours: 98,158.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $187,606.

Description: PTE 86–128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The information collection requirements incorporated within the class exemption are designed as appropriate safeguards to ensure the protection of the plan assets involved in the transactions, that except for the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first.

Without the relief provided by this class exemption, broker-fiduciaries who provide research and investment management services to accounts for which they effect transactions for the purchase and sale of securities, may be barred by the Employee Retirement Income Security Act from providing these combined services to employee benefit plans.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Affected Public: Business or other for-profit, Individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 3,100.

Number of Annual Responses: 3,100.

Estimated Time Per Response: 31 minutes.

Total Burden Hours: 109.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services: $74,384.50.

Description: The DFVC Program is intended to encourage, using reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of the Employee Retirement Income Security Act of 1974. Delinquent plan administrators are those who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible plan administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the specified civil penalties set out in the Notice.

The information collection requirement included in the DFVC Program requires providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment is associated with the relevant plan. If the Department were unable to determine readily whether a penalty had already been paid as a result of a late filing, an additional penalty might be assessed when it was determined that the filing was received after the deadline.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–29992 Filed 12–3–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0061(2002)]

Cotton Dust Standard (29 CFR 1910.1043); Extension of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposal to decrease the existing burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by the Cotton Dust Standard (29 CFR 1910.1043).[1] This standard protects employees from occupational exposures to cotton dust; cotton-dust exposure causes pulmonary disease (*e.g.*, byssinosis) that may result in death and serious illness.

DATES: Submit written comments on or before February 4, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0061(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Cotton Dust Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to decrease the burden hours imposed by the existing paperwork requirements.

(202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html*, and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of the 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The major information-collection requirements in the Cotton Dust Standard (§ 1910.1043; the ''Standard'') specify that employers must: Perform exposure monitoring, including initial, periodic, and additional monitoring; notify each employee in writing of their monitoring results within 20 days after receiving these results; establish a written compliance program; implement a respiratory-protection program in accordance with § 1910.134 (OSHA's Respiratory Protection Standard); and develop a written program of work practices to minimize cotton-dust exposure.

Other paperwork provisions of the Standard require employers to provide employees with medical examinations, including initial examinations for new employees and periodic examinations for other employees exposed to cotton dust under specific conditions. As part of the medical-surveillance program, employers must give written information to the examining physicians, and obtain from these physicians a written opinion regarding the employees' medical results and exposure limitations.

Additional collection-of-information requirements mandate that employers provide training to employees prior to their initial job assignment, at least annually thereafter, if a change occurs in an employee's job assignment or work process, or if an employee indicates a need for retraining. Employers must also post a copy of the Standard and its appendices in a public location at the workplace, and make copies available to employees. On request, the employer must provide OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) with the training material required by this provision. Moreover, employers are to post warning signs in each work area if the concentration of cotton dust is above the permissible exposure limit.

The Standard also specifies that employers must establish and maintain exposure-monitoring and medical-surveillance records for each employee covered by these requirements. In addition, they must make any record required by the Standard available to OSHA compliance officers and NIOSH for examination and copying, and provide exposure-monitoring and medical-surveillance records to employees and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure-monitoring and medical-surveillance records, and who have no successor employer, must transmit these records to NIOSH. Employers who remain in business for the entire retention period must, before disposing of these records, notify NIOSH of the impending disposal and transfer the records to NIOSH if it requests the records within three months of being so notified.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information -collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Action

OSHA is proposing to decrease the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Standard. The Agency proposes to reduce the current burden-hour estimate from 75,696 hours to 74, 172 hours, a total reduction of 1,524 hours. Although OSHA has added burden hours for employee training, these additional burden hours are offset by a substantial decrease in the estimated number of employees exposed to cotton dust. In addition, the Agency notes that total capital costs determined in this ICR, compared to the previous ICR, rose from $6,059,756 to $6,526,314; this additional cost resulted principally from an increase in the cost of administering a medical examination from $130 to $150. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Cotton Dust Standard (29 CFR 1910.1043).

OMB Control No.: 1218–0061.

Affected Public: Business or other for-profit; Federal government; State, local, or tribal governments.

No. of Respondents: 570.

Frequency of Response: On occasion; semi-annually; annually.

Average Time per Response: Response times vary from five minutes to maintain a required record to two hours to conduct exposure monitoring.

Estimates Total Burden Hours: 74,172.

Estimated Cost (Operation and Maintenance): $6,526,314.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on November 29, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–30006 Filed 12–3–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0184(2002)]

4,4′-Methylenedianiline Standard for General Industry (29 CFR 1910.1050); Extension of the Office of Management and Budget's (OMB) Approval for Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to increase the existing burden-hour estimates for, and to extend OMB approval of, the information-collection requirements of the 4,4′-Methylenedianiline (MDA) Standard for General Industry (29 CFR 1910.1050).[1] This standard protects employees from adverse health effects that may result from occupational to MDA, including cancer and liver disease.

DATES: Submit written comments on or before February 4, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0184(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the MDA Standard for General Industry is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov/comp-links.html,* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase the burden hours imposed by the existing paperwork requirements.

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collections instruments are clearly understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 (the ''Act'' authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the MDA Standard for General Industry (the ''Standard'') protect employees from the adverse health effects that may result from their exposure to MDA, including cancer, and liver and skin disease. The major information-collection requirements of the Standard specify that employers perform initial, periodic, and additional exposure monitoring; within 15 days after receiving exposure-monitoring results, notify each employee in writing of their results, either individually or by posting; and routinely inspect the hands, face, and forearms of each employee potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also establish written compliance program and develop a written emergency plan for any workplace that could have an emergency (*i.e.,* an unexpected and potentially hazardous release of MDA).

Employers are to label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or accessways to regulated areas, as well as train employees exposed to MDA at the time of their initial assignment, and at least annually thereafter. Employers also must provide employees with information and training at the time of their initial assignment to a work area containing MDA, and at least annually thereafter. On request, employers are to make the written training materials available to employees, and information and training materials available to OSHA compliance officers and NIOSH representatives.

Other paperwork requirements of the Standard require employers to provide employees with medical examinations, including initial, periodic, emergency, and follow-up examinations. As part of the medical-surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the employee's medical results and exposure limitations.

The Standard also requires employers to establish and maintain exposure-monitoring and medical-surveillance records for each employee who is subject to these respective requirements, make any record required by the Standard available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure-monitoring and medical-surveillance records to employees and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure-monitoring and medical-surveillance records, and who have no successor employer; must notify NIOSH at least 90 days before disposing of the records; they must transmit these records to NIOSH if so requested.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to increase the existing burden-hour estimate, and to

extend OMB approval of, the collection-of-information requirements specified by the Standard. The Agency proposes to increase the total burden-hour estimate from 320 hours to 689 hours, an increase of 369 hours. The additional burden hours result in large part from an increase in the number of employees who receive initial and periodic medical examinations. Also, capital costs rise from $19,720 to $50,550 because the number of required exposure-monitoring samples increased from 44 to 51, while the cost of analyzing a sample increase from $90 to $100; moreover, the total number of medical examinations rise from 117 to 330, while the cost of administering a medical examination increase from $130 to $150. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: MDA Standard for General Industry (29 CFR 1910.1050).

OMB Number: 1218–0184.

Affected Public: Business or other for-profit; Federal government; State, local, or tribal governments.

Number of Respondents: 15.

Frequency of Recordkeeping: On occasion; quarterly; semi-annually; annually.

Average Time per Response: Varies from five minutes to provide information to the examining physician to two hours to conduct exposure-monitoring.

Estimated Total Burden Hours: 689 hours.

Estimated Cost (Operation and Maintenance): $50,550.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (62 FR 50017).

Signed at Washington, DC, on November 29, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–30007 Filed 12–3–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0183(2002)]

4′,4′-Methylenedianiline Standard for Construction (29 CFR 1926.60); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA) Labor.

ACTION: Request for comments.

SUMMARY: OSHA solicits comments concerning its proposal to increase the existing burden hours estimates for, and to extend OMB approval of, the information-collection requirements of the 4′,4′-Methylenedianiline (MDA) Standard Construction (29 CFR 1926.60).[1] This standard protects employees from the adverse health effects that may result from occupational exposure to MDA, including cancer, and liver and skin disease.

DATES: Submit written comments on or before February 4, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0183(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html,* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase the burden hours imposed by the existing paperwork requirements.

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of 1970 (the ''Act'') authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the 4′,4′-Methylenedianiline Standard for Construction (the ''MDA Standard'') protect employees from the adverse health effects that may result from their exposure to MDA, including cancer, and liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure monitoring; within 15 days after receiving exposure-monitoring results, notify each employee in writing of their results; and routinely inspect the hands, face, and forearms of each employees potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: Establish a written compliance program; institute a respiratory-protective program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard); and develop a written emergency plan for any construction operation that could have an emergency (i.e., an unexpected and potentially hazard release of MDA).

Employers are to label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or accessways to regulated areas, as well as

train employees exposed to MDA at the time of their initial assignment, and at least annually thereafter.

Other paperwork provisions of the MDA Standard require employers to provide employees with medical examinations, including initial, periodic, emergency and follow-up examinations. As part of the medical-surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the employee's medical results and exposure limitations.

The MDA Standard also specifies that employers are to establish and maintain exposure-monitoring and medical-surveillance records for each employee who is subject to these respective requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure-monitoring and medical-surveillance records to employees and their designated representatives. Finally, employers who cease to do business within the period specified for retaining exposure-monitoring and medical-surveillance records, and who have no successor employer, must notify NIOSH at least 90 days before disposing of the records and transmit the records to NIOSH if so requested.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to increase the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the MDA Standard. The Agency proposes to increase the total burden-hour estimate from 1,523 hours to 1,609 hours, an increase of 86 hours. The additional burden hours result in large part from an increase in the number of employers who develop and maintain objective data, or historical monitoring data, for exempted operations. Also, capital costs rose from $74,000 to $80,400 because the cost of analyzing an exposure-monitoring sample increased from $90 to $100, while the cost of administering a medical examination rose from $130 to $150. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: MDA Standard for Construction (29 CFR 1926.60).

OMB Number: 1218–0183.

Affected Public: Business or other for-profit; Federal government, State, local, and tribal governments.

Number of Respondents: 66.

Frequency of Recordkeeping: On occasion; semi-annually; annually.

Average Time per Response: Varies from five minutes to provide information to the examining physician to two hours of perform exposure monitoring.

Estimated Total Burden Hours: 1,609.

Estimated Cost (Operation and Maintenance): $80,400.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (62 FR 50017).

Signed at Washington, DC, on November 29, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–30008 Filed 12–3–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[01–153]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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)). This information collection provides information on Goddard Space Flight Center Visitor Center volunteers.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms Darlene Ahalt, Goddard Space Flight Center, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Application for Volunteer Program.

OMB Number: 2700–0057.

Type of review: Extension.

Need and Uses: The application is used to collect information on persons applying to be a Goddard Space Flight Center Visitor Center Volunteer.

Affected Public: Individuals or households; Business or other-for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 40.

Responses Per Respondent: 1.

Annual Responses: 30.

Hours Per Request: Approximately ½ hour.

Annual Burden Hours: 20.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–29944 Filed 12–3–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services

Agency Information Collections Activities; Submission for OMB Review, Comment Request; User Need Assessment in Digitization

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has

been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by January 3, 2002. 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.

ADDRESSES: Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

P.L. 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization P.L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Technology Survey for Libraries and Museums.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: IMLS Grantees.

Number of Respondents: 342.

Estimated Time Per Respondent: Varies.

Total Burden Hours: 116.

Total Annualized capital/startup costs: 0.

Total Annual Costs: $53,545.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 01–29933 Filed 12–3–01; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, December 11, 2001.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

7413—Railroad Special Investigation Report—Maryland Transit Administration Light Rail Vehicle Accidents at the Baltimore-Washington International Airport Transit Station near Baltimore, Maryland, February 13 and August 15, 2000.

7415—Highway Accident Report—Collison of CSX Freight Train and Murray County School District School Bus at Railroad/Highway Grade Crossing in Conasauga, Tennessee, on March 28, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, December 7, 2001.

FOR MORE INFORMATION CONTACT: Vicky D O'Onofrio, (202) 314–6410.

Dated: November 30, 2001.

Vicky D' Onofrio,

Federal Register Liaison Officer.

[FR Doc. 01–30178 Filed 11–30–01; 2:57 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 and 50–410 License Nos. DPR–63 and NPF–69]

Niagara Mohawk Power Corporation, et al., (Nine Mile Point Nuclear Station, Unit Nos. 1 and 2); Supplemental Order Regarding Approval of Transfer of Licenses and Approving Conforming Amendment

I

Niagara Mohawk Power Corporation (NMPC) is the exclusive owner and operator of Nine Mile Point Nuclear Station, Unit 1 (NMP–1), and in regard thereto, holds Facility Operating License No. DPR–63. NMPC is also part-owner and exclusive operator of Nine Mile Point Nuclear Station, Unit No. 2 (NMP–2), and in connection therewith, is a holder of Facility Operating License No. NPF–69. The other co-owners of NMP–2 and holders of the license are New York State Electric & Gas Corporation (NYSEG), Rochester Gas and Electric Corporation (RG&E), Central Hudson Gas & Electric Corporation (CHGEC), and Long Island Lighting Company (LILCO, which is doing business as Long Island Power Authority). NMP–1 and NMP–2 (the facilities) are located at the licensees' site in Oswego County, New York.

II

By application dated February 1, 2001, Constellation Nuclear, LLC, on behalf of its indirect subsidiary Nine Mile Point Nuclear Station, LLC (NMP LLC), and NMPC, NYSEG, RG&E, and CHGEC requested the consent of the U.S. Nuclear Regulatory Commission (NRC or Commission) to a proposed direct transfer of the licenses for NMP–1 and NMP–2, to the extent held by the foregoing applicants, to NMP LLC. The application was supplemented by submittals from Constellation Nuclear, LLC, dated March 1, March 16, March 29, April 5, April 27, May 30, and June 7, 2001 (collectively herein referred to as the Application). The Application also requested the approval of conforming license amendments to reflect the direct transfer of the licenses. The Application further requested consent to certain indirect transfers of the licenses, to the extent such would occur following the direct transfers resulting from (1) a planned realignment or restructuring of the Constellation Energy Group (CEG), Inc., of which NMP LLC is a part, and the establishment of a new intermediate parent company of NMP LLC referred to as New Controlled, and (2) the

acquisition by Virgo Holdings, Inc. (Virgo), an indirect subsidiary of The Goldman Sachs Group, Inc., of an equity interest in NMP LLC and up to a 17.5% voting interest in New Controlled, coupled with the distribution of the remaining voting shares of New Controlled, all of which would be held by CEG, Inc., up to the time of distribution, to the existing public shareholders of CEG, Inc., leaving Virgo with the largest single voting interest in NMP LLC's ultimate parent company.

The Application provided that in connection with the direct transfers, NMP LLC would assume title to NMP–1 following approval of the proposed license transfers, and would assume the 82% ownership interest in NMP–2 currently held by NMPC (owner of a 41% interest), NYSEG (18% interest), RG&E (14% interest) and CHGEC (9% interest). LILCO is not involved in the direct transfer of NMP–2 and, therefore, will remain a licensee with respect to its 18% ownership interest. In addition, NMP LLC would become responsible for the operation of both NMP–1 and NMP–2. The Application stated that NMP LLC would also assume the decommissioning responsibility of the current owners of NMP–1 and NMP–2 transferring their interests in the facilities to NMP LLC. NMP LLC would provide decommissioning funding assurance through the use of decommissioning trusts coupled with parent company guarantees.

The Application proposed conforming license amendments that would replace references to NMPC, NYSEG, RG&E, and CHGEC in the licenses with references to NMP LLC, as appropriate, and make other administrative changes to reflect the proposed direct transfer.

The Commission published a notice of the request for approval and an opportunity for a hearing in the **Federal Register** on April 2, 2001 (66 FR 17584). The Commission received no comments or requests for hearing pursuant to the notice. The NRC staff approved the proposed direct and indirect license transfers by an Order dated June 22, 2001. That Order, which contained several conditions of approval, was based in part on the premise that the NMPC, RG&E, CHGEC and NYSEG interests would be transferred concurrently.

By a submittal dated September 10, 2001, Constellation Nuclear, LLC, NMPC, CHGEC and RG&E stated that due to certain delays in receiving other necessary regulatory approvals, their interests in the NMP–1 and NMP–2 licenses may need to be transferred to NMP LLC prior to any transfer of NYSEG's interest in NMP–2. The September 10, 2001, submittal was supplemented by a letter dated September 26, 2001, from Constellation Nuclear, LLC, and NMPC, and a letter dated September 28, 2001, from J.E. Silberg, counsel to Constellation Nuclear, LLC. These letters are collectively referred to as the Supplemental Application. The Supplemental Application requested NRC consent to the direct transfer approved by the June 22, 2001, Order occurring in two phases, *i.e.,* the NMPC, CHGEC, and RG&E transfers would occur first, followed by the NYSEG transfer.

The Supplemental Application also requested approval of a conforming license amendment for NMP–2 to reflect the first phase of a two-phase direct transfer of the interests in NMP–2. The amendment would delete references to NMPC, CHGEC, and RG&E to reflect the transfer of their interests to NMP LLC, but leave NYSEG on the license.

Approval of the two-phase completion of the previously approved direct transfers involving NMP–2 and corresponding conforming license amendment to reflect the completion of the first phase was requested pursuant to 10 CFR 50.80 and 50.90. The NRC staff determined that the Supplemental Application relates only to schedular matters and did not involve any material changes to the underlying basis for the transfer approval Order dated June 22, 2001. Therefore, the Supplemental Application was within the scope of the April 2, 2001, **Federal Register** notice cited above and did not require renoticing or a new opportunity for a hearing.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the Supplemental Application and other information before the Commission, the NRC staff has determined that its previous findings set forth in the Order dated June 22, 2001, remain valid notwithstanding that the transfers may occur in two phases, namely, NMP LLC is qualified to hold the licenses for NMP–1 and NMP–2 to the same extent the licenses are now held by NMPC, CHGEC, RG&E and NYSEG, and that the transfer of the licenses, as previously described herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions described herein. The NRC staff has further found that the Supplemental Application for the proposed license amendment to reflect the first phase of a potential two-phase transfer complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR chapter I; the facility will operate in conformity with the Supplemental Application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated October 30, 2001.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the direct NMP–2 license transfer previously approved by the June 22, 2001, Order, from NMPC, CHGEC, RG&E and NYSEG, to NMP LLC may occur in two phases, as described above, subject to the following conditions:

(1) NMP LLC shall, prior to the completion of each direct transfer, have provided to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMP LLC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) On the closing date(s) of the transfer of the NMPC, RG&E, CHGEC, and NYSEG interests in NMP–1 and NMP–2 to it, NMP LLC shall: (1) Obtain from the transferors then transferring their interests all of their accumulated decommissioning trust funds for NMP–1 and NMP–2, respectively, and (2) receive [a] parent company guarantee[s] pursuant to 10 CFR 50.75(e)(1)(iii)(B) (to be updated annually) in a form acceptable to the NRC and in [an] amount[s] which, when combined with the decommissioning trust funds for NMP–1 and NMP–2 that have been transferred, equals or exceeds the total amounts for NMP LLC's then resulting total ownership share of NMP–1 and

NMP–2, respectively, pursuant to 10 CFR 50.75(b) and (c).

(3) The master decommissioning trust agreement for NMP–1 and NMP–2, at the time any subject direct transfer is effected and thereafter, is subject to the following:

a. The decommissioning trust agreement must be in a form acceptable to the NRC.

b. With respect to the decommissioning trust funds, investments in the securities or other obligations of CEG Inc., New Controlled, or their affiliates, successors, or assigns, are and shall be prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are and shall be prohibited.

c. The decommissioning trust agreement must provide that no disbursements or payments from the trusts, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of the payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

d. The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

e. The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) NMP LLC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the Application, the requirements of the June 22, 2001, Order (amended by this Order herein), and the related safety evaluation.

(5) At the time any subject direct transfer is effected, NMP LLC shall enter or shall have entered into an intercompany credit agreement with Constellation Energy Group (CEG), Inc., or New Controlled, whichever entity is the ultimate parent of NMP LLC at that time, in the form and on the terms represented in the Application. Should New Controlled become the ultimate parent of NMP LLC following the direct transfer of the licenses to NMP LLC, NMP LLC shall enter or shall have entered into a substantially identical intercompany credit agreement with New Controlled at the time New Controlled becomes the ultimate parent; in such case, any existing intercompany credit agreement with CEG, Inc. may be canceled once the intercompany credit agreement with New Controlled is established. Except as otherwise provided above, NMP LLC shall take no action to void, cancel, or modify any intercompany credit agreement referenced above, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation.

(6) NMPC shall inform the Director of the Office of Nuclear Reactor Regulation of the date(s) of the closing of the direct transfers no later than two business days prior to such respective date(s). If all of the direct and indirect transfers of the licenses approved by the June 22, 2001, Order, as supplemented by this Order are not completed by June 30, 2002, this Order and the June 22, 2001, Order shall become null and void with respect to those transfers not so completed, provided, however, upon written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Supplemental Order, to conform the operating license for NMP–2 to reflect the subject first phase of the direct license transfers, is approved. If NMPC, RG&E, and CHGEC transfer their interests in NMP–2 to NMP LLC and NYSEG does not concurrently transfer its interest in NMP–2, the amendment shall be issued and made effective at the time NMPC, RG&E, and CHGEC transfer their interests in NMP–2 to NMP LLC.

It is further ordered that, to the extent any of the conditions of the June 22, 2001, Order, and conditions contained in the conforming license amendments approved by that Order, are inconsistent with the conditions contained in this Supplemental Order and conditions contained in the amendment approved by this Supplemental Order, all such inconsistent conditions of the June 22, 2001, Order, and all such inconsistent conditions contained in the conforming license amendments approved by that Order, are hereby modified to be consistent with the conditions contained in this Supplemental Order and conditions contained in the license amendment approved by this Supplemental Order. License amendments for NMP–1 and NMP–2, as approved by the June 22, 2001, Order, and as modified herein, or the license amendment as approved by this Supplemental Order, shall be issued as appropriate and made effective at the time the corresponding license transfers occur.

This Supplemental Order is effective upon issuance.

For further details with respect to this Supplemental Order, see the Supplemental Application transmitted by letters dated September 10, 26, and 28, 2001, the associated supplemental safety evaluation dated October 30, 2001, and the Order and its associated safety evaluation both dated June 22, 2001. All of these documents are available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov.*

Dated at Rockville, Maryland, this 30th day of October, 2001.

For the Nuclear Regulatory Commission

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 01–29970 Filed 12–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PSEG Nuclear LLC (the licensee) to withdraw its November 29, 2000, application as supplemented August 10, 2001, for proposed amendment to Facility Operating License No. NPF–57 for the Hope Creek Generating Station (HCGS), located in Salem County, New Jersey.

The proposed amendment would have modified the HCGS technical specifications to reflect the enabling of the Oscillation Power Range Monitor (OPRM) reactor protection system (RPS) trip function. The OPRM is designed to detect the onset of reactor core power oscillations resulting from thermal-hydraulic instability and suppress them by initiating a reactor scram via the RPS trip logic.

The Commission had previously issued a Notice of Consideration of

Issuance of Amendment published in the **Federal Register** on December 27, 2000 (65 FR 81930). However, by letter dated October 19, 2001, the licensee withdrew the proposed change. The withdrawal request was based on the extended time period General Electric Company (GE) is projecting to resolve a defect that was reported to the Commission pursuant to part 21 of Title 10 of the Code of Federal Regulations (10 CFR part 21). The defect pertains to GE's OPRM setpoint methodology as detailed in letters from GE to the Commission dated June 29 and August 31, 2001. The defect could result in non-conservative OPRM trip setpoints. The OPRM is currently installed at HCGS with the RPS trip function disabled.

For further details with respect to this action, see the application for amendment dated November 29, 2000, as supplemented August 10, 2001, and the licensee's letter dated October 19, 2001, which withdrew the application for license amendment. 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 Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of November 2001.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Project Manager, Section 2, Project Directorate I, Divisionof Licensing Project Management Office of Nuclear Reactor Regualtion.

[FR Doc. 01–29971 Filed 12–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7002]

Portsmouth Gaseous Diffusion Plant United States Enrichment Corporation; Notice of Consideration of Request for Temporary Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of request for temporary exemption.

SUMMARY: The Nuclear Regulatory Commission (Commission) is considering the issuance of a temporary exemption from the requirement to perform an emergency preparedness (EP) exercise every 2 years for the Portsmouth Gaseous Diffusion Plant operated by the United States Enrichment Corporation (USEC). The request for temporary exemption is necessary because USEC had to postpone the required scheduled EP exercise because of the terrorist attacks on the United States, lack of availability of Federal agencies, and the current heightened alert status of the plant. USEC expects to conduct the EP exercise by April 30, 2002. The NRC has prepared an environmental assessment with a finding of no significant impact on the request.

FOR FURTHER INFORMATION CONTACT: Dan E. Martin, Project Manager, Special Projects Branch, Division of Fuel Cycle and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7254, *e-mail dem1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is considering the issuance of a temporary exemption from the requirement to perform an emergency preparedness exercise every 2 years, pursuant to 10 CFR part 76, for the Portsmouth Gaseous Diffusion Plant (PORTS), operated by USEC. The facility is authorized to use Special Nuclear Material (SNM) in the enrichment of natural uranium to prepare low-enriched uranium to be used by others in the fabrication of nuclear fuel pellets and fuel assemblies and operates near Piketon, Ohio.

The PORTS facility was scheduled to conduct an EP exercise on September 12, 2001. This exercise was postponed because of the terrorist attacks on the United States that occurred on September 11, 2001. Because of the ongoing high alert status of the plant, and the need to coordinate with several offsite agencies and groups, the PORTS EP exercise will not be performed this calendar year. USEC expects to conduct the exercise no later than April 30, 2002.

The last EP exercise conducted at the PORTS facility was held on September 14, 1999. USEC's Emergency Plan, in accordance with 10 CFR 76.91(l), requires that plant personnel plan and conduct biennial EP exercises. Because the next exercise will not be conducted during calendar year 2001, USEC has requested a temporary exemption from the requirement to conduct biennial EP exercises. The NRC staff has prepared an environmental assessment of the proposed action and reached a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant temporary schedular relief from the requirement pursuant to 10 CFR 76.91(l) to perform a biennial EP exercise during calendar year 2001. The proposed action would allow USEC to conduct the PORTS 2001 biennial exercise as late as April 30, 2002. The proposed action is in accordance with USEC's request for exemption dated October 4, 2001.

Need for the Proposed Action

The proposed action is necessary to support a request to USEC by the United States Department of Energy (DOE) that the EP exercise scheduled for September 12, 2001, be postponed until calendar year 2002. Furthermore, because of the heightened state of security alert that the plant is under and the unavailability of some participants, USEC has determined that it would not be prudent to hold the 2001 biennial EP exercise during calendar year 2001. Allowing the delay would avoid overlap with the current state of high alert and allow fuller participation by other agencies and groups.

Environmental Impacts of the Proposed Action

The proposed action would not materially affect the emergency response capabilities of the PORTS facility. The last EP exercise was conducted on September 14, 1999, and there were no issues identified which required immediate corrective action. NRC reviews and inspections since the 1999 exercise have not identified a decline in the effectiveness of USEC's emergency response capability. The postponement should have no impact on the effectiveness of USEC's emergency response capability. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the amounts or types of any effluents that could be released offsite, and there is no increase in individual or cumulative radiation exposure. Accordingly, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other

environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no discernible environmental impact associated with the proposed action, any alternatives with equal or lesser impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in environmental impacts and would result in hardship to USEC, DOE, and perhaps other participants. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources beyond those already necessary to conduct the EP exercise during 2001, and would merely delay the exercise.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with State of Ohio official, Carol O'Claire, Supervisor, Radiological Branch, Ohio Emergency Management Agency, and U.S. Department of Energy official Randall M. DeVault, Group Leader, Transition and Technology Group, Office of Nuclear Fuel Security and Uranium Technology, regarding the environmental impact of the proposed action. No objections were received.

Consultations with the U.S. Fish and Wildlife Service and the State Historic Preservation Officer were not performed because of the lack of any conceivable impact to fish and wildlife or historic assets.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

This document was prepared by Dan E. Martin, Project Manager, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards. Mr. Martin is the Project Manager for the Portsmouth Gaseous Diffusion Plant.

For further details with respect to the proposed action, see the USEC letter request dated October 4, 2001, available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web Site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 26th day of November, 2001.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–29969 Filed 12–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice; Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 3, 10, 17, 24, 31, 2001, January 7, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 3, 2001

Monday, December 3, 2001

2 p.m.—Briefing on Status of Steam Generator Action Plan (Public Meeting) (Contact: Maitri Banerjee, 301–415–2277).

Wednesday, December 5, 2001

1:25 p.m.—Affirmation Session (Public Meeting) (if needed).

1:30 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

Week of December 10, 2001—Tentative

There are no meetings scheduled for the Week of December 10, 2001.

Week of December 17, 2001—Tentative

There are no meetings scheduled for the Week of December 17, 2001.

Week of December 24, 2001—Tentative

There are no meetings scheduled for the Week of December 24, 2001.

Week of December 31, 2001—Tentative

There are no meetings scheduled for the Week of December 31, 2001.

Week of January 7, 2001—Tentative

Wednesday, January 9, 2002

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: November 29, 2001.

Sandra M. Joosten,

Executive Assistant, Office of the Secretary.

[FR Doc. 01–30091 Filed 11–30–01;12:25 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions of two guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.142, ''Safety-Related Concrete Structures for Nuclear Power Plants (Other than Reactor Vessels and Containments,'' provides guidance on methods acceptable to the NRC staff for complying with the NRC's regulations on the design, evaluation, and quality assurance of safety-related nuclear concrete structures, excluding concrete reactor vessels and concrete containments.

Revision 2 of Regulatory Guide 1.143, ''Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-

Cooled Nuclear Power Plants,'' provides guidance on methods acceptable to the NRC staff for complying with the NRC's regulations on the design, construction, installation, and testing the structures, systems, and components of radioactive waste management facilities in light-water-cooled nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Specific questions on the guides should be directed to Mr. H.L. Graves at (301) 415–5880, email *HLG1@NRC.GOV*.

Regulatory guides are available for inspection or downloading at the NRC's web site at <*WWW.NRC.GOV*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 21st day of November, 2001.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 01–29968 Filed 12–3–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark Reinhold, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–1882.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Kay Coles James,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Paul T. Conway, Chief of Staff—Chair Steven R. Cohen, Senior Advisor to the Director Richard A. Ferris, Associate Director, Investigations Service William E. Flynn, Associate Director, Retirement and Insurance Service

John C. Gartland, Director, Office of Congressional Relations Teresa M. Jenkins, Director, Office of Workforce Relations Mark A. Robbins, General Counsel Ronald P. Sanders, Chief of Human Resources, Internal Revenue Service

[FR Doc. 01–29984 Filed 12–3–01; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27469]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 28, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 24, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 24, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation (70–9987)

KeySpan Corporation (''KeySpan''), a registered holding company, One MetroTech Center, Brooklyn, New York 11202, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 13(b) of the Act and rules 43, 45, 90 and 91 under the Act.

KeySpan requests authority to establish a subsidiary captive insurance company, (''Captive''), to engage in reinsuring certain levels of predictable risk for KeySpan and its associate companies. KeySpan requests authority to form and capitalize Captive. KeySpan will be the sole shareholder upon purchase of all shares of common stock for $100. The aggregate amount of the initial insurance premiums required by Captive is $36 million. Funding of the premiums to Captive will be as follows: The first $18 million will be paid in cash from the participating KeySpan system companies based on their allocated share and the remaining $18 million will be in the form of KeySpan common stock issued to Captive. All funds will be depositd with the Captive's bank in Vermont and will be invested in securities that are exempt by rule 40 under the Act.

Captive will provide three types of insurance coverage for KeySpan: Automobile liability, workers' compensation and general liability insurance to affiliates. It will also provide, under an Owner's Controlled Insurance Program, general liability and worker's compensation insurance to its unaffiliated principal contractor for the duration of any projects involving KeySpan system companies. These projects will only involve gas main construction and maintenance for system companies.

Captive will be a direct, wholly owned subsidiary of KeySpan and will be authorized to operate as an insurance

company in Vermont. Captive will assume the risk.

PECO Energy Company and PECO Energy Transition Trust (70–10003)

PECO Energy Company (''PECO''), a utility subsidiary of Exelon Corporation (''Exelon''), 10 South Dearborn Street, 37th Floor, Chicago, Illinois 60603, a registered holding company, and PECO Energy Transition Trust (''PETT''), a special purpose subsidiary of Exelon (collectively, ''Declarants''), have filed a declaration under section 13(b) of the Act and rules 87, 90, 91 and 54 under the Act.

In Commission orders dated November 2, 2000 (Holding Co. Act Release No. 27266), and December 8, 2000 (Holding Co. Act Release No. 27296) (collectively, the ''Prior Orders''), the Commission approved PECO's refinancing of up to the full amount of outstanding transition bonds due March 1, 2004, and September 1, 2007, with refunding transition bonds having a final maturity not later than March 1, 2011.[1] On March 1, 2001, PETT refinanced approximately $805 million of the prior transition bonds through the issuance of Series 2001–A Transition Bonds.[2]

In Amendment No. 5 to the Form U–1 in File No. 70–9693, Exelon sought approval under section 13(b) of the Act for PECO to provide certain servicing functions to PETT at a price not restricted to cost. Exelon states that it will withdraw that request from File No. 70–9693 and instead Declarants are making the same request in the Form U–1 filed in the current matter.

Under the terms of PECO's settlement of its 1998 restructuring proceeding and the final order of the Pennsylvania Public Utility Commission (''Pennsylvania Commission'') approving the settlement, issued on May 14, 1998, PECO is permitted to recover $5.26 billion in stranded costs over a twelve year period beginning on January 1, 1999. PECO's stranded costs are collected through a non-bypassable transition charge which must be paid by all of PECO's transmission and distribution customers, regardless of whether the customers continue to purchase their electric capacity or energy from PECO. Utilities are authorized to securitize the right to recover all or a portion of these non-bypassable transition charges through the issuance of ''transition bonds.'' This right is known as ''Intangible Transition Property.''

As permitted under Pennsylvania law, certain portions of the May 14, 1998, Pennsylvania Commission order were designated a Qualified Rate Order (''QRO'') authorizing PECO to securitize up to $4 billion of its recoverable costs through the issuance of transition bonds. On March 16, 2000, the Pennsylvania Commission issued a second QRO authorizing PECO to securitize an additional $1 billion. In order to accomplish the approved securitization transactions, PECO created PETT as an independent special purpose entity. PETT is a statutory business trust formed on June 23, 1998, under a trust agreement between PECO, as grantor, First Union Trust Company, N.A., as issuer trustee, and two beneficiary trustees appointed by PECO. PETT was organized for the special purpose of purchasing from PECO the Intangible Transition Property, issuing transition bonds, pledging its interest in the Intangible Transition Property and other collateral to a bond trustee to secure the transition bonds and performing activities that are necessary and suitable to accomplish these purposes including collecting the specific part of Intangible Transition Property used to pay the bonds, *i.e.,* ''Intangible Transition Charges'' collected from PECO customers.

As part of the transactions relating to the currently Outstanding Transition Bonds, PECO and PETT entered into an Amended and Restated Master Servicing Agreement, dated March 25, 1999, as amended May 2, 2000, and March 1, 2001 (the ''Servicing Agreement''), under which PECO, as servicer, manages and administers the ITP sold to PETT and collects the Intangible Transition Charges on behalf of PETT.[3]

To help ensure the necessary legal separation for purposes of isolating PETT from PECO for bankruptcy purposes, the rating agencies desire that any servicing arrangement to be at a market price so that a successor entity could assume the duties in the event of the bankruptcy of PECO without interruption or an increase in fees. Accordingly, the Servicing Agreement has provided for at market pricing and will continue to do so while any transition bonds remain outstanding. PECO and PETT seek approval under section 13(b) of the Act and rules 87, 90 and to continues this practice during the period and transition bonds remain outstanding and the Servicing Agreement remains in place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29985 Filed 12–3–01; 8:45 am]

BILLING CODE 8010–01–P

[1] As of June 30, 2000, there was $1.132 billion outstanding in these transition bonds outstanding.

[2] Further details regarding PETT's obligations and outstanding transition bonds (the ''Outstanding Transition Bonds'') aty September 30, 2001,a re set forth in PETT's Quarterly Report on Form 10–Q for the quarer ended September 30, 2001 in File No. 333–58055.

[3] The Servicing Agreement is incorporated by reference to Exhibits 10.3 and 10.4 to PETT's Form S–3 Regulation Statement in File No. 333–51740.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45110; File No. SR–Amex–2001–90]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Establishing New Exchange Fees Based on the Number of Order Cancellations Routed Through the Amex Order File

November 27, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 23, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 21, 2001, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to establish a new fee based upon the number of order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President & Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 20, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex amended note 5 to Section VI, Options Order Cancellation Fee of the Amex Fee Schedule, to clarify that the fee will be assessed when the total number of orders an executing clearing member cancels through the Amex Order File (''AOF'') in a particular month exceeds the total number of orders that the member executes through the AOF in that same month. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on November 20, 2001, the date the Amex filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

cancellations that are routed through the AOF.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposed to establish a fee on the cancellation of orders. The Exchange represents that the fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of immediately following an order routed through exchange systems with a cancel request for that order. The Exchange asserts that these order cancellations utilize system capacity and may require manual processing by specialist unit personnel, which may unnecessarily distract specialist staff from other responsibilities. The Exchange represents that cancellations often come in large numbers, which create backlogs in the AOF, increase Exchange costs, adversely impact public customers, their clearing firms, and specialists, and result in less-than-timely executions of customer orders. The Exchange asserts that the large volume of order cancellations requires an increase in Exchange spending on systems and related hardware used to process increased message traffic.

Pursuant to the proposed fee, the executing Clearing Member would be charged $1.00 for every order that it cancels through the AOF in any month when the total number of orders cancelled through the AOF exceeds the total number of orders that same firm executed through AOF in that same month.[4] This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through AOF in a given month. The Exchange will begin billing the cancellation fee after November 1, 2001.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[5] in general, and section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes or changes a due, fee, or other charge.[9] At any time within 60 days of November 21, 2001, the Commission may summarily abrogate such proposed rule change, as amended, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–2001–90 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29986 Filed 12–3–01; 8:45 am]

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[4] Telephone conversation between Claire P. McGrath, Vice President & Deputy General Counsel, Amex, and Frank N. Genco, Attorney Advisor, Division, Commission, on November 16, 2001.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] The Exchange's proposed rule change is similar to a fee instituted by the Chicago Board Options Exchange, Inc., which became immediately effective on July 27, 2001. *See* Securities Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001).

[10] *See* 15 U.S.C. 78(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45106; File No. SR–Amex–2001–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC, To Allow for $0.50 Strike Price Intervals for Options Based on the iShares 100 Index Fund

November 27, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 9, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Jeffrey Burns, Assistant General Counsel, Legal & Regulatory Department, Amex, to

Continued

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to allow for one-half point ($0.50) strike price intervals for options based on the iShares 100 Index Fund (''OEF'').

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish one-half point ($0.50) strike price intervals for options on OEF,[4] an exchange-traded fund (''ETF'') that represents ownership in an open-end management company established to hold a portfolio of stocks replicating the S&P 100 Index (''Index''). OEF holds substantially all of the securities of the Index in approximately the same proportions as reflected in the Index. Currently, OEF options and OEF are listed and traded on the Chicago Board Options Exchange, Inc. (''CBOE''); however, the Amex expects in the near future to also list and trade these products.

The Exchange will list options on OEF pursuant to the criteria set forth in *Interpretation .06* to Amex Rule 915.[5] However, the Amex believes that it is appropriate to amend its existing strike price intervals for ETFs[6] to permit the strike price interval for options on OEF to be set at $0.50.[7] Currently, options on ETFs at the Amex have strike price intervals of one point ($1.00). The CBOE, however, recently received approval from the Commission to introduce $0.50 strike price intervals on OEF, and accordingly, introduced the $0.50 strike price interval on or about January 31, 2001.[8]

The Amex believes that trading options contracts on OEF with one-half point fixed strike prices will benefit investors by providing greater strike price choices and fostering competition between the options exchanges.[9] The Exchange further asserts that it is appropriate to list options on the OEF with half-point strike prices to ensure that products traded on the Amex remain competitive.[10]

Although the Exchange recognizes that adding additional strike prices on OEF options for trading under the proposed rule change may result in a slight increase in message traffic, the Exchange represents that it has the necessary systems capacity to support any additional strike prices on OEF options that may be added under the proposed rule.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5) of the Act[12] in particular, in that it will permit trading in options based on OEF pursuant to strike intervals designed to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional Amex product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)[13] of the Act and Rule 19b–4(f)(6)[14] thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately as of November 7, 2001 so that the proposed $0.50 strike price intervals may be implemented immediately.

The Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change, as amended, become operative immediately as of November 7, 2001.[16] At any time within

Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 9, 2001 (''Amendment No. 1''). Amendment No. 1 clarified that the proposed rule change applies only to the strike prices of the iShares S&P 100 Index Fund and that the Exchange would be able to support a change in strike prices even though such a change would result in a slight increase in message traffic.

[4] Telephone conversation between Jeffrey Burns, Assistant Counsel, Amex, and Steven Johnston, Special Counsel, Division, Commission, on November 26, 2001 (clarifying that Amex will file a separate proposed rule change and obtain approval before either: (1) Establishing any new strike price interval on an exchange-traded fund and other than OEF; or (2) establishing any new strike price interval on the OEF other than the $0.50 interval that is the subject of SR–Amex–2001–97) (''Telephone Conversation'').

[5] Amex Rule 915 describes the criteria for underlying securities. Specifically, Commentary .04 under Amex Rule 915 indicates which securities are deemed appropriate for options trading.

[6] The Exchange received approval to trade options on ETFs on July 1, 1998. *See* Securities Exchange Act Release No. 40157 (July 1, 1998) 63 FR 37426 (July 10, 1998) (Order Approving File No. SR–Amex–96–44). As noted in the Exchange's filing and the Commission's approval order, strike price intervals for both 100– and 1000–share contracts are set to bracket the ETF share at one-point intervals up to a share price of $200.

[7] Telephone Conversation.

[8] *See* Securities Exchange Act Release No. 43969 (February 15, 2001) 66 FR 11311 (February 23, 2001) (*Notice of Filing and Immediate Effectiveness of File No. SR–CBOE–01–02*).

[9] Telephone Conversation.

[10] *Id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 40.19b–4(f)(6).

[15] Under Rule 19b–4(f)(6)(iii), the Exchange must give written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the rule change, or such shorter time as designated by the Commission. As required, the Exchange has provided the Commission with written notice of its intent to file the proposed rule change.

[16] For purposes only of accelerating the operative date of this proposal, the Commission has

60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–Amex–2001–97 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on November 9, 2001, the date the Amex filed Amendment No. 1.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45103; File No. SR–CBOE–00–42]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Eliminating the Obligation of Designated Primary Market-Makers To Accord Priority to Non-Public Customer Orders

November 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.85 (DPM Obligations) regarding obligations of Designated Primary Market-Makers (''DPMs'') such that when a DPM represents an order as agent, the DPM is required to accord priority only to those orders of public customers over the DPM's principal transactions. The text of the proposed rule change is below. Additions are in italics.

RULE 8.85. (a) No change.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

* * * * *

(iii) accord priority to any *public customer* order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to amend CBOE Rule 8.85 regarding a DPM's obligation to represent orders. Currently, CBOE Rule 8.85(b)(iii) requires a DPM to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority. The CBOE proposes to amend CBOE Rule 8.85(b)(iii) to require DPMs to accord priority only to public customer orders.[3]

In the last few years, a number of systemic changes have occurred in the Exchange marketplace that have caused an increasing number of orders to be left for representation by DPMs. Changing economics have caused a decline in the number of independent floor brokers on the Exchange who formerly represented many orders in trading crowds. At the same time, the Exchange converted its equity option trading crowds that had been traditional competing market-maker trading crowds. As a result of these occurrences, a large percentage of all order that are traded in a particular trading crowd are first routed to the crowd Public Automated Routing (''PAR'') terminal. Because DPMs must be present at all times in their particular trading location and because there is generally not an independent crowd

[3] According to the CBOE, it proposes to use its Retail Automatic Execution System (RAES) Rule 6.8 to define those orders to which its DPMs must give priority. Currently, CBOE Rule 6.8(b)(ii) defines orders that are not eligible for execution in RAES as those in which a member, non-member participant in a joint venture with a member or any non-member broker-dealer has an interest. Accordingly, the CBOE proposes to exclude these orders from a DPM's obligation to accord priority. Telephone call among Steve Youhn, CBOE, Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on November 21, 2001.

broker in any particular location, it has fallen to the DPM to staff the PAR terminals and to represent the orders routed to the PAR terminal. Generally, the DPM does not charge for this brokerage service and thus, receives no direct benefit from performing this function. The CBOE does not believe it is appropriate or even preferable for the marketplace for the DPM to be denied the opportunity to compete to trade against so many orders merely because it is performing a service that benefits the Exchange generally.

The CBOE believes that without the proposed amendment, it will become increasingly difficult for DPMs to compete against non-DPMs in the trading crowd. As the percentage of orders routed to the PAR terminal grows, the incentives to assume the affirmative obligations and expenses in managing a DPM operation decrease. The Exchange believes that the proposed rule change is justified in light of the particular responsibilities, burdens, and costs borne by DPMs compared to other market participants. DPMs have more market making responsibilities than non-DPMs, higher capital requirements, and other unique costs, including costs associated with staffing the brokerage function, the quote updating functions, and marketing functions.

The Exchange offers the following example to help illustrate the nature of the concern. Assume a particular DPM has an order for a broker-dealer that has been routed to the crowd PAR terminal. The broker-dealer is seeking to buy 30 contracts of XYZ at a limit of $3 at a time when the market is 3 (bid)—3¼ 4 (offer). Now, assume a broker-dealer walks into the crowd to sell 100 contracts of XYZ at $3. The DPM may represent the broker-dealer order and compete against other non-DPMs to trade against that 100 contract order. The DPM, however, must accord priority to that broker-dealer order and cannot compete to trade against that order. If the broker-dealer order and the other market-makers determine to trade all of the 100 contracts, the DPM will have no change to participate in the trade. If the DPM did not have to accord priority to the broker-dealer order, the DPM would be able to compete equally with the other market participants and assert is participation right if the trade occurred at the DPM's previously established principal bid or offer.

The Exchange believes that the proposal will require DPMs to accord priority to those orders for public customers that they represent as agent over the DPM's principal transactions. Moreover, in accordance with the proposed rule change, the CBOE represents that DPMs will have the option to trade other non-public customer orders that they represent ahead of their own interest in a particular trade.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with, and furthers the objectives of, section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(5) of the Act,[5] in particular, because it is designated to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–42 and should be submitted by December 26, 2001.

For the Commission, by the Division of Makert Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29931 Filed 12–3–01; 8:45 am]

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45097; File No. SR–NYSE–2001–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 407 (''Transactions—Employees of Members, Member Organizations and the Exchange'')

November 21, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 407 (''Transactions—Employees of Members, Member Organizations and the Exchange'') and incorporate and amend an existing written interpretation into the rule in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

order to require that associated persons obtain their employers' written approval prior to entering into private securities transactions. In addition, the Exchange proposes to define the terms ''securities or commodities account,'' ''private securities transactions'' and ''other financial institutions.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 407(b) requires that members, allied members and employees to obtain the prior written consent of their employers in order to open and maintain a securities or commodities account at another broker-dealer, investment adviser, bank or other financial institution. Further, employers of such associated persons must receive duplicate confirmations and statements of such accounts. In this regard, the Exchange believes that NYSE Rule 407 helps members and member organizations maintain the integrity of their information barriers and employee trading policies and assists members and member organizations in monitoring employee trading for possible insider trading violations and manipulative and deceptive devices.

An existing interpretation of NYSE Rule 407 in the *NYSE Interpretation Handbook* requires that members, allied members and employees associated with members or member organizations notify their employers of any private securities transactions, where such securities transactions are typically negotiated directly with an issuer and not through an account with a broker-dealer or bank.

The Exchange proposes to amend NYSE Rule 407 and incorporate and amend the interpretation noted above into the rule to require that associated persons of members or member organizations obtain their employers' written approval (rather than notification) prior to entering into private securities transactions. The Exchange also proposes that associated persons effecting private securities transactions shall arrange for duplicate confirmations and statement (or their equivalents) to be sent to another person designated by their member or member organization under NYSE Rule 342(b)(1) (''Offices—Approval, Supervision and Control'') to periodically review such transactions.

In addition, the Exchange proposes to define the terms ''securities or commodities account,'' ''private securities transactions'' and ''other financial institution.'' The Exchange proposes that the term ''securities or commodities account'' shall include limited or general partnership interests in investment partnerships.

The Exchange proposes that the term ''private securities transactions'' shall include all transactions in the securities of issuing entities that are not public, whether or not such transactions are negotiated directly with the issuer. It shall include, but not be limited to, interests in oil and gas ventures, real estate syndications, participations in tax shelters and in other investment vehicles, and shares issued prior to a public distribution by such issuing entities.

The Exchange proposes that the term ''other financial institution'' shall include, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

In addition, the Exchange proposes to amend NYSE Rule 407 to provide the Exchange with the general authority to waive any of the requirements of the rule upon written request of a member or member organization that has the obligation to approve the account and where good cause is shown. For example, a member or member organization that is required to approve an account of an employee associated with such member or member organization may not wish to receive duplicate confirmations and statements because such employee does not have the direct or indirect power to make any investment decisions at another member or member organizations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[3] which provides, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

[3] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–44 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulations, pursuant to the delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29930 Filed 12–3–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45112; File No. SR–NYSE–2001–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. To Implement Three CRD Processing Fees and a One-Time System Transition Fee in Connection with the Administration of Forms U–4 and U–5

November 28, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 6, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change implements three Web CRD processing fees and a one-time System Transition Fee charged to NYSE members and member organizations who are not members of the National Association of Securities Dealers, Inc. (''NASD'') in connection with the administration and processing of Forms U–4 or U–5 through the Web CRD system.

II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to November 13, 2000, Exchange members and member organizations who were not members of NASD were required to manually file Form U–4 [3] and Form U–5 [4] with the Exchange's Qualifications and Registrations Department. These members and member organizations primarily conduct business on the Floor of the Exchange and are not required to be registered with NASD.

Effective November 13, 2000, Exchange members and member organizations who are not members of the NASD are required to submit (in connection with NYSE Rules 345.12 and .18) Forms U–4 and U–5 through NASD Regulation, Inc.'s (''NASDR'') Web CRD system (''Web CRD''). The filings are processed electronically through the Internet. Specific details regarding the filing procedures associated with this transition were published in NYSE Information Memo Number 00–25 [5] dated October 13, 2000. Including associated persons of NYSE-only members and member organizations in Web CRD enables the Exchange to more efficiently perform its regulatory responsibilities for all members and member organizations and ultimately enhances investor protection.

The proposed rule change implements three processing fees and a one-time system transition fee imposed upon NYSE-only members and member organizations resulting from the Exchange's directive that registration filing be submitted to Web CRD. Members and member organizations will be instructed to pay the CRD processing fees directly to NASDR through Web CRD. NASDR will collect the appropriate fees directly to NASDR through Web CRD. NASDR will collect the appropriate processing fees at the time the NYSE member or member organization effects a registration transaction through Web CRD.

The three processing fees are the same as those charged dual NYSE/NASD registrants, and are as follows:

First, the proposed rule change implements an $85 CRD Processing Fee charged for all Initial, Transfer, and Re-license Form U–4 filings. This fee, combined with current, corresponding NYSE fees, will bring the total amount paid to NASDR for Initial Individual Registration to $150 ($65 NYSE Standard Application Fee + $85 CRD Processing Fee). The total amount paid for Transfer and Re-licensing will amount to $128 ($43 NYSE Standard Application Fee + $85 CRD Processing Fee). The NYSE Application Fees of $65 (for Initial Individual Registration) and $43 (for Transfers and for Re-licensing) will be passed on to the NYSE by NASDR.[6] This is the same process and fee structure that already applies to dual NASD/NYSE members and member organizations filing through Web CRD.

Second, the proposed rule change implements a $95-CRD Disclosure Processing Fee charged in connection with Forms U–4 and U–5 for all filings with new or amended disclosure information. (There is no corresponding NYSE fee.)

Thirdly, the proposed rule change implements an annual $30 CRD System Processing Fee. Therefore, the total annual processing/maintenance cost per registered person will be $82, which includes the current $52 NYSE annual maintenance fee that will be passed on to the NYSE.[7]

In addition to the fees outlined above, sole NYSE members and member organizations will be required to pay a one-time System Transition Fee of $115 per registered person as of December 31, 2001, payable January, 2002.[8]

2. Statutory Basis

The statutory basis for the proposed rule change in section 6(b)(4) of the Act [9] that permits the rules of an

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] Uniform Application for Securities Industry Registration or Transfer.

[4] Uniform Termination Notice for Securities Industry Registration.

[5] A follow-up Information Memo will be issued to reaffirm the registration filing process for NYSE-only members and member organizations and to update the fee schedule. The NYSE submitted a draft Information Memorandum and Fee Schedule that reflected such registration process and updated fee schedule. E-mail dated November 21, 2001 from Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, to John Riedel, Attorney Adviser, Division of Market Regulation (''Division''), to Commission.

[6] These fees offset the costs to the NYSE for the review and processing of all applications. Telephone call between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and John Riedel, Attorney Adviser, Division, Commission, dated November 20, 2001.

[7] This is an annual maintenance fee to cover costs associated with the registration program. Telephone call between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, Elizabeth Badaway, Accountant, Division, Commission, and Terri Evans, Assistant Director, Division, Commission, dated November 26, 2001.

[8] This is a fee payable to the NASD to cover special arrangements for NYSE-only members filing through Web CRD. Telephone call between Mary Anne Furlong, Division, Commission, and Terri Evans, Assistant Director, Division, Commission, dated November 26, 2001.

[9] 15 U.S.C. 78(f)(b)(4).

exchange to provide for the equitable allocation of reasonable dues, fees and other charges among the members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f) of Rule 19b–4 thereunder.[11] Accordingly, the proposed rule change has become effective upon filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to the File Number SR–NYSE–2001–47 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29987 Filed 12–3–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45105; File No. SR–PCX–2001–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Registered Representative Fees

November 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 6, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On November 20, 2001, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges by increasing its Registered Representative Fee. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael D. Pierson, Vice President, Regulatory Policy, PCX, to John S. Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated November 19, 2001 (''Amendment No. 1''). In Amendment No. 1, the PCX made a correction to its proposal to reflect that the fee increase is from $45 to $50.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Bais for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently charges a $45 annual fee for new applications, maintenance and transfer of registration status for each Registered Representative and each Registered Options Principal whose firm is a member firm of the Exchange.[4] The Exchange is now proposing to increase this fee to $50.[5] The Exchange believes this fee change is warranted based upon the Exchange's increased costs relating to its regulatory oversight and enforcement program. The Exchange notes that initial, transfer, and maintenance Registered Representative registration fees traditionally have been billed and collected by the NASD. Under the proposal, the NASD will continue to bill for and collect these fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [6] of the Act, in general, and Section 6(b)(4),[7] in particular, in that it provides for the equitable allocation of reasonable dues,

[4] The PCX's increase in this fee to $45 became effective in July 2001. *See* Securities Exchange Act Release No. 44571 (July 18, 2001), 66 FR 38774 (July 25, 2001) (Notice of filing and Immediate Effectiveness of SR–PCX–2001–21).

[5] The Exchange notes that two other exchanges have recently increased their registration fees, annual fees and transfer fees for Registered Representatives and Registered Options Principals. *See* Securities Exchange Act Release No. 44947 (October 17, 2001), 66 FR 53822 (October 24, 2001) (Notice of Filing and Immediate Effectiveness of SR–Phlx–2001–90); and Securities Exchange Act Release No. 44597 (July 26, 2001). 66 FR 40302 (August 2, 2001) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2001–37).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–44 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–29932 Filed 12–3–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on November 6, 2001, the date the PCX filed the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security; Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting.

DATE: December 11, 2001 10 a.m.–6 p.m.

ADDRESS: Washington, DC—Venue to be determined. Due to unforeseen circumstances the venue has not been identified to date. This information will be published in the **Federal Register** and posted at *www.CSSS.gov* as soon as it is available.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting will be open to the public between 10 a.m. and 6 p.m., with a break for lunch between 12:30 p.m. and 1:30 p.m.

Purpose: This is the seventh deliberative meeting of the Commission. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Tuesday, December 11, at 10 a.m. and ending at 6 p.m., with a break for lunch between 12:30 p.m. and 1:30 p.m. The Commission will be discussing its draft Final Report.

Records are being kept of all Commission proceedings that are subject to public release under the Federal Advisory Committee Act and are available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, transcripts, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov,* email to *comments@CSSS.gov;*
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503;
- Telephone at (202) 343–1255.

Dated: November 27, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–30027 Filed 12–3–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice #3829]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9 a.m. to 1 p.m. on December 19, 2001, in room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD makes recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the December 19 meeting includes discussion of the interagency process on international labor policy formulation.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by open of business December 18, to Eric Barboriak at (202) 647–3664 or fax (202) 647–0431 or email barboriakem@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S.

Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Barboriak at the phone and fax numbers provided above.

Dated: November 28, 2001.

Michael E. Parmly,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. 01–30009 Filed 12–3–01; 8:45 am]

BILLING CODE 4710–18–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on December 12, 2001, from 9 a.m. to 12 noon. The meeting will opened to the public from 9 a.m. to 9:45 a.m. and close to the public from 9:45 a.m. to 12 noon.

DATES: The meeting is scheduled for December 12, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 6057, of the Department of Commerce, located at 14th and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Moll (principal contact), at (202) 482–1316, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the agenda topics to be addressed will be:

- National Trade Estimate Report on Foreign Trade Barriers.
- Chile Free Trade Agreement Negotiations Overview.
- General Agreement on Trade in Services (GATS) December Session.

Elizabeth A. Gianini,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–30024 Filed 12–3–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–239]

WTO Dispute Settlement Proceeding Brought by Brazil Regarding Antidumping Duties Imposed by the United States on Silicon Metal From Brazil

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; correction.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of a correction to the notice published in the **Federal Register** on November 21, 2001, 66FR 58546, titled ''WTO Dispute Settlement Proceeding Brought by Brazil Regarding Antidumping Duties Imposed by the United States on Silicon Metal from Brazil.'' In the section of that notice titled ''Major Issues Raised by Brazil,'' the second sentence of the first paragraph should read, ''However, section 351.106(c) of the DOC's regulation, 19 CFR 351.106(c), applies a 0.5 percent *de minimis* standard in the case of reviews.''

FOR FURTHER INFORMATION CONTACT: Katherine J. Mueller, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–0317.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–29989 Filed 12–3–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–11066]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Maritime Administration, MAR 221, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–5181, or FAX: 202–366–7485. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Designation of Vessels as American Great Lakes Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0521.

Form Numbers: None.

Expiration Date of Approval: June 30, 2002.

Summary of Collection of Information: In accordance with Public Law 101–624, the Secretary of Transportation issued requirements for the submission of applications for designation of vessels as American Great Lakes Vessels. Owners who wish to have this designation must certify that their vessel(s) meets certain criteria established in 46 CFR part 380.

Need and Use of the Information: Application is mandated by statute to establish that a vessel meets statutory criteria for obtaining the benefit of eligibility to carry preference cargoes.

Description of Respondents: Shipowners of merchant vessels.

Annual Responses: One response.

Annual Burden: 1.25 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By order of the Maritime Administrator.

Dated: November 29, 2001.

Joel C. Richard,

Secretary.

[FR Doc. 01–29994 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10288; Notice 2]

Cooper Tire & Rubber Company; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Cooper Tire & Rubber Company (Cooper) has determined that certain Mastercraft, Roadmaster, Starfire and Futura brand tires in the P225/60R15 size do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper and Pep Boys, the brand name owner for the Futura tires produced by Cooper, have petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and have filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on August 14, 2001, with a 30-day comment period (66 FR 42705). NHTSA received no comments on this application.

FMVSS No. 109 requires that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different (S4.3 (e)). The Tupelo, Mississippi, tire manufacturing facility had nine (9) molds involved in tire production during the thirteenth through sixteenth production weeks of 2001, in which the number of polyester tread plies was incorrectly stated. According to Cooper, the subject tires were molded ''TREAD 2 PLY STEEL + 1 PLY POLYESTER, SIDEWALL 2 PLY POLYESTER.'' The correct molding to match the actual tire construction should have been ''TREAD 2 PLY STEEL + 2 PLY POLYESTER, SIDEWALL 2 PLY POLYESTER.

The incorrect number of polyester tread plies was removed from the molds by buffing and the correct number of polyester tread plies inserted; however, prior to the molds being correctly stamped, 503 tires, of which 40 were Futura tires owned by Pep Boys, were inadvertently shipped marked as having only one polyester tread ply.

Cooper stated that the incorrect number of polyester tread plies on each tire does not present a safety-related defect. The involved tires, in fact, have two polyester tread plies instead of one and they comply with all other requirements of 49 CFR 571.109.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act of November 2000 required, among other things, that the agency initiate rulemaking to improve tire label information. In response to section 11 of the TREAD Act, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments addressing the ANPRM, which sought comments on the tire labeling information required by 49 CFR sections 571.109 and 571.119, part 567, part 574, and part 575. Most of the comments were from motor vehicle and tire manufacturers, although several private citizens and consumer interest organizations responded to the ANPRM. With regard to the tire construction labeling requirements of FMVSS 109, S4.3 (d) and (e), most commenters indicated that the information was of little value to consumers. However, the tire construction information is valuable to the tire retreading, repair, and recycling industries, according to several trade groups representing tire manufacturing. The International Tire and Rubber Association, Inc., (ITRA) indicated that the tire construction information is used by tire technicians to determine the steel content of a tire and to select proper retread, repair, and recycling procedures.

In addition to the written comments solicited by the tire labeling ANPRM, the agency conducted a series of focus groups, as required by TREAD, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of the information molded into the tire sidewall with the exception of the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we believe that few consumers are influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) molded into the tire sidewall when making a motor vehicle or tire purchase decision. However, the tire repair, retread, and recycling industries do use the tire construction information, according to comments from industry associations, and the agency will consider this during development of the tire labeling rulemaking.

The agency believes that the best measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered.

Although tire construction affects tire strength and durability, neither the agency nor the tire industry provides information relating the strength and durability of a tire to the number and types of plies in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, tread wear, temperature, and traction when assessing performance capabilities of various tires.

In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety. The agency believes the safety of the users of these tires will not be adversely affected by the noncompliance because most consumers do not base tire purchases or vehicle operation parameters on tire construction information. Additionally, the tire construction is more robust than the label indicates (2 polyester tread plies instead of 1). The agency has reached the conclusion that the noncompliance will not have an adverse effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries, according to ITRA. In this case, the steel used in the construction of the tires is properly labeled.

In consideration of the foregoing, NHTSA has decided that the burden of persuasion has been met and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the applications from Cooper and Pep Boys are granted and the applicants are exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 29, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–30010 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–8925, Notice 2]

Mazda Motors Corporation, Grant of Application for Decision That a Noncompliance Is Inconsequential to Motor Vehicle Safety

Mazda Motors Corporation has determined that all Mazda MPV minivans produced beginning with the 1989 model year through 2001 models manufactured prior to October 6, 2000, and all 1979 through 1993 Mazda B-Series pickup trucks do not meet the labeling requirements of paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' This includes approximately 1,449,000 vehicles. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mazda petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on March 2, 2001, with a 30-day comment period (66 FR 13126). NHTSA received no comments on this application.

The noncompliance with paragraph S5.3 of FMVSS 120 relates to vehicle labeling. The vehicles are all equipped with both certification labels required by 49 CFR part 567 and tire information labels as specified in paragraph S5.3 (b) of FMVSS 120. However the tire information labels do not include the appropriate gross vehicle weight rating (GVWR) and the gross axle weight ratings (GAWR) as required.

Mazda supported its application for inconsequential noncompliance by stating that, in all cases, the part 567 certification labels including the GVWR and GAWR information are located on the driver's door latch post (B-pillar) and the tire information labels are located on the driver's door edge. Both labels are visible simultaneously when the door is open. According to Mazda, the GVWR and GAWR information is also included in the owner's manual for all the subject vehicles beginning with the 1988 model year. Mazda believes that this noncompliance presents no risk to motor vehicle safety and therefore seeks exemption from the notification and remedy requirements. Mazda further stated that it is not aware of any problems or owner complaints resulting from the absence of the GVWR and the GAWR data on the tire information label.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 120, paragraph S5.3, is whether the GVWR and GAWR information for these vehicles is readily available to consumers. Mazda affixed both a tire information label and a vehicle certification label to these vehicles. One of the reasons that FMVSS No. 120 requires that both labels include the GVWR and GAWR information is the fact that the labels need not be located close to one another. According to Mazda, the vehicle certification label, including the GVWR and GAWR for the vehicle, and the tire information label, are close to one another on these vehicles. Since both labels can be seen when the driver's door is open, it is less likely that consumers would be unaware of the GVWR and GAWR information.

In consideration of the foregoing, NHTSA has decided that Mazda has met its burden of persuasion that the noncompliance with FMVSS No. 120, paragraph S5.3, is inconsequential to motor vehicle safety. Accordingly, Mazda's application is granted and the company is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120. In addition, for the reasons explained above, NHTSA plans to propose amending its standard to permit required information to appear on either the tire label or the certification label. (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 29, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–30011 Filed 12–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 27, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 3, 2002, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0046.

Form Number: ATF F 27–G (5520.3).

Recordkeeping Requirement ID Number: ATF REC 5520/2.

Type of Review: Extension.

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates must file an application. ATF uses the application to identify persons and premises that manufacture volatile fruit-flavor concentrates. Volatile fruit-flavor concentrates contain alcohol and have a potential to be used for beverage purposes on which tax is imposed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondents: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 40 hours.

OMB Number: 1512–0565.

Form Number: ATF F 8620.5.

Type of Review: Extension.

Title: Personnel Security Request.

Description: ATF Form 8620.5 will be used as an internal use form to preliminarily screen individuals having a need for access to ATF facilities, data, or information. Information on this form will be used to conduct criminal records searches, security index inquiries, credit histories, and NCIC queries.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 83 hours.

Clearance Officer: Frank Bowers, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 01–29942 Filed 12–3–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 26, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 3, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1476.

Regulation Project Number: INTL–3–95 Final.

Type of Review: Extension.

Title: Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.

Description: The information requested is necessary for the Service to audit taxpayers' returns to ensure taxpayers have properly determined the source of income from sales of inventory produced in one country and sold in another.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 425.

Estimated Burden Hours Per Respondent: 2 hours, 36 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,125 hours.

OMB Number: 1545–1594.

Regulation Project Number: REG–251520–96 Final.

Type of Review: Extension.

Title: Classification of Certain Transactions Involving Computer Programs.

Description: The information requested in regulation Section 1.861–18(k) is necessary for the Commissioner to determine whether a taxpayer properly is requesting to change its method of accounting.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1631.

Regulation Project Number: REG–209619–93 NPRM.

Type of Review: Extension.

Title: Escrow Funds and Other Similar Funds.

Description: Section 468B(g) requires that income earned on escrow accounts, settlement funds, and similar funds be subject to current taxation. This section authorizes the Secretary to issue regulations providing for the current taxation of these accounts and funds as grantor trusts or otherwise. The proposed regulations would amend the final regulations qualified settlement funds (QFSs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,300.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,650 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–29943 Filed 12–3–01; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 66, No. 233

Tuesday, December 4, 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.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 01–293]

Wireless E911 Service, Petition of City of Richardson, TX

Correction

Rule document 01–27605 was inadvertently published in the Proposed Rule section in the issue of Friday, November 2, 2001, appearing on page 55618. It should have appeared in the Rules and Regulations section.

[FR Doc. C1–27605 Filed 11–30–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
December 4, 2001

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, 171, et al.

Hazardous Materials: Requirements for Cargo Tanks; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180

[Docket No. RSPA–98–3554 (HM–213)]

RIN 2137–AC90

Hazardous Materials: Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing a number of revisions to the Hazardous Materials Regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. This proposed rule also addresses three National Transportation Safety Board (NTSB) recommendations and several petitions for rulemaking. By updating and clarifying the regulations, addressing the NTSB recommendations, and responding to petitions for rulemaking, these revisions should increase the safety of cargo tanks transporting hazardous materials, provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators, and manufacturers of cargo tank motor vehicles.

DATES: Comments must be received by February 4, 2002. To the extent possible, we will consider comments received after this date in making our decision on a final rule.

ADDRESSES: Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Commenters should identify the docket number [RSPA–98–3554 (HM–213)] and submit 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 to the docket electronically by accessing the Dockets Management System website at ''*http://dms.dot.gov.*'' Click on ''Help & Information'' to obtain instructions for filing the 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 may view public dockets between the hours of 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays. Internet users may review all comments received by the U.S. Department of Transportation by accessing the Dockets Management System website at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen, Office of Hazardous Materials Standards, RSPA, telephone (202) 366–8553; Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366–4545; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121.

SUPPLEMENTARY INFORMATION: All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket room indicated in the **ADDRESSES** section. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, RSPA will also continue to file, in the docket, relevant information that becomes available after the close of the comment period. Interested persons should periodically examine the docket for new material. Comments should include any relevant data or referenced factual information. In addition, RSPA asks that commenters provide justification for any suggested changes to this NPRM.

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I. Background

On June 12, 1989, the Research and Special Programs Administration (RSPA; we) published a final rule in the **Federal Register** (Docket HM–183, 183A; 54 FR 24982) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) pertaining to cargo tank motor vehicles. We further revised the regulations each year from 1990 through 1995 under dockets HM–183, HM–183A, and HM–183C. Several of these dockets made significant changes to the cargo tank regulations to improve safety; other revisions corrected mistakes and made minor changes. Dockets HM–183 and 183A established the DOT 400 series cargo tank specifications, as well as certification requirements for cargo tank manufacturers. Docket HM–183C contained a number of miscellaneous items that clarified and relaxed certain requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles.

Under 49 CFR 1.73(d), the Federal Motor Carrier Safety Administration (FMCSA) is delegated authority to enforce the HMR, with particular emphasis on highway transportation, including regulations for construction and maintenance of cargo tank motor vehicles (CTMVs). FMCSA and RSPA work closely with the regulated industry through educational assistance activities and FMCSA's compliance and enforcement program. During these activities, we identified several areas in the current regulations that need updating or clarification. In addition, we received requests for clarification of the regulations and petitions for rulemaking. The National Transportation Safety Board (NTSB) has also made several safety recommendations concerning cargo tanks. In this NPRM, we are proposing revisions that would apply to all cargo tanks and revisions that would apply to certain specification cargo tanks or cargo tanks used to transport certain ladings.

II. Proposed Revisions Applicable to All Cargo Tanks

A. Definitions

General. Under Docket HM–183, we adopted a number of definitions for DOT 400-series specification CTMVs. The definitions apply to all specification CTMVs used to transport

hazardous materials. Thus, in this NPRM we are proposing to combine the definitions currently in § 178.345–1(c) with the definitions in § 173.320(a) and make them applicable to all specification CTMVs.

Minimum thickness. We propose to add in § 178.320 a definition for ''minimum thickness'' to clarify how the minimum head and shell thickness for specification cargo tanks must be determined. The proposal defines ''minimum thickness'' to mean the least of: (1) The thickness required by the tables in the original specification; (2) the thickness required to satisfy the structural integrity and accident damage requirements; or (3) the thickness required to satisfy the requirements of the American Society of Mechanical Engineers (ASME) Code, if applicable. This proposal should eliminate confusion as to whether the minimum thickness tables in § 180.407(i) are the governing factor in determining minimum thickness. It is possible that the minimum thickness value prescribed by the ASME Code or the structural integrity requirements may be greater than that required by the minimum thickness tables. For example, an MC 307 cargo tank was manufactured using 10-gauge (0.1345 inches) steel. Upon conducting a thickness test, an inspection/testing facility measured the thickness of the tank at 0.12 inches, which is lower than the 0.1345 inches specified in Table I of § 180.407(i)(5) for 10-gauge steel. However, the MC 307 cargo tank was only required to be manufactured using 12-gauge steel (0.1046 inches) as specified in Part 178. Therefore, the thickness of this tank is above the minimum thickness (0.1046 inches) prescribed for this cargo tank and the cargo tank is suitable for continued service.

Maximum allowable working pressure. Currently, the HMR require a cargo tank's maximum allowable work pressure (MAWP) to be determined based on the lading that will be transported in the cargo tank or the maximum pressure in the tank during loading or unloading. The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking (P–1272) suggesting that a cargo tank's MAWP should be dependent on the physical characteristics of the cargo tank rather than the lading carried in the cargo tank or the method of loading or unloading the cargo tank. In its petition, TTMA notes that a cargo tank manufacturer will not always know the characteristics of the lading that will be transported in the cargo tank and that a manufacturer will not always know the pressure at which the tank will be loaded or unloaded.

In its petition, TTMA also asserts that the current regulations have resulted in confusion in the regulated industry as to whether the static head of lading should be included in the MAWP. TTMA notes that § 178.345–1(k) defines MAWP as the largest of: (1) The pressure prescribed for the lading in part 173; (2) the vapor pressure of the most volatile lading at 115°F plus the maximum static pressure exerted by the lading at the maximum lading density plus any pressure exerted by a gas padding; or (3) the maximum pressure in the cargo tank during loading or unloading. TTMA states that it is not clear if the static head is included in the lading pressure prescribed in Part 173 or the loading/unloading pressure.

We agree with TTMA that there should be no ambiguity in the HMR as to the meaning of MAWP. We also agree that the MAWP should be based on the cargo tank's physical characteristics, but we believe MAWP should also be linked to the requirements of § 173.33 for use by shippers and carriers. The proper matching of the maximum lading pressure conditions defined in § 173.33(c) with the MAWP of a cargo tank by shippers and carriers is critical to providing safety in cargo tank operations. The maximum lading pressure addresses many factors critical to matching a lading to a cargo tank MAWP, including the static head (pressure) generated by a specific lading or the maximum pressure in a tank during loading or unloading. For example, § 173.33(c)(iv) requires the sum of the vapor pressure of the lading at 115°F, plus the tank static head exerted by the lading, plus any pressure exerted by a gas padding, including air, in the tank to be less than or equal to the MAWP of the cargo tank. The pressure defined by this summation is the pressure exerted at the bottom of the tank. When a cargo tank is inverted in a rollover, this pressure is applied to the pressure relief devices installed on the cargo tank. Particularly for large diameter tanks and high-density ladings, this resultant pressure could be sufficient to open the cargo tank's pressure relief devices and drain the contents of the tank, even if the tank were undamaged. Thus, it is critical for shippers and carriers to determine that the MAWP of a cargo tank is greater than or equal to maximum lading pressure derived from the conditions specified in § 173.33. Similarly, cargo tank manufacturers should be familiar with the requirements of § 173.33 in order to provide a cargo tank with an MAWP sufficient to meet the needs of shippers and carriers. To strengthen the linkage between § 173.33 and cargo tank MAWP, we are proposing to revise the definition for MAWP to require the MAWP to be greater than or equal to the maximum lading pressure condition prescribed in § 173.33 for each material.

Corroded/abraded. Although it is used throughout § 180.407, the term ''corroded or abraded'' is not currently defined in the HMR. As a result, there have been many different interpretations concerning the type and extent of corrosion or abrasion that requires thickness testing. Some cargo tank inspection and test facilities perform thickness tests on cargo tanks that do not require such a test; other facilities fail to test cargo tanks that should be thickness tested. External corrosion on cargo tanks is a common occurrence during winter in many geographical areas. Rocks and other debris can chip paint on cargo tanks, causing surface oxidation and rust. Road salt accelerates corrosion. The new definition specifies that ''corroded or abraded'' means a reduction in the material thickness of the cargo tank that is visible to the naked eye.

Corrosive to the tank/valve. We also propose to revise the definition of ''corrosive to the tank/valve'' because of the many requests for clarification that we have received. The regulations require additional and more frequent inspections (internal inspection, thickness testing, upper coupler removal and inspection) for CTMVs transporting a lading that may adversely affect tanks or valves, causing leaks and other safety hazards. The current definition of ''corrosive to the tank/valve'' includes those ladings that meet the corrosivity requirements in § 173.136 for the material of construction of a cargo tank/valve (6.25 mm per year), and other lading where experience shows corrosion exists. The reference to § 173.136 (definition of a Class 8 material) in the current definition has caused confusion. We did not intend that lading designated as ''corrosive to the tank/valve'' would be limited to Class 8 materials or to materials that cause corrosion at a rate of 6.25 mm or more per year. Our intent was to include any lading, not just those classed as Class 8 materials, that corrodes a tank or valve.

The proposed change to the definition of ''corrosive to the tank/valve'' specifies that test data and experience must be used to determine if a specific lading is corrosive to the cargo tank wall or valve. The removal of the reference to § 173.136 is intended to clarify that ''corrosive to the tank/valve'' is not limited to materials with a corrosion

rate of 6.25 mm or more per year. Under this proposal, any test data or experience that indicates any amount of corrosion is sufficient to meet the definition. We welcome comments on any existing sources of corrosion data.

B. Marking of Emergency Shutoff Devices

On May 12, 1993, in Rockville, Maryland, gasoline overflowed from an underground storage tank while it was being filled from an MC 306 CTMV. The gasoline ignited, causing a fire that spread to an adjacent building. The first firefighters on the scene stopped the flow of gasoline by closing the gate valves in a manifold at the rear of the cargo tank. The first responders were unaware of the on-truck remotely actuated means for closing the cargo tank's internal valve. A hazardous materials officer arrived at the scene and activated the on-truck remote shutoff device; however, the inability of the first responders to locate the shutoff device resulted in a risk that could have been avoided. As a result of its investigation of this incident, the NTSB recommended that RSPA require existing and new cargo tank motor vehicles with on-truck remote control mechanisms for internal shutoff valves to be marked for emergency use on all cargo tanks authorized for the transportation of hazardous materials (NTSB # H–93–34).

In response to this recommendation, we are proposing to amend the HMR to require all manually activated on-truck remote shutoff devices for closure of the internal valve to be marked ''Emergency Shutoff.'' The requirement would be effective two years after the publication date of a final rule.

C. Recertification to Original Specification

There appears to be confusion in the regulated industry as to whether cargo tanks that have been modified for specialized or non-hazardous materials service may be re-certified for hazardous materials service. In this NPRM, we propose to allow for the re-certification of a cargo tank to its original specification, provided specific requirements are met. These requirements include documentation to verify that the cargo tank was originally manufactured to a DOT specification, verification by a Registered Inspector that the cargo tank is in compliance with the requirements of the specification, and certification that the cargo tank successfully passed all required tests and inspections. In addition, any repairs performed on MC 306, MC 307, or MC 312 cargo tanks after June 30, 1992, will have to have been performed in accordance with requirements in § 180.413.

An example of a cargo tank that may be recertified to its original specification is an MC 306 cargo tank where its internal self-closing stop valve was removed so that the tank could be used to transport asphalt. As proposed in this NPRM, the cargo tank may be re-certified to its original specification provided an internal shutoff valve is reinstalled, the CTMV meets all other requirements of the specification, and the cargo tank motor vehicle has successfully passed the inspections and tests required in § 180.407(c).

D. Cargo Tank Qualification and Maintenance

We are proposing a number of clarifications to the requirements in Part 180 for cargo tank qualification and maintenance to eliminate confusion. For example, we are proposing to clarify the tests and inspections that must be performed when a cargo tank shows evidence of dents, corroded or abraded areas, or leakage; has sustained damage to an extent that may adversely affect its lading retention capability; or has any other condition that could render it unsafe for the transportation of hazardous materials.

In addition, consistent with an NTSB recommendation (H–95–14), we are proposing to require thickness testing of ring stiffeners and appurtenances on cargo tanks that are constructed of mild steel, high-strength, low-alloy steel, or aluminum, when the ring stiffeners and appurtenances are installed in a manner that precludes an external visual inspection. NTSB investigated two catastrophic cargo tank failures, one that occurred on March 9, 1983, in Beaumont, Texas, and the other on January 6, 1994, in Deltona, Florida. As a result of its investigations, NTSB determined that thickness testing of the cargo tanks' ring stiffeners might have detected the corrosion that caused the failures.

Further, we are proposing to clarify the HMR requirements for repair, modification, stretching, or rebarrelling of cargo tanks. Currently, facilities are allowed to repair, modify, stretch, or rebarrel a non-ASME Code stamped cargo tank provided the facility has an ASME Certificate of Authorization for use of the ''U'' stamp. Full compliance with the National Board Inspection Code (NBIC) is not currently required when working on non-ASME Code stamped cargo tanks if the facility has a ''U'' stamp.

In this NPRM, we are proposing to require facilities to perform repairs, modifications, stretching, or rebarrelling of cargo tanks in conformance with the NBIC. Prior to 1995, the NBIC was only applicable to tanks with an MAWP of 15 psig or greater. However, in 1995 the applicability of the NBIC was extended to all pressure vessels. While the ASME Code is applicable to new construction only, the NBIC sets forth procedures for repairing or modifying pressure vessels. Adopting the NBIC requirements in the HMR for all cargo tank repairs, modifications, stretching, and rebarrelling will provide clarity, consistency, and a greater level of safety. However, we are not proposing to adopt NBIC requirements for certification by an Authorized Inspector, completion of the R–1 form, and stamping tanks with the ''R'' stamp for non-ASME cargo tanks at this time due to cost considerations and concern about the availability of Authorized Inspectors.

Because persons have suffered severe injuries or died while performing repairs to cargo tanks that were not properly cleaned and purged, we are also proposing to clarify and emphasize that the entire CTMV, including void spaces, piping, and vapor recovery systems, be cleaned and purged before doing repairs, modifications, stretchings, rebarrellings, or mountings that involve welding on cargo tanks that transport toxic or flammable lading. We also propose to clarify that modification, stretching, or rebarrelling must be inspected and certified by a Design Certifying Engineer (DCE). The current requirement for a DCE to approve modifications has caused confusion about the level of participation required from the DCE. In addition, we propose to revise specification plate requirements to reflect the modification, stretching, or rebarrelling of a cargo tank. We are proposing to require a supplemental specification plate to be installed adjacent to the original specification plate. Changes to the original specification plate would not be allowed. This proposal addresses TTMA's petition (P–1388) requesting that we require a supplemental plate for changes. However, we are not proposing to adopt TTMA's request to allow the original cargo tank manufacturer to replace the original specification plate if the cargo tank is altered. We believe that the information on the original specification plate should be permanent and not altered, even if the work is done by the original manufacturer.

III. Revisions Applicable to DOT 400-Series Cargo Tanks

We are proposing several revisions to the specifications applicable to the DOT

400-series cargo tanks. These proposals include revisions to: (1) Structural integrity requirements; (2) manhole marking requirements; (3) road clearance allowances; (4) bottom accident protection; (5) specification plate marking; (6) leak testing alternatives; and (7) weld joints. In addition to these changes, which are described below, we are also proposing revisions to the DOT 400-series specifications to make the requirements easier to understand and follow.

A. Structural Integrity Requirements

The HMR currently do not include structural support members in the structural integrity requirements for lightweight attachments welded to DOT 400-series CTMVs. In this NPRM, we are proposing to correct this omission by adding structural support members to the list of attachments to which the structural integrity requirements apply for new construction of DOT–400 series CTMVs.

B. Manhole Marking

Currently, the HMR require manhole covers to be permanently marked with the manufacturer's name, the test pressure, and a certification that the manhole cover meets HMR requirements. This marking enables cargo tank owners, Registered Inspectors, and enforcement personnel to verify that the manhole conforms to applicable regulatory requirements. In this NPRM, we are proposing to specify that manhole assemblies be marked on the outside, where they can be seen without opening the manhole cover or fill opening, thereby enabling persons to see the marking without being exposed to hazardous materials inside the cargo tank. We are proposing that this requirement become effective one year after the effective date of a final rule. The revised marking requirements would apply to newly manufactured cargo tanks and cargo tanks that have their manhole assemblies replaced.

C. Road Clearance

The current HMR requirement for minimum allowable road clearance for DOT 400-series CTMV components or protection devices located between two adjacent axles is at least one-half inch for each foot separating the axles and in no case less than 12 inches. In a petition for rulemaking (P–1325), TTMA requests that we lower the minimum road clearance requirement to permit greater flexibility in the design of landing gear, tire carriers, cabinets, and other components near axles. TTMA suggests that such a revision would permit lowering the center of gravity for some CTMVs, which would improve dynamic stability. TTMA states that it is aware of no situations in which a landing gear failure has punctured a cargo tank.

We agree with TTMA that reducing the center of gravity for CTMVs would be beneficial. Thus, in this NPRM, we are proposing to revise the requirements for minimum road clearance for landing gear within 10 feet of an axle to be no less than 10 inches. We propose to maintain the current clearance requirements for the middle area between axles. The proposed revision would allow landing gear to be lowered by two inches, but would not compromise clearances in the area of a CTMV most vulnerable to contact with the ground—that is, the area midway between a tractor's rear axle and the CTMV rear suspension.

D. MAWP Specification Plate Marking

Current regulations for DOT 406, DOT 407, and DOT 412 cargo tanks require the maximum loading and unloading pressure to be marked on the cargo tank's specification plate. In a petition for rulemaking (P–1212), TTMA asks us to eliminate this marking requirement. TTMA notes that the volume change of liquids transported in DOT 406, DOT 407, and DOT 412 cargo tanks is small and that the maximum loading and unloading rate is calculated in the design of the cargo tank and identified on the specification plate. We agree that the maximum loading and unloading pressure marking is unnecessary because the maximum loading/unloading pressure is reflected in the MAWP. Therefore we are proposing to eliminate it. However, in no situation can the actual pressure in the tank exceed the MAWP.

E. Leak Testing Using EPA Method 27

Currently, the HMR permit cargo tanks equipped with vapor collection equipment to be leak tested in accordance with the Environmental Protection Agency (EPA) ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test'' as set forth in Appendix A to 40 CFR part 60. We propose to clarify the parameters for testing cargo tanks that are used to transport petroleum distillate fuels and are equipped with vapor recovery equipment. EPA regulations at 40 CFR 63.425(e) require cargo tanks equipped with vapor collection systems that are used to transport petroleum distillate fuels to pass an annual certification test for vapor tightness. This annual certification test includes both the Method 27 test for vapor tightness of a cargo tank and a pressure test of the tank's internal vapor valve. The revision proposed in this NPRM specifies that cargo tanks equipped with vapor collection equipment that are used to transport petroleum distillate fuels may be tested in accordance with 40 CFR 63.425(e) instead of the annual leakage test required under § 180.407 of the HMR. In addition, we are proposing that, if the EPA annual certification test in 40 CFR 63.425(e) is used to satisfy the annual leak test requirement, the Method 27 test must be conducted using air. Performing the test using liquid, an alternative allowed by EPA, may mask leakage below the liquid level at the pressure level specified for the test. The EPA Method 27 air test should detect even small leaks in a cargo tank. Therefore, we propose to prohibit use of alternative procedures in section 6 of Method 27 that allow the use of water.

We are also proposing a special marking to designate cargo tanks that have been tested in conformance with EPA's annual certification test for cargo tanks equipped with vapor recovery equipment and used to transport petroleum distillate fuels. The proposed marking is ''K–EPA27.'' The marking would replace the ''K'' marking on a cargo tank if the EPA vapor tightness test methods and procedures as set forth in 40 CFR 63.425(e) are used in place of the leak test. If a cargo tank is tested using both the leak test specified in the HMR and the vapor tightness tests specified in the EPA regulations, it would be marked with both ''K'' and ''K–EPA27''. This proposal establishes a national, uniform marking requirement for cargo tanks tested for vapor tightness in accordance with EPA regulations instead of, or in addition to, the leak test procedures specified in the HMR. This new marking would be applied to cargo tanks that are tested for vapor tightness under EPA procedures beginning one year after the effective date of the final rule.

F. Weld Joints on DOT 407 Cargo Tanks

In a petition (P–1333), TTMA requests that we adopt a weld joint efficiency of 0.85 for head seams in bulkheads on DOT 407 cargo tanks. Based on review of the TTMA petition and additional information, we are proposing in this NPRM that the strength of a weld seam in a bulkhead without radiographic examination of the weld must be 0.85 of the strength of the bulkhead. The welded seam must be a full penetration butt weld, no more than one seam may be used per bulkhead, and the welded seam must be completed before forming the dish radius and knuckle radius.

In its petition, TTMA also requested that we permit spot radiographic examination of weld joints every six months as an alternative to the periodic test. We do not agree with TTMA. Instead, we are proposing that two test specimens of the same material and thickness and joined by the same welding procedure as those to be used in manufacturing the bulkhead must be tested to failure in tension. The ratio of the actual tensile stress to the actual tensile strength of the adjacent material of both samples must be greater than 0.85. The test specimens may represent all the tanks that are manufactured in the same facility within six months after the tests are completed.

IV. Revisions Applicable to MC 331 and MC 338 Cargo Tanks

We are proposing several revisions to the HMR specifications applicable to MC 331 and MC 338 cargo tanks. The proposals include: (1) Revisions to make the specifications consistent with the DOT 400-series cargo tank specification requirements; (2) retrofit requirements for cargo tanks not currently equipped with remote shutoff devices; (3) a new requirement for thermal activation devices on MC 338 CTMVs; (4) revisions to the internal inspection requirements; and (5) revisions to leakage test requirements for cargo tanks in anhydrous ammonia service. In addition to these changes, which are described below, we are also proposing revisions to the MC 331 and MC 338 specifications to make the requirements easier to understand and follow.

A. Consistency With DOT 400-Series Specification

We are proposing a number of changes to the MC 331 and MC 338 specifications to make them consistent with specifications applicable to DOT 400-series CTMVs. The DOT 400-series cargo tank specifications are more contemporary regulations that reflect current industry practices. In addition, the DOT 400-series specifications are performance standards, and, thus, provide greater flexibility to cargo tank designers and manufacturers to meet the DOT requirements. As proposed in this NPRM, we are not imposing additional requirements for MC 331 and MC 338 CTMVs; rather we are increasing flexibility in meeting the requirements by proposing performance standards and additional alternatives.

Under Docket HM–183C (60 FR 17398), we modified the structural integrity requirements for MC 331 and MC 338 CTMVs to conform with the DOT 400-series specification requirements. At that time, however, the related requirements for attachments were not changed. Thus, we propose to make requirements for the design, construction, and installation of attachments, appurtenances, structural support members, or accident protection devices on MC 331 and MC 338 CTMVs consistent with the requirements for DOT 400-series CTMVs. Similarly, we are proposing to revise long-standing requirements for rear-end protection devices on MC 331 and MC 338 CTMVs to authorize the DOT 400-series rear-end protection provisions as an alternative to the current requirements for both MC 331 and MC 338 CTMVs.

We are also proposing changes to the MC 331 and MC 338 specifications for cargo tank support and anchoring for consistency with the DOT 400-series requirements. When the structural integrity requirements for the MC 331 and MC 338 CTMVs were modified under HM–183, the closely related requirements for support and anchoring were not changed. This was an inadvertent error that we now propose to correct. This would apply to newly constructed MC 331 and MC 338 CTMVs.

We propose to require essential information marked on MC 331 and MC 338 CTMV metal specification plates to be consistent with requirements for DOT 400-series CTMVs. Thus, in addition to the information already required, the specification plate would be marked with the cargo tank test pressure; the CTMV certification date if different from the cargo tank certification date; the cargo tank certification date; the shell material specification number; the head material specification number; the maximum design density of lading; the weld material; the minimum thickness of the cargo tank shell; tank maximum allowable working pressure; cargo tank design temperature; cargo tank manufacturer; cargo tank manufacture date; maximum weight of lading; minimum thickness—head; and exposed surface area. The requirement for Vehicle manufacturer's serial number would be removed. MC 331 cargo tanks would be required to add the information concerning linings and heating systems while MC 338 cargo tanks would be required to include information specific to this series. This requirement would apply to new construction and changes on these CTMVs.

In addition, for MC 331 CTMVs, we propose to require certificates for a CTMV that is manufactured in two or more stages. Each manufacturer who performs a manufacturing function on the incomplete CTMV must provide the succeeding manufacturer with a certificate that states the function that was performed and must also provide certificates received from previous manufacturers, Registered Inspectors, and Design Certifying Engineers. Further, we propose to clarify the roles of the original manufacturer of a cargo tank and the assembler of a CTMV in documenting on the certificate those areas of the specification that are not met or specification shortages, including valves, piping, fittings, and the like. The person who installs the components that bring the tank into full compliance with the specification would be required to stamp the certification date on the specification plate and issue a Certificate of Compliance.

B. Remote Shutoffs

On December 28, 1988, in Ashland, Virginia, a pipe fitting on an MC 331 cargo tank transporting sulfur dioxide failed during a delivery operation. The driver of the CTMV suffered a fatal injury while attempting to close the cargo tank's internal valve. The CTMV was not equipped with a remote mechanical means to close the internal valve. As a result of its investigation, NTSB recommended that RSPA require MC 330, MC 331, and MC 338 CTMVs to be equipped with on-truck remote mechanical means to close the internal valve (NTSB # H–90–91).

In a final rule published November 3, 1994 (HM–183C; 50 FR 55162), we adopted a requirement for MC 331 and MC 338 CTMVs constructed after January 1, 1995, to be equipped with on-truck remote shutoff devices. For CTMVs constructed prior to January 1, 1995, we required each MC 330 and MC 331 CTMV used to transport flammable gas; flammable liquid; hydrogen chloride, refrigerated liquid; or anhydrous ammonia, and each MC 338 CTMV used to transport flammable ladings to be retrofitted with an on-truck remote shutoff device.

In this NPRM, we are proposing to require all MC 330, MC 331, and MC 338 CTMVs to be retrofitted with an on-truck remote mechanical shutoff device that meets the requirements for the applicable specification. The retrofit must be accomplished within three years from the effective date of a final rule. Under this proposal, CTMVs used to transport only argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon are excepted from the requirement for on-truck remote shutoffs.

We are also proposing to require MC 338 CTMVs to be equipped with a means of thermal activation for closing the internal self-closing stop valve. On

June 4, 1998 (63 FR 30572), RSPA established a negotiated rulemaking committee under Docket RSPA–97–2718 (HM 225A). During the negotiated rulemaking process, the committee discussed the safety benefits of fusible elements, which provide a heat-activated means for closing a valve. Fusible elements melt when subjected to sufficiently high temperatures, thereby closing the valve to which they are affixed. The HMR currently require installation of on-truck remote closures with a means of thermal activation on MC 331 cargo tanks. Consistent with the committee's recommendation, we are proposing that internal self-closing stop valves be equipped with a means of thermal activation on all MC 338 cargo tanks. This requirement would not apply to tanks transporting only argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon.

C. Inlet and Outlet Fittings on MC 331 Cargo Tanks

Currently, § 178.337–9 of the HMR requires the use of malleable metals for the construction of valves and fittings on MC 331 cargo tanks. The National Propane Gas Association (NPGA) petitioned for a change to § 178.337–9 to require liquid filling and vapor equalization fittings on MC 331 cargo tanks to be constructed of malleable steel or ductile iron only (P–0935). In its petition, NPGA stated that this change would help to prevent the occurrence of piping failures when fittings made of soft metals, such as brass or copper, are struck by an outside force. We agree. Accordingly, we are proposing to require new or replacement primary valves and fittings used in liquid filling or vapor equalization on MC 331 cargo tanks to be constructed of malleable steel or ductile iron. This proposal is consistent with the National Fire Protection Association (NFPA) Standard 58 and is currently the standard industry practice.

D. Internal Visual Inspections of Insulated Tanks

Currently, the HMR provide an exception for insulated MC 330 and MC 331 cargo tanks from the requirement to undergo an internal visual inspection in conjunction with the annual external visual inspection. The exception was included in the HMR to facilitate inspection of insulated MC 330 and MC 331 cargo tanks that did not have manholes or inspection openings, making it impossible to enter the cargo tank to perform an internal visual inspection. Because insulation precludes a visual inspection of the exterior of the cargo tank, and there is no means to inspect the interior of the tank, it was decided that the only way to verify the structural integrity of the cargo tank was to subject it to a hydrostatic or pneumatic pressure test at one-year intervals.

The exception applies to insulated MC 330 and MC 331 cargo tanks, irrespective of whether the cargo tank is equipped with a manhole or inspection opening. However, many of these cargo tanks are, in fact, equipped with manholes or inspection openings. We believe that operators should be permitted the option of verifying the structural integrity of these cargo tanks with an internal visual inspection rather than a more costly pressure test. Therefore, we are proposing to permit the owner of an insulated cargo tank that is equipped with manholes or inspection openings to perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank. As appropriate, these tanks would continue to be required to undergo a complete internal visual inspection and pressure test at the intervals specified in § 180.407(c).

E. Leakage Tests for Cargo Tanks in Anhydrous Ammonia Service

The HMR currently require cargo tanks to be leak tested at no less than 80 percent of the tank design pressure or MAWP. The regulations include an exception for MC 330 and MC 331 cargo tanks in liquefied petroleum gas (LPG) service that permits them to be leakage tested at not less than 414 kPa (60 psig). This exception was adopted (Docket HM–183, 183A; 56 FR 27872; June 17, 1991) because normal operating pressure for cargo tanks in LPG service varies with ambient temperature; thus, a cargo tank in LPG service would have to be leakage tested under conditions simulating the highest ambient temperature to which it will be subjected to assure that it is not operated at pressures exceeding leakage test pressure.

The Fertilizer Institute (TFI) filed a petition (P–1255) requesting that we allow anhydrous ammonia cargo tanks to be included in this exception. TFI states that, because changes in ambient temperatures result in substantial changes in the normal operating pressure for cargo tanks in anhydrous ammonia service, a cargo tank in anhydrous ammonia service would need to be leakage tested on the hottest day of each year to ensure that it is not operated at pressures exceeding the leakage test pressure. TFI stated that this causes ''extreme hardship'' for companies transporting anhydrous ammonia in cargo tanks. TFI further stated that anhydrous ammonia is a compressed gas with properties that are similar to those of LPG.

RSPA recognized the difficulty described by TFI and, on August 23, 1996, granted an exemption, DOT E–11551, to allow cargo tanks in anhydrous ammonia service to be leakage tested at a lower pressure. However, due to differences in the vapor pressures of LPG and anhydrous ammonia, the exemption permits leakage testing of cargo tanks in dedicated anhydrous ammonia service at not less than 483 kPa (70 psig), rather than 414 kPa (60 psig) as is currently permitted for LPG. We are proposing to incorporate the provisions of DOT E–11551 into the HMR.

In its petition for rulemaking, TFI also requests that we amend the HMR to decrease the frequency of leakage testing to every two years, instead of annually, for cargo tanks in dedicated anhydrous ammonia service. TFI correctly observes that cargo tanks in chlorine service are only required to be leakage tested every two years and that one reason given by RSPA for extending this retest period to two years was that chlorine emits an odor that permits easy detection of a leak. TFI notes that anhydrous ammonia also has an easily detectable odor. However, the primary reason for a two-year leak test interval for cargo tanks in chlorine service is that these tanks are subjected to very stringent construction standards. The detectability of leakage due to an odor was a minor consideration. Therefore, RSPA is not proposing to adopt this portion of the TFI petition.

V. Petitions for Rulemaking and Other Recommendations

We have a number of petitions for rulemaking requesting changes to the CTMV requirements. Most of the requested changes are proposed in this NPRM. A brief summary of these petitions follows:

P-Number	Section	Request
0935	178.337–9	Require liquid filling and vapor equalization fittings on MC 331 cargo tanks be made of malleable steel or ductile iron only. Filed by NPGA. RSPA agrees.

P-Number	Section	Request
1199	180.407	Allow an external heating system on a CTMV to be pressure tested at its MAWP. Filed by NTTC. RSPA agrees.
1212	178.345–17	Remove requirement to mark the maximum loading and unloading pressures on a cargo tank's specification plate. Filed by TTMA. RSPA agrees.
1255	180.407	Extend frequency of leakage test for MC 330 and MC 331 CTMVs in anhydrous ammonia service from one to two years. Filed by TFI. RSPA partially agrees.
1262	180.407	Allow testing of heating systems on CTMV at the heating system design pressure instead of 1.5 times the heating systems design pressure. Filed by TTMA. RSPA agrees.
1272	178.320	Revise definition of ''MAWP''. Filed by TTMA. RSPA partially disagrees.
1292	180.407	Allow pressure and leakage test to be performed by a manufacturer or repairer. Filed by TTMA. RSPA agrees.
1300	180.407	Revise minimum thickness requirements for MC 300 series CTMVs. Filed by TTMA. RSPA agrees.
1322	180.413	Clarify requirements for certification of cargo tank mounting by a DCE and supervision of the mounting by a Registered Inspector. Filed by TTMA. RSPA agrees.
1325	178.345–8	Revise minimum road clearance requirements for DOT 400-series CTMVs. Filed by TTMA. RSPA agrees.
1333	178.347–1	Allow weld seam joint efficiency of 0.85 for head seams in bulkheads on DOT 407 CTMVs . Filed by TTMA. RSPA agrees.
1343	180.415	Require the requalification date marking on a CTMV to be the date the test or inspection expires instead of the date the test or inspection was last performed. Filed by NTTC. RSPA agrees.
1388	180.413	Require attachment of a supplemental specification plate that reflects changes during modification, stretching or rebarreling of a CTMV. Filed by TTMA. RSPA partially agrees.
1410	171.1	Incorporate by reference latest editions of certain TTMA industry documents. Filed by TTMA. RSPA agrees.

National Transportation Safety Board (NTSB) Recommendations

H–90–91 Require controls for internal shut-off valves for the discharge system to be installed at remote locations on all newly constructed and currently authorized DOT specification cargo tanks that are used for the transportation of any HM. See § 180.405.

H–93–94 Require remote control mechanisms for internal shutoff valves to be marked for emergency use on all cargo tanks authorized for the transportation of HM. See § 172.328.

H–95–14 Revise inspection/testing requirements for all cargo tanks constructed of mild and high-strength, low-alloy steel that are used to transport HM to require at least once each year or immediately when visual inspections indicate corrosion, measurement of the thickness of appurtenances (including ring stiffeners) that form air cavities adjacent to external cargo tank sheet material when the cargo tank sheet material cannot be visually inspected. If the thickness of the appurtenance material has corroded to a predetermined percentage of its manufactured thickness, require that access to the tank sheet material within the air cavity be made and that the thickness of the tank sheet material to be measured. See § 180.407.

VI. Section-by-Section Review

Part 107

We propose to revise the title of Subpart F to clarify that the registration requirements apply to cargo tank facilities that test, inspect, and repair cargo tanks, and to manufacturers, assemblers, and Design Certifying Engineers.

Section 107.502. We propose to revise the definition of ''assembly'' to include the installation of linings or coatings to the inside wall of a cargo tank wall and the installation of equipment or components during the manufacturing process that are necessary to conform to the specification requirements. This proposal is meant to clarify that the term ''assembler'' is not limited to a person who mounts cargo tanks on motor vehicle suspension parts, but also includes a person who installs equipment or components during the manufacturing process.

Section 107.503. We propose to require information on the registration statement for cargo tank manufacturing, assembling, and repair facilities to indicate whether a facility is conducting tests and inspections at a location other than the address listed in the registration form. The purpose of this proposal is to identify registered facilities that are using mobile inspection/testing equipment.

Part 171

Section 171.7. We propose to revise this section to incorporate the June 1, 1998 edition of Truck Trailer Manufacturers Association (TTMA) RP No. 61–98 ''Performance of Manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks;'' the July 1, 1997 edition of TTMA RP No. 81–97 ''Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks;'' and the June 1, 1998 edition of TTMA TB No. 107, ''Procedure for Testing In-Service Unmarked, and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers.'' This proposal responds to a petition from TTMA (P–1410). In addition, we are proposing to incorporate by reference the American Petroleum Institute Recommended Practice 1604 ''Closure of Underground Petroleum Storage Tanks,'' Third Edition, dated March 1996.

Section 171.8. We propose to revise the definitions of ''Design Certifying Engineer (DCE)'' and ''Registered Inspector (RI)'' to permit an individual who does not meet the educational requirements in the definitions to be recognized as a DCE or RI if the person was performing those functions for three years prior to September 1, 1991, and meets all other qualifications. In addition, we are proposing to eliminate a requirement for an individual to have registered with the DOT before December 31, 1995. The regulations currently permit an individual who does not meet the educational requirements to be recognized as a DCE or RI if the individual had at least three years of experience in performing the function of a DCE or RI, prior to September 1, 1991, and if the individual

registered with the Department before December 31, 1995.

We are also proposing to change the definition of ''Cargo tank'' to include intermediate bulk containers (IBCs) in the list of specifications under which cargo tanks are not manufactured. In addition, we propose to revise the definition of ''Maximum Allowable Working Pressure'' to include a new section reference.

Part 172

Section 172.101. We propose to modify the Hazardous Materials Table by adding a new Special Provision 144 in Column (7) for the following proper shipping names: Diesel fuel; Fuel, aviation, turbine engine; Fuel oil (no. 1, 2, 4, 5, or 6); Gas oil or Diesel fuel or Heating oil, light; Gasohol; Gasoline; Hydrocarbons, liquid, n.o.s.; Kerosene; Petroleum crude oil; Petroleum distillates, n.o.s. or Petroleum products, n.o.s; and Petroleum oil. Special Provision 139 clarifies that underground storage tanks (USTs) may be shipped as unregulated materials if they meet the definition of ''empty'' in § 173.29 or if they are cleaned, purged, or made inert in accordance with the American Petroleum Institute Standard 1604 for USTs.

Section 172.102. We propose to revise paragraph (c)(1) to add Special Provision 144 concerning the transportation of empty USTs, as detailed above.

Section 172.328. We are proposing to add a new paragraph (d) to require all manually activated on-vehicle remote shutoff devices for closure of a cargo tank's internal shutoff valve to be marked ''Emergency Shutoff.'' This requirement would become effective two years after the effective date of a final rule published in the **Federal Register**.

Part 173

Section 173.33. We propose to re-designate the minimum design requirements for cargo tanks used to transport Packing Group I and II liquid ladings in current paragraph (g) as new paragraph (c)(6) and to redesignate paragraph (h) as paragraph (g). Paragraph headings would be added for paragraphs (f) and (g).

Section 173.150. We propose to remove the references to §§ 173.21, 173.24, 173.24a, and173.24b in paragraph (f)(3)(viii). Current paragraph (f)(3)(vii) requires compliance with Subpart B of part 173, so these references are redundant.

We also propose to revise paragraph (f)(3) by adding a new paragraph (ix) to clarify that hazardous materials (HM) training requirements apply to persons involved with the transportation of a combustible liquid in a bulk package or a combustible liquid that is also a hazardous substance, a hazardous waste, or a marine pollutant. In 1992, RSPA reviewed the costs and safety benefits of the training requirement (Docket HM–126F; 57 FR 20952) and found HM training to be justified. However, the training requirement was inadvertently omitted from this section.

Part 177

Section 177.834. We propose to revise paragraph (j) of this section to specify that all manhole closures must be closed and secured on cargo tanks containing hazardous materials or residues of hazardous materials. Cargo tanks that are cleaned and purged may have open manhole closures.

Part 178

Section 178.320. We are proposing to revise paragraph (a) to add definitions applicable to cargo tanks that are currently in § 178.345–1(c). In addition, we propose to revise and move the definition of maximum allowable working pressure (MAWP) from § 178.345–1(k) to paragraph (a). Finally, we are proposing to replace the term ''stop-valve'' with ''stop valve'' in paragraph (a) each place it appears.

We propose to revise paragraph (b) to state specifically that accident damage protection devices must be certified by a DCE. FMCSA has found that there is a misunderstanding among assemblers installing cargo tanks onto a motor vehicle chassis as to whether the rear-end protection devices must be certified by a DCE. Because rear-end protection devices are required by the specification to meet specific structural integrity requirements, the design of these devices must be certified by a DCE.

In addition, paragraph (d) would be added to clarify that ''minimum thickness'' is the greatest of: (1) The value specified in the special provisions of the Hazardous Materials Table; (2) the value calculated or specified in the applicable section; or (3) the value specified in the tables in § 180.407.

Section 178.337–3. We propose to revise paragraph (g) to add structural support members to the list of attachments to which this paragraph applies. In addition, the proposed revision: (1) Groups all requirements for mounting pads in § 178.337–3(g)(2); (2) deletes an unnecessary requirement that mounting pads be the same material as the cargo tank and, instead, allows the pad material to be selected by the DCE; (3) achieves conformity with relevant requirements for DOT 400-series cargo tanks in § 178.345–3; and (4) eliminates the exception for a small gap in the continuous weld around mounting pads while permitting continued use of weep holes or telltale holes as currently allowed.

Section 178.337–8. We are proposing to revise paragraph (a)(5)(iii) to remove an expired compliance date.

Section 178.337–9. In paragraph (b)(2), we propose a revision to require the use of malleable steel or ductile iron in the construction of inlet and outlet fittings on MC 331 cargo tanks.

For clarity, we are proposing to move paragraph (b)(5), which addresses requirements for grouping piping and fittings, to § 178.337–10 as new paragraph (e). This would consolidate all of the requirements for accident damage protection.

Section 178.337–10. We are proposing to revise the section heading from ''Protection of fittings'' to ''Accident damage protection.'' In addition, we are proposing to re-designate chlorine tank requirements in current paragraph (c) as paragraph (d) and to re-designate the rear-end protection requirements in current paragraph (d) as paragraph (c). Proposed redesignated paragraph (c) would be revised to incorporate the requirements for MC 338 cargo tanks and authorize the DOT 400 series rear-end protection provisions as an alternative to existing requirements for MC 331 cargo tank motor vehicles.

We also propose to re-designate § 178.337–9(b)(5) as new § 178.337–10(e) and to move requirements concerning shear sections in current § 178.337–12 to new § 178.337–10(f).

Section 178.337–12. This section currently prescribes requirements for shear sections located adjacent to and outboard of internal valves or excess flow valves. This section would be removed and reserved and the current requirements would be designated as new paragraph (f) in § 178.337–10, thereby consolidating all accident damage protection requirements in one section.

Section 178.337–13. We propose to revise this section for consistency with the DOT 400-series requirements for cargo tank support and anchoring. When the structural integrity requirements for MC 331 cargo tank motor vehicles were modified under HM–183 (54 FR 24982), the closely-related requirements for support and anchoring were not changed. Therefore, we are now proposing changes to the requirements for support and anchoring. In addition, we propose to relax a requirement that mounting pads be the same material as the cargo tank material

of construction by allowing the pad material to be selected by the DCE.

Section 178.337–17. We propose to revise paragraph (a) to require essential information marked on MC 331 CTMV metal identification plates to be consistent with the requirements for DOT 400-series CTMVs so that this essential information is readily available to operators and enforcement officials. This requirement would become effective one year from the date of publication of a final rule in the **Federal Register** and would be applicable to new construction only. Metal identification plates for MC 331 CTMVs certified after the effective date of the final rule would be marked with the following information:

(1) DOT-specification number MC 331;

(2) Original test date (Orig. Test Date) month and year;

(3) MAWP in psig;

(4) Cargo tank test pressure (Test P), in psig;

(5) Cargo tank design temperature (Design Temp. Range)__°F to__°F;

(6) Cargo tank motor vehicle manufacturer (CTMV mfr.);

(7) Cargo tank motor vehicle certification date (CTMV cert. date), if different from the cargo tank certification date;

(8) Cargo tank manufacturer (CT Mfr.);

(9) Cargo tank manufacture date (CT date Mfr.);

(10) Cargo tank certification date (CT cert. date);

(11) Material specification number—shell (Shell matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type;

(12) Material specification number—heads (Head matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type.

Note— When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***);

(13) Maximum weight of lading (Max. Payload) in pounds;

(14) Exposed surface area in feet;

(15) Nominal capacity (Water Cap.), in pounds;

(16) Maximum design density of lading (Max. lading density), in pounds per gallon;

(17) Weld material (Weld matl.);

(18) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches). Parenthetical abbreviations noted above would be permitted;

(19) Manufactured Thickness—shell (Mfg. Shell-thick), in inches. When manufactured shell thicknesses are not the same for different areas, show (top ____, side , bottom ____, in inches). Parenthetical abbreviations noted above would be permitted;

(20) Minimum Thickness—head (Min. Head-thick), in inches;

(21) Manufactured Thickness—head (Mfg. Head-thick), in inches;

(22) Lining Material (Lining), if applicable;

(23) Heating system design pressure (Heating sys. press.) in psig, if applicable;

(24) Heating system design temperature (Heating sys. temp.) in °F, if applicable;

Section 178.337–18. We propose to re-designate paragraphs (a)(3) and (a)(4) as (a)(5) and (a)(6), respectively. We propose to add new paragraphs (a)(3) and (a)(4) detailing requirements for certifying cargo tanks manufactured in stages by two or more manufacturers.

Section 178.338–2. We propose to revise paragraph (c) to except certain steel alloys from impact test requirements for consistency with exceptions allowed in the ASME Code. Section 178.338–1(c) states that each tank must be designed and constructed to the ASME Code. Therefore, because the HMR specify that these tanks should be constructed of materials authorized by the ASME Code, exceptions in the ASME Code from impact testing for certain steel alloys should also be recognized in the HMR.

Section 178.338–3. We propose to revise paragraph (g) to add structural support members to the list of attachments to which this paragraph applies. The proposed revision also incorporates more flexible, performance language consistent with structural integrity requirements permitted for DOT 400-series CTMVs.

Section 178.338–10. We are proposing to revise the section heading to read ''Accident damage protection'' instead of ''Collision damage protection.'' In addition, we are proposing to revise paragraph (c) to authorize the DOT 400-series cargo tank rear-end protection provisions as an alternative to existing requirements for MC 338 cargo tank motor vehicles.

Section 178.338–11. We propose to revise paragraph (c) to require internal self-closing stop valves to be equipped with a means of thermal activation. In addition, we are revising paragraph (c) for clarity.

Section 178.338–13. When the structural integrity requirements for MC 338 cargo tank motor vehicles were modified under HM–183 to conform with structural integrity requirements of the DOT 400-series, the closely-related requirements for supports and anchoring were not changed. Therefore, we are proposing changes to the requirements for support and anchoring. In addition, we are proposing to modify an unnecessary requirement that mounting pads be the same material as the cargo tank to allow the pad material to be selected by the Design Certifying Engineer.

We are proposing to delete current paragraph (a) and re-designate current paragraphs (b) and (c) as paragraphs (a) and (b), respectively. References to ''Appendix G'' in each of these paragraphs would be revised to read: ''(* * * Appendix G of Section VIII, Division 1 of the ASME Code).'' In addition, a new paragraph (c) would be added to require the use of mounting pads that conform to the requirements of § 178.338–3(g) when welding a structural support member or accident damage protection device directly to the cargo tank wall.

Section 178.338–18. We propose to revise paragraph (a) to require information on MC 338 CTMV metal identification plates to be consistent with the requirements for DOT 400-series CTMVs. This requirement would become effective one year from the date of publication of a final rule in the **Federal Register** and would be applicable to new construction only. Metal identification plates for new MC 338 CTMVs would be marked with the following information:

(1) DOT-specification number MC 338 (MC 338);

(2) Original test date (Orig. Test Date) month and year;

(3) Tank MAWP in psig;

(4) Cargo tank test pressure (Test P), in psig;

(5) Cargo tank design temperature (Design Temp. Range)__°F to__°F;

(6) Cargo tank motor vehicle manufacturer (CTMV mfr.);

(7) Cargo tank motor vehicle certification date (CTMV cert. date), if different from the cargo tank certification date;

(8) Cargo tank manufacturer (CT Mfr.);

(9) Cargo tank manufacture date (CT date Mfr.);

(10) Cargo tank certification date (CT cert. date);

(11) Material specification number—shell (Shell matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type;

(12) Material specification number—heads (Head matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type.

Note— When the shell and head materials are the same thickness, they

may be combined (Shell & head matl, yyy***);

(13) Maximum weight of lading (Max. Payload) in pounds;

(14) Exposed surface area in feet;

(15) Nominal capacity (Water Cap.), in pounds net at 60 °F., with the tank at its coldest operating temperature, after deduction for the volume above the inlet to the pressure relief device or pressure control valve, structural members, baffles, piping, and other appurtenances inside the tank;

(16) Maximum design density of lading (Max. lading density), in pounds per gallons;

(17) Weld material (Weld matl.);

(18) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top __, side __, bottom __, in inches). Parenthetical abbreviations noted above would be permitted;

(19) Manufactured Thickness—shell (Mfg. Shell-thick), in inches. When manufactured shell thicknesses are not the same for different areas, show (top __, side __, bottom __, in inches). Parenthetical abbreviations noted above would be permitted;

(20) Minimum Thickness—head (Min. Head-thick), in inches;

(21) Manufactured Thickness—head (Mfg. Head-thick), in inches;

(22) Lining Material (Lining), if applicable;

(23) ''Insulation for Oxygen Service'' or ''Not Authorized for Oxygen Service,'' as appropriate;

(24) Marked rated holding time for at least one cryogenic liquid, in hours, and the name of that cryogenic liquid (MRHT__ hrs, name of cryogenic liquid). MRHT markings for additional cryogenic liquids may be displayed on or adjacent to the specification plate.

Section 178.345–1. For consistency, we propose to revise paragraph (c) by removing the definitions and placing them in alphabetical order in § 178.320(a). In addition, we propose to remove paragraph (k) and move the definition of ''maximum allowable working pressure'' to § 178.320(a).

Section 178.345–2. We propose to revise paragraph (b) to address the requirements for minimum thickness as specified in 178.320(d).

Section 178.345–3. We are proposing to revise paragraph (b) by adding a new paragraph (b)(3) to require that all cargo tank designers, manufacturers, owners, and users must consider all conditions specified in § 173.33(c) when matching the performance characteristic of the cargo tank to the characteristics of the lading being transported.

We are proposing to revise paragraph (f) to add requirements for structural support members. In addition, in paragraph (f)(3), the references to paragraphs (g)(1) and (g)(2) would be corrected to read (f)(1) and (f)(2). We are also revising paragraph (f) for clarity and consistency.

Section 178.345–5. We propose to revise paragraph (e) to specify that manhole markings must be placed on the outside of the manhole assembly where they can be seen without opening the manhole cover or fill opening.

Section 178.345–8. We propose to revise paragraph (a)(5) to specify minimum road clearance requirements for landing gear within 10 feet of an axle. In response to a 1996 petition (P–1325) from the Truck Trailer Manufacturing Association (TTMA), we are proposing a minimum road clearance requirement of 10 inches. TTMA suggests this height to allow for clearance when a CTMV wheel may drop over a curb or for crossing over rises, such as a railroad crossing. We agree that this clearance is necessary to prevent scraping or damaging the CTMV when encountering these situations.

In paragraph (d), we propose a revision to clarify that manufacturers must comply with applicable requirements in the Federal Motor Carrier Safety Regulations at 49 CFR 393.86 and with paragraph (b) of this section.

Section 178.345–10. In paragraph (a), we propose to add a sentence to clarify that pressure relief vents are not required to conform to the ASME Code. The requirement for a cargo tank to be ''constructed in accordance with the ASME Code'' or ''constructed and certified in conformance with the ASME Code'' applies to the construction of the cargo tank walls and closure devices. Certification to the ASME Code may be done without the installation of pressure relief devices. Sections 178.345–10, 178.346–3, 178.347–4, and 178.348–4 set forth requirements for pressure relief systems for DOT 400-series cargo tanks. These requirements are different from and supersede the ASME Code venting requirements.

Section 178.345–13. In § 178.345–13, we propose to correct references to read §§ 178.346–5, 178.347–5, and 178.348–5 respectively. These section numbers were previously changed, and this NPRM proposes to update appropriate reference citations.

Section 178.345–14. We propose to revise paragraph (b)(1) to require that the words ''See variable specification plate'' be added to the name plate on cargo tanks built to more than one specification. This requirement is consistent with industry practice and the proposed wording in § 180.413(d)(3)(vi).

We also propose to revise paragraphs (c)(6) and (c)(7) to eliminate the maximum loading and unloading pressure marking requirement from the specification plate.

Section 178.346–1. In paragraph (d)(6), the reference ''§ 178.345–10'' would be corrected to read ''§ 178.346–3''; and in paragraph (d)(7) the reference ''§ 178.345–13 would be corrected to read ''§ 178.346–5.''

Section 178.346–2. We propose to revise the text and table titles to be consistent with the minimum thickness requirements in § 178.320(d).

Section 178.346–5. We propose to revise paragraph (c) to clarify the parameters for testing cargo tanks that are used to transport petroleum distillate fuels and are equipped with vapor recovery equipment. These cargo tanks may be tested in accordance with EPA's annual certification test requirements as set forth in 40 CFR 63.425(e). To satisfy the leakage test requirements, however, we are proposing that the Method 27 test must be performed using air and not liquid.

Section 178.347–1. We propose a minor editorial correction in paragraph (c) to change the word ''accordance'' to ''conformance.'' We propose to add paragraph (d)(9) to provide for a weld joint efficiency of 0.85 for head seams in bulkheads on DOT 407 CTMVs.

We propose in paragraph (d)(5) to change the reference to ''§§ 178.345–5 and 178.347–5,'' to read ''§ 178.347–3.'' In addition, in paragraph (d)(6) the reference to ''§ 178.345–10,'' and the reference in paragraph (d)(7) to ''§ 178.345–13,'' would be changed to read ''§ 178.347–4'' and ''§ 178.347–5,'' respectively.

Section 178.347–2. We propose to revise paragraph (a) and the table titles to be consistent with the minimum thickness requirements in § 178.320(d).

Section 178.348–1. We propose to remove the reference to ''§ 178.348–5,'' in paragraph (e)(2)(v). We also propose to change the reference to ''§ 178.348–10,'' in paragraph (e)(2)(vi), to read ''§ 178.348–4.'' In addition, we propose to change the second reference to ''§ 178.348–13,'' in paragraph (e)(2)(vii), to read ''§ 178.348–5.''

Section 178.348–2. We propose to revise paragraph (a) and the table titles for consistency with the minimum thickness requirements in § 178.320(d).

Part 180

Section 180.403. We propose to define the term ''corroded or abraded'' to mean any visible reduction in the material thickness of the cargo tank wall or valve

due to pitting, flaking, gouging, or chemical reaction to the material surface. In addition, we propose to modify the definition for ''corrosive to the tank or valve'' to mean that the lading has been shown through experience or test data to reduce the thickness of the tank wall or valve.

Section 180.405. We propose to modify paragraph (b) to allow a cargo tank motor vehicle that was originally built to a standard authorized by an exemption to be marked and certified to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification after August 31, 1995. Currently, paragraphs (d), (e), and (f) outline steps that must be taken prior to this certification. Although the cargo tanks should have been marked and certified before August 31, 1995, FMCSA and RSPA believe there may be a number of cargo tanks in operation that have not been certified to the appropriate specification. The practice of certifying these cargo tanks to the applicable MC 300-series specification was previously authorized. Continuing to permit these tanks to be marked and certified would not decrease the current level of safety. This proposal would not authorize these tanks to be used in DOT-specification service, after the expiration of the exemption under which they were manufactured, unless the necessary changes have been made and the tank is certified.

Also, we propose to add paragraph (b)(2)(iv) to require any repairs performed on MC 306, MC 307, or MC 312 cargo tanks after June 30, 1992 to have been conducted in accordance with § 180.413.

We propose to remove paragraph (g)(3). The period for retrofitting manholes has expired and the regulation is obsolete.

We propose to revise paragraph (k) to require MC 300-series cargo tanks that have a pressure relief system set at 3 psig and that have no MAWP or design pressure marked on the specification plate, or an MAWP or design pressure of less than 3 psig marked on the specification plate, to be re-marked with an MAWP or design pressure of not greater than 3 psig. This provision is currently allowed, but not required.

We propose to revise paragraph (l)(2)(iii), which prescribes the load that a rear-end tank protection device or rear bumper is required to withstand, to be consistent with the requirements for rear-end protection devices in § 178.345–8(d)(3). Currently, the rear-end protection device or rear bumper is required to withstand a 2 ''g'' load uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle. As proposed, the rear bumper or rear-end protection device would be required to withstand the horizontal load at an angle not exceeding 10 degrees to the longitudinal axis of the vehicle. This proposal would make the angle of load application consistent with the rear-end damage protection devices installed on new DOT 400-series CTMVs, as revised on November 3, 1994 (Docket HM–183C; 59 FR 55167).

We also propose to add a new paragraph (o) to require MC 330, MC 331, and MC 338 cargo tanks that are not equipped with on-truck remote shutoff devices to be retrofitted with on-truck remote shutoff devices that meet the requirements of the applicable specification. In this NPRM, we are proposing a three-year retrofit program for existing cargo tanks not equipped with an on-truck remote shutoff feature.

Section 180.407. We propose to revise paragraph (a)(2) to remove the phrase ''or during loading or unloading'' to limit the maximum pressure in the tank to the MAWP, except when the tank is undergoing a pressure test only.

We propose to revise paragraphs (b)(1) and (b)(2) to clarify the tests and inspections that must be conducted when a cargo tank shows evidence of dents, corroded or abraded areas, leakage, has sustained damage to an extent that may adversely affect its lading retention capabilities, or any other condition that might render it unsafe for transportation in hazardous materials service.

In addition, paragraph (b)(4) would be removed because the inspection and testing requirements for cargo tanks that have been modified from their original design specifications are currently outlined in § 180.413 and are redundant in this section.

We are proposing to revise paragraph (d)(1) to correct references for hydrostatic and pneumatic testing of cargo tanks where the visual inspection is precluded because the cargo tank is lined, coated, or designed so as to prevent access for internal inspection.

In response to NTSB recommendation H–95–14, we are also proposing to revise paragraph (d)(4) to require thickness testing of ring stiffeners and appurtenances on cargo tanks constructed of mild steel or high-strength, low-alloy steel and aluminum that are installed in a manner that precludes an external visual inspection of the cargo tank.

We propose to revise paragraph (g) to replace the term ''re-closing pressure relief valve'' with ''self-closing pressure relief valve.'' This change would clarify that loading and unloading vents that open and close mechanically during loading and unloading operations are not subject to the bench testing requirements. As proposed, the revision would specify that self-closing pressure relief devices, such as normal vents (1 psig vents) installed on MC 306 and DOT 406 cargo tanks, must be removed from the cargo tank for inspection and testing or replaced in conjunction with the pressure test. In addition, paragraph (g)(1)(v) would be removed because the 5-year phase in period has expired.

In paragraph (g)(4), we propose to reduce the test pressure for cargo tank heating systems as requested in petitions (P–1199) and (P–1262) from NTTC and TTMA, respectively. NTTC members who own and operate DOT-specification CTMVs with external heating systems have found that these systems cannot withstand 1.5 times the design pressure as currently specified in paragraph (g)(4). The most vulnerable parts of the typical external heating system are the flexible connectors (rubber or elastomerics) that are used to interconnect heat exchanger panels. Because these heating systems are covered with insulation, a failure can cause expensive, time-consuming repairs. Evidently, before the adoption of Part 180 periodic testing, system designers made no provision for testing at 1.5 times operational conditions, a level that is routinely recognized in the design of conventional piping systems. For these reasons, NTTC and TTMA asked RSPA to reduce the test pressure to the maximum operating pressure of each system.

We propose to revise paragraph (h)(1) to require internal and external self-closing stop valves to be tested during the leak test, adjacent tanks in a multi-compartment CTMV to be separately tested, and cargo tanks in liquefied compressed gas service to be externally inspected for leaks during leakage tests by a means other than using a pressure gauge.

We propose to add paragraph (h)(1)(iv) to require MC 330 or MC 331 cargo tanks in dedicated service for anhydrous ammonia to be leakage tested at not less than 483 kPa (70 psig). In addition, we propose to add paragraph (h)(1)(v) to require non-specification cargo tanks subject to testing under § 173.8(d)(6) to be leak tested at a pressure of 16.5 kPa (2.4 psig). Section 173.8 requires non-specification cargo tanks authorized by that section to be tested and inspected in the same manner as required for an MC 306 CTMV. Many non-specification cargo tanks are not marked with a MAWP or

design pressure. This requirement would ensure that these cargo tanks are leakage tested in the same manner as MC 306 CTMVs.

We propose to revise paragraph (h)(2) to clarify the parameters for testing cargo tanks used to transport petroleum distillate fuels that are equipped with vapor recovery systems. These cargo tanks may be tested in accordance with EPA's annual certification test requirements as set forth in 40 CFR 63.425(e). To satisfy the leakage test requirements, however, we are proposing that the Method 27 test must be performed using air and not liquid. Under this proposal, the hydrostatic test alternative included in Method 27 may not be used to satisfy the leakage test requirements. We believe that the pneumatic test is a better test method for detecting leaks.

We propose to revise paragraph (i) and the titles of the tables in § 180.407(i)(5) by adding wording that is consistent with the proposed minimum thickness requirements in § 178.320(d).

Also, we propose to revise paragraph (i)(6) to change the wording ''maximum lading density'' to ''maximum weight of lading or reduced maximum working pressure, or combinations thereof'', and to make other relevant editorial revisions. Currently, if a cargo tank does not meet the minimum thickness required to satisfy the structural integrity requirements, the existing provisions allow for a downgrade of the maximum lading density, but do not recognize other factors directly related to the stress levels experienced by the cargo tank. This change is consistent with cargo tank design practices that evaluate both the weight of lading carried by the cargo tank and the pressure on the cargo tank wall as determining factors for minimum in-service thickness. The proposed change also responds to a petition (P–1300) from TTMA.

Section 180.409. We propose to revise paragraph (a) to add a reference to the definition of Registered Inspector in § 171.8. to clarify that a person must meet the minimum qualifications set forth in the definition in order to be qualified to perform tests and inspections required by § 180.407(c). This proposed change is based on a petition (P–1292) from TTMA.

Section 180.413. We propose to revise paragraph (a) requirements for performing repairs, modifications, stretching, rebarrelling, or remounting a cargo tank. Specifically, we propose to explicitly state that a facility repairing any specification cargo tanks must adhere to the quality control procedures (e.g. welder qualifications and approved welding procedures) in the National Board Inspection Code (NBIC) except requirements for inspection by an Authorized Inspector, preparation of an R–1 Form, or stamping of the ''R'' stamp on the cargo tank. This was our intent in 1989 when, under Docket HM–183, we changed the regulations to require that repair facilities hold either a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp or a valid ASME Certificate of Authorization for use of the ASME ''U'' stamp. FMCSA has discovered numerous instances where, although a facility holds a valid ''U'' or ''R'' stamp, the quality control procedures used to obtain the stamp were not utilized during the repair. One example is the use of ''lap patches'' which are prohibited under the NBIC. This revision will prohibit this and other un-safe practices being discovered during repairs of non-ASME stamped cargo tanks. In addition, the registration and cleaning and purging requirements would be moved from paragraphs (b)(4) and (d)(8) to paragraph (a)(2). In addition, we propose to revise paragraph (c) for clarity.

In paragraph (d), we propose to revise the requirements for stretching, modifying, or rebarrelling a cargo tank to clarify the intent of the regulation. Specifically, we propose to eliminate the need for testing in accordance with § 180.407, which is currently required by § 180.413(d)(4)(iv). Testing the adequacy of welded modifications, stretchings, or rebarrellings would be accomplished by testing specified in paragraph (d)(3)(iv) of this section (formerly § 180.413(d)(10)). In paragraph (d), RSPA also proposes to clarify that a modification, stretching, or rebarrelling must be certified by a DCE.

In paragraph (d)(4)(v), we propose to require a supplemental specification plate to be installed adjacent to the original specification plate. This proposed change eliminates the provision that currently allows changes to the original specification plate. In addition, paragraph (d)(4), in its entirety, would be re-designated as paragraph (d)(3). The provisions of paragraph (d)(5) would be re-worded and moved to (d)(4).

We are proposing to move the provisions contained in paragraphs (d)(6) and (7) to a new paragraph (e) to eliminate confusion about what is required when a cargo tank is re-mounted onto a new chassis. New paragraph (e) is based on a petition (P–1322) from TTMA and would clarify requirements for certification of mounting by a DCE and supervision of the mounting by a Registered Inspector. Current paragraph (e) would be re-designated as paragraph (f).

Section 180.415. We propose to revise paragraph (b)(3)(vi) to require a special marking, ''K-EPA27,'' on cargo tanks that have been tested in accordance with EPA requirements for testing cargo tank vapor tightness. Under this proposal, this marking would replace the ''K'' marking if EPA's annual certification test, as set forth in 40 CFR 63.425(e), is used instead of the leakage test in § 180.407(h)(1), or would be in addition to the ''K'' marking if the cargo tank undergoes both the leakage test and the EPA annual certification test. This proposal would provide a nationally uniform marking for cargo tanks that pass the annual certification test in accordance with EPA requirements.

In addition, after October 1, 2001, RSPA proposes to change the date that is marked on the tank from the date the test or inspection was last performed to the date the test or inspection expires, preceded by the letter ''N.'' This responds to petition P–1343 submitted by NTTC. RSPA agrees with the request that by indicating when the test or inspection expires, and subsequently when the test or inspection is next due, owners, operators, and inspectors will be able to more easily determine if the cargo tank is meeting the requirements.

Section 180.417. We propose to require additional information to be provided on inspection and test reports to enable owners and operators of cargo tanks to more effectively review the results of the test or inspection. The information required by the revised paragraph (b)(1) would provide important information about the cargo tank and its service that may affect the type and method of test to be performed. This information would be supplied by the cargo tank owner or carrier to the re-qualification or maintenance facility.

The specific information, proposed in paragraph (b)(2), is information that the inspection or testing facility would provide to the cargo tank owner or carrier and concerns the compliance status of the cargo tank. The information is currently available to the inspection or testing facility but is not usually given to the cargo tank owner. Current paragraph (b)(2) would be re-designated as paragraph (b)(3).

We propose to revise paragraph (d) to clarify what documents must accompany the cargo tank when ownership changes. Currently, §§ 180.413(e) and 180.417(d) require the seller to provide copies of certain documents and records to the buyer, upon the sale of a cargo tank. The proposed change would consolidate these requirements into one section.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. RSPA has prepared a preliminary Regulatory Evaluation assessing potential costs, benefits and savings of the proposed changes. The Regulatory Evaluation is available for review in the public docket on the DOT Docket Management System website, *http://dms.dot.gov.* RSPA considered three alternatives: (1) Taking no regulatory action; (2) clarifying and updating the regulations, responding to several petitions for rulemaking, and addressing three NTSB recommendations; and (3) responding to NTSB recommendations only. RSPA chose Alternative 2 because it would increase safety, reduce compliance costs, and provide greater flexibility in design and construction of cargo tanks.

We estimate the total annual cost savings to the industry resulting from implementation of the proposals in this NPRM would be $3,521,600. At the same time the industry would incur increased costs of compliance totaling $2,199,167 the first year and $1,449,270 each following year. The overall net benefits would be $1,222,433 the first year and $2,072,330 each subsequent year.

Increasing clarity and thereby understanding of the regulations, facilitates compliance, and reduces risks to the public and environment. While some proposals in this Notice would result in costs and safety benefits, others would result in savings while not sacrificing safety. Overall, the estimated savings of these proposals are greater than the estimated costs. The proposals with the most associated costs are proposals based on safety concerns and NTSB recommendations, which are based on events that occurred in serious accidents. These proposals would increase safety for people and property.

In this Notice, RSPA invites comments on the costs and savings associated with each of the proposed changes.

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, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not 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 (5) above and would preempt state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at § 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. RSPA proposes that the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

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.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on the assessment in this preliminary regulatory evaluation, and information generally available on the number and size of potentially affected entities, we find that:

- All small entities that engage in the manufacture, operation, testing or inspection of certain DOT specification cargo tank motor vehicles would be subject to some or all of the proposed rules;
- In each instance where regulatory proposals would require a new or increased cost to a regulated party, the cost is a modest $100 or less per cargo tank;
- Small entities would also be able to take advantage of the relaxations in the proposed rule, resulting in a net reduction of regulatory costs.

RSPA estimates that most of the approximately 3,700 interstate and 5,500 intrastate motor carriers that would be subject to the requirements of this rule are small businesses. There are also approximately 7,000 cargo tank inspection/testing facilities subject to the requirements that are estimated to be small businesses. We estimate that operators of existing fleets of cargo tank motor vehicles would incur costs of approximately $75 per year for each of the approximately 5,000 affected series 307, 312, 407 and 412 cargo tank motor vehicles in corrosive material service, and $100 every two years for thickness testing of appurtenances on the estimated 15,000 cargo tanks in that same series. In neither case is the additional cost likely to have a significant economic impact on the operator's net income or ability to remain competitive.

In the case of manufacturers/assemblers of series 406, 407 and 412 cargo tank motor vehicles, the proposed changes involve a new requirement for the application of mounting pads that is estimated to increase their cost to manufacture/assemble each cargo tank motor vehicle by $100. We expect that cost will be passed through to the person purchasing the cargo tank. Also, since the cost is modest, we do not anticipate a decreased carrier demand for cargo tanks.

Although there are still other provisions in this rule that would present an added cost to these small

businesses, there are also safety benefits that have the potential to save money and protect the viability of small businesses by lowering the risk of a catastrophic accident. Most of the provisions of the rule are directed toward individual cargo tanks. Since small businesses operate fewer cargo tanks, most of the cost of this proposed rule would affect larger businesses. The proposed rule includes several provisions that would provide savings to small businesses by allowing experienced Registered Inspectors and Design Certifying Engineers to continue to perform functions for which they were previously qualified, allowing recertification of certain cargo tanks to their original specification, and relaxing requirements for leakage testing of cargo tanks in anhydrous ammonia service that are operated almost exclusively by entities that are small businesses (including small farms).

In addition to the above compliance costs, a number of proposed relaxations would allow for a potential net reduction in regulatory costs. For example, owners of cargo tanks would be able to re-certify their cargo tanks to the original specification. Manufacturers of MC 338 cargo tanks would be able to take advantage of the relaxation of mounting requirements, which will save engineering and construction costs. Likewise, the revisions for bottom damage protection devices would create further possible reductions in compliance costs. These and other relaxations offset the additional requirements, while maintaining current safety standards.

In consideration of the above, while the proposed rule would apply to a substantial number of small entities, I certify that the economic impact on those small entities would not be significant.

E. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0014, Cargo Tank Specification Requirements, with 130,861 burden hours and $1,734,350 annual costs. RSPA believes that this proposed rule may result in decreased annual burden hours and costs. If these proposals are finalized, the current approval would be required to be revised and resubmitted to OMB for extension and re-approval.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection that RSPA may submit to OMB for extension and re-approval based on the requirements in this proposed rule. RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in this proposed rule since the information collection was last approved. RSPA estimates that the total information collection and recordkeeping burden as proposed in this rule would be revised as follows:

OMB No: 2137–0014.

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 102,021.

Total Annual Burden Cost: $4,088,350.

One Time Start Up Cost: $1,595,000.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, RSPA will submit the revised information collection and recordkeeping requirements to the Office of Management and Budget for approval.

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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

RPSA has performed an Environmental Assessment and has determined this proposed rule does not have any significant negative impacts to the environment and may result in a small net benefit from the proposal to allow the recertification of cargo tanks that allows older cargo tanks to be used rather than discarded. Therefore, we find that there are no significant environmental impacts associated with this proposed rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

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.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. The title of Subpart F would be revised to read as follows:

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers

3. In § 107.502, paragraph (a)(1) would be revised to read as follows:

§ 107.502 General registration requirements.

(a) * * *

(1) *Assembly* means the performance of any of the following functions when the function does not involve welding on the cargo tank wall:

(i) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component;

(ii) The installation of equipment or components necessary to meet the specification requirements prior to the certification of the cargo tank motor vehicle; or

(iii) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

* * * * *

4. In § 107.503, paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) would be redesignated as paragraphs (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) respectively, and new paragraph (a)(3) would be added to read as follows:

§ 107.503 Registration statement.

(a) * * *

(3) A statement indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in paragraph (a)(2) of this section;

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In § 171.1, in the paragraph (a)(3) table, a new entry for ''American Petroleum Institute'' would be added in appropriate alphabetical order and under ''Truck Trailer Manufacturers Association,'' the entries ''TTMA RP No. 81'' and ''TTMA RP No. 61–94'' would be removed, the entry ''TTMA TB No. 107'' would be revised, and two new entries would be added in appropriate alpha-numeric order, to read as follows:

§ 171.7 Reference material.

(a) Matter incorporated by reference * * *

* * * * *

(3) Table of material incorporated by reference. * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Petroleum Institute 1220 L Street, NW, Washington, D.C. 20005–4070:	
API Recommended Practice 1604 Closures of Underground Petroleum Storage Tanks, 3rd Edition, March 1996''	171.201
* * * * * * *	
Truck Trailer Manufacturers Association * * *	
TTMA RP No. 61–98, Performance of Manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks, June 1, 1998	180.405
TTMA RP No. 81–97, Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks, July 1, 1997 Edition	178.345–10
TTMA TB No. 107, Procedure for Testing In-Service, Unmarked, and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers, June 1, 1998 Edition	180.405
* * * * * * *	

* * * * *

7. In § 171.8, the definitions for ''Cargo tank,'' ''Design Certifying Engineer,'' ''MAWP,'' and ''Registered Inspector'' would be revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures (for the definition of a tank, see § 178.320, § 178.337–1, or § 178.338–1 of this subchapter, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

* * * * *

Design Certifying Engineer means a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to perform stress analysis of pressure vessels and otherwise determine whether a cargo tank design and construction meets the applicable DOT specification. In addition, Design Certifying Engineer means a person who meets, at a minimum, any one of the following:

(1) Has an engineering degree and one year of work experience in cargo tank structural or mechanical design;

(2) Is currently registered as a professional engineer by appropriate authority of a state of the United States or a province of Canada; or

(3) Has at least three years' experience in performing the duties of a Design Certifying Engineer prior to September 1, 1991.

* * * * *

MAWP means maximum allowable working pressure. For DOT specification cargo tanks used to transport liquid hazardous materials, see § 178.320(c) of this subchapter.

* * * * *

Registered Inspector means a person registered with the Department in accordance with Subpart F of part 107

of this chapter who has the knowledge and ability to determine whether a cargo tank conforms to the applicable DOT specification. In addition, Registered Inspector means a person who meets, at a minimum, any one of the following:

(1) Has an engineering degree and one year of work experience;

(2) Has an associate degree in engineering and two years of work experience;

(3) Has a high school diploma (or General Equivalency Diploma) and three years of work experience; or

(4) Has at least three years' experience performing the duties of a Registered Inspector prior to September 1, 1991.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In the § 172.101 Hazardous Materials Table, the following entries would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quality limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* *		*		*	*		*		*			
D	Diesel fuel	3	NA1993	III	None	144, B1, 1B3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
I	Diesel fuel	3	UN1202	III	3	144, B1, 1B3, T2, TP1.	150	203	242	60 L	220 L	A	
	* *		*		*	*		*		*			
	Fuel, aviation, turbine engine	3	UN1863	I	3	144, T11, TP1, TP8.	150	201	243	1 L	30 L	E	
				II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
				III	3	144, B1, IB3, T2, TP1.	150	203	242	60L	220 L	A	
D	Fuel oil (*No. 1, 2, 4, 5, or 6*)	3	NA 1993	III	3	144, B1, IB3 T4, TP1, TP29.	150	203	242	60 L	220 L	A	
	* *		*		*	*		*		*			
	Gas oil	3	UN1202	III	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A	
	* *		*		*	*		*		*			
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol.*	3	NA1203	II	3	144	150	202	242	5L	60 L	E	
	Gasoline	3	UN1203	II	3	144, B33, IB2, T4, TP1.	150	202	242	5 L	60 L	E	
	* *		*		*	*		*		*			
	Hydrocarbons, liquid, n.o.s	3	UN3295	I	3	144, T11, TP1, TP8.	150	201	243	1 L	30 L	E	
		3	UN3295	II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B	
		3	UN3295	III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
	* *		*		*	*		*		*			
	Kerosene	3	UN1223	III	3	144, B1, IB3, T2, TP2.	150	203	242	60 L	220 L	A	

	*	*	*		*	*		*		*			
	Petroleum crude oil	3	UN1267	I	3	144, T11, TP1, TP8.	None	201	243	1 L	30 L	E
				II	3	144, IB2 T4, TP1, TP8.	150,	202	242	5 L	60 L	B
				II	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A
	Petroleum distillates, n.o.s. *or* Petroleum products, n.o.s.	3	UN1268	I	3	144, T11, TP1, TP8.	150	201	243	1 L	30 L	E
				II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B
				III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A
	*	*	*		*	*		*		*			
D	Petroleum oil	3	NA1270	I	3	144, T11, TP1, TP9.	None	201	243	1 L	30 L	E
				II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B
				III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	202 L	A
	*	*	*		*	*		*		*			

10. In § 172.102, in paragraph (c)(1), special provision 144 would be added in numerical order to read as follow:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

144 If transported as a residue in an underground storage tank (UST), as defined in 40 CFR 280.12, that has been cleaned and purged or rendered inert according to the American Petroleum Institute (API) Standard 1604, then the tank and this material are not subject to any other requirements of this subchapter. However, sediments remaining in the tank that meet the definition for a hazardous material are subject to the applicable regulations of this subchapter.

* * * * *

11. In § 172.328, a new paragraph (d) would be added to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(d) After [Two Years From Effective Date of Final Rule], each on-vehicle manually-activated remote shutoff device for closure of the internal self-closing stop valve must be identified by marking ''Emergency Shutoff'' in letters at least 1.5 inches in height, in a color that contrasts with its background, and located in an area immediately adjacent to the means of closure.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

13. In § 173.33, current paragraphs (g) and (h) would be redesignated as paragraphs (c)(6) and (g), respectively, and paragraph headings for current paragraph (f) and redesignated paragraph (g) would be added to read as follows:

§ 173.33 Hazardous materials in cargo tanks motor vehicles.

* * * * *

(f) *Substitute packagings.* * * *

(g) *Remote control of self-closing top valves—MC 330, MC 331 and MC 338 cargo tanks.* * * * .

14. In § 173.150, paragraphs (f)(3)(vii) and (f)(3)(viii) would be revised and paragraph (f)(3)(ix) would be added to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform to the requirements of § 173.203;

(viii) The requirements of §§ 173.1, 174.1, 177.804, 177.817, and 177.834 of this subchapter, except § 177.834 (i)(3); and

(ix) The training requirements of subpart H of part 172 of this subchapter.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

15. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

16. In § 177.834, paragraph (j) introductory text would be revised to read as follows:

§ 177.834 General requirements.

* * * * *

(j) *Manholes and valves closed.* Except for a cargo tank conforming to § 173.29(b)(2) of this subchapter, a person may not drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

17. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

18. In § 178.320, paragraphs (a) and (b)(1) would be revised and paragraph (d) would be added to read as follows:

§ 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.

(a) *Definitions.* For the purpose of this subchapter:

Appurtenance means any attachment to a cargo tank that has no lading retention or containment function and provides no structural support to the cargo tank.

Baffle means a non-liquid-tight transverse partition device that deflects, checks or regulates fluid motion in a tank.

Bulkhead means a liquid-tight transverse closure at the ends of or between cargo tanks.

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings and closures (for *tank*, see § 178.345–1(c), § 178.337–1, or § 178.338–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but that, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

Cargo tank wall means those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and that, when closed as for transportation of lading, yield the minimum volume of the cargo tank assembly.

Charging line means a hose, tube, pipe, or a similar device used to pressurize a tank with material other than the lading.

Companion flange means one of two mating flanges where the flange faces are in contact or separated only by a thin leak-sealing gasket and are secured to one another by bolts or clamps.

Connecting structure means the structure joining two cargo tanks.

Constructed and certified in accordance with the ASME Code means a cargo tank is constructed and stamped in accordance with the ASME Code, and is inspected and certified by an Authorized Inspector.

Constructed in accordance with the ASME Code means a cargo tank is constructed in accordance with the ASME Code with authorized exceptions (see §§ 178.346, 178.347, and 178.348) and is inspected and certified by a Registered Inspector.

Design type means one or more cargo tanks that are made—

(1) To the same specification;

(2) By the same manufacturer;

(3) To the same engineering drawings and calculations, except for minor variations in piping that do not affect the lading retention capability of the cargo tank;

(4) Of the same materials of construction;

(5) To the same cross-sectional dimensions;

(6) To a length varying by no more than 5 percent;

(7) With the volume varying by no more than 5 percent (due to a change in length only); and

(8) For the purposes of § 178.338 only, with the same insulation system.

External self-closing stop valve means a self-closing stop valve designed so that

the self-stored energy source is located outside the cargo tank and the welded flange.

Extreme dynamic loading means the maximum loading a cargo tank motor vehicle may experience during its expected life, excluding accident loadings resulting from an accident, such as overturn or collision.

Flange means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting, or other attachment.

Inspection pressure means the pressure used to determine leak tightness of the cargo tank when testing with pneumatic pressure.

Internal self-closing stop valve means a self-closing stop valve designed so that the self-stored energy source is located inside the cargo tank or cargo tank sump, or within the welded flange, and the valve seat is located within the cargo tank or within one inch of the external face of the welded flange or sump of the cargo tank.

Lading means the hazardous material contained in a cargo tank.

Loading/unloading connection means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose, pipe, or device is attached.

Loading/unloading outlet means a cargo tank outlet used for normal loading/unloading operations.

Loading/unloading stop valve means the stop valve farthest from the cargo tank loading/unloading outlet to which the loading/unloading connection is attached.

Manufacturer means any person engaged in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall. This term includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension component that involves welding on the cargo tank wall. A *manufacturer* must register in accordance with subpart F of Part 107 of this chapter.

MAWP means the maximum pressure allowed at the top of the tank in its normal operating position. The *MAWP* must be calculated as prescribed in Section VIII (Division 1) of the ASME Code (see § 171.7 of this subchapter). In use, the MAWP must be greater than or equal to the maximum lading pressure conditions prescribed in § 173.33 of this subchapter for each material transported.

Maximum lading pressure. See § 173.33(c) of this subchapter.

Minimum thickness. See paragraph (d) of this section.

Multi-specification cargo tank motor vehicle means a cargo tank motor vehicle equipped with two or more cargo tanks fabricated to more than one cargo tank specification.

Normal operating loading means the loading a cargo tank motor vehicle may be expected to experience routinely in operation.

Nozzle means a subassembly consisting of a pipe or tubular section with or without a welded or forged flange on one end.

Outlet means any opening in the shell or head of a cargo tank, (including the means for attaching a closure), except that the following are not *outlets*: a threaded opening securely closed during transportation with a threaded plug or a threaded cap, a flanged opening securely closed during transportation with a bolted or welded blank flange, a manhole, a gauging device, a thermometer well, or a pressure relief device.

Outlet stop valve means the stop valve at a cargo tank loading or unloading outlet.

Pipe coupling means a fitting with internal threads on both ends.

Rear bumper means the structure designed to prevent a vehicle or object from under-riding the rear of another motor vehicle. See § 393.86 of this title.

Rear-end tank protection device means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

Sacrificial device means an element, such as a shear section, designed to fail under a load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the cargo tank and the sacrificial device. Operation of the *sacrificial device* must leave the remaining piping and its attachment to the cargo tank intact and capable of retaining lading.

Self-closing stop valve means a stop valve held in the closed position by means of self-stored energy, that opens only by application of an external force and that closes when the external force is removed.

Shear section means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

Shell means the circumferential portion of a cargo tank defined by the basic design radius or radii excluding the bulkheads.

Stop valve means a valve that stops the flow of lading.

Sump means a protrusion from the bottom of a cargo tank shell designed to facilitate complete loading and unloading of lading.

Tank means a container, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Test pressure means the pressure to which a tank is subjected to determine pressure integrity.

Toughness of material means the capability of a material to absorb energy represented by the area under a stress strain curve (indicating the energy absorbed per unit volume of the material) up to the point of rupture.

Vacuum cargo tank means a cargo tank that is loaded by reducing the pressure in the cargo tank to below atmospheric pressure.

Variable specification cargo tank means a cargo tank that is constructed in accordance with one specification, but that may be altered to meet another specification by changing relief device, closures, lading discharge devices, and other lading retention devices.

Void means the space between tank heads or bulkheads and a connecting structure.

Welded flange means a flange attached to the tank by a weld joining the tank shell to the cylindrical outer surface of the flange, or by a fillet weld joining the tank shell to a flange shaped to fit the shell contour.

(b) * * * (1) Each cargo tank or cargo tank motor vehicle design type and each accident damage protection device design must be certified to be in conformance with the specification requirements by a Design Certifying Engineer who is registered in accordance with Subpart F of part 107 of this chapter.

* * * * *

(d) *Shell and head thickness.* The minimum required shell and head thickness for a cargo tank is specific to the hazardous material transported and is the least of the following:

(1) The minimum thickness for a specific hazardous material as required by the special provisions specified in column 7 in the § 172.101 Hazardous Materials Table and the requirements of Part 173 of this subchapter as specified in column 8c in the same table;

(2) The thickness as calculated or specified in the applicable specification; or

(3) For MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tanks, the in-service minimum thickness

prescribed in Tables I and II of § 180.407(i)(5) of this subchapter, for the minimum thickness specified by Tables I and II of the applicable specification(s).

19–20. In § 178.337–3, paragraph (g) would be revised to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(g) The design, construction, and installation of an attachment, appurtenance to the cargo tank, structural support member between the cargo tank and the vehicle or suspension component, or accident protection device must conform to the following requirements:

(1) Structural members, the suspension sub-frame, accident protection structures, and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to the cargo tank wall such as a conduit clip, brake line clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by a continuous weld or in such a manner as to preclude formation of pockets which may become sites for corrosion. Attachments meeting the requirements of this paragraph (g)(2) are not authorized for cargo tanks constructed under part UHT, Section VIII (Division 1) of the ASME Code (see § 171.7 of this subchapter).

(3) Except as prescribed in paragraphs (g)(1) and (g)(2) of this section, the welding of any appurtenance, accident protection device, or structural support member to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell wall or head wall to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.25 inch may be used when the shell or head thickness is over 0.25 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must—

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of Section VIII (Division 1) of the ASME Code (see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the attached structural member.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and a tank or jacket seam weld.

21. In § 178.337–8, paragraph (a)(5)(iii) would be revised to read as follows:

§ 178.337–8 Openings, inlets, and outlets.

(a) * * *

(5) * * *

(iii) A cargo tank motor vehicle used to transport refrigerated liquids such as argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon, or mixtures thereof.

* * * * *

22. In § 178.337–9, (b)(2) would be revised and paragraph (b)(5) would be removed and reserved, to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(2) Pipe joints must be threaded, welded, or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable steel or ductile iron must be used in the construction of primary valves and fittings used in liquid filling or vapor equalization. Where copper tubing is permitted, joints must be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 538°C (1000°F). The method of joining tubing may not reduce the strength of the tubing.

* * * * *

23. In § 178.337–10, the section heading and paragraphs (c) and (d) would be revised, and paragraphs (e) and (f) would be added, to read as follows:

§ 178.337–10 Accident damage protection.

* * * * *

(c) *Rear-end protection.* Rear-end protection devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and piping in the event of a rear end collision. The bumper design must transmit the force of the collision directly to the chassis of the vehicle. The rear bumper and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank, or within 30 horizontal degrees thereof. The rear bumper dimensions must meet the requirements of § 393.86 of this title and extend vertically to a height adequate to protect all valves and fittings located at the rear of the cargo tank from damage that could result in loss of lading; or

(2) Conform to the requirements of § 178.345–8.

(d) *Chlorine tanks.* A chlorine tank must be equipped with a protective housing and a manway cover to permit the use of standard emergency kits for controlling leaks in fittings on the dome cover plate. The housing and manway cover must conform to the Chlorine Institute's Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwg. 137–3 (see § 171.7 of this subchapter).

(e) *Piping and fittings.* Piping and fittings must be grouped in the smallest practicable space and protected from damage as required in this section.

(f) *Shear section.* Shear sections or sacrificial devices are required on the following attachments:

(1) A section that will break under undue strain must be provided adjacent to or outboard of each valve specified in § 178.337–8(a)(3) and (4).

(2) Internal self-closing stop valves, excess flow valves and check valves must be protected by a shear section or other sacrificial device. The sacrificial device must be located in the piping system outboard of the stop valve and within the accident damage protection to prevent any accidental loss of lading. The device must break at no more than

70 percent of the load that would be required to cause the failure of the protected lading retention device, part or cargo tank wall. The failure of the sacrificial device must leave the protected lading retention device and its attachment to the cargo tank wall intact and capable of retaining product.

§ 178.337–12 [Removed and Reserved]

24. Section 178.337–12 would be removed and reserved.

25. Section 178.337–13 would be revised to read as follows:

§ 178.337–13 Supporting and anchoring.

(a) A cargo tank that is not permanently attached to or integral with a vehicle chassis must be secured by the use of restraining devices designed to prevent relative motion between the cargo tank and the vehicle chassis when the vehicle is in operation. Such restraining devices must be readily accessible for inspection and maintenance.

(b) On a cargo tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the structural member used in place of a motor vehicle frame, the cargo tank must be supported by external cradles. A cargo tank mounted on a motor vehicle frame must be supported by external cradles or longitudinal members. Where used, the cradles must subtend at least 120 degrees of the shell circumference.

(c) The design calculations of the support elements must satisfy the requirements of § 178.337–3, (a), (b), (c), and (d).

(d) Where any cargo tank support is attached to any part of a cargo tank head, the stresses imposed upon the head must be provided for as required in paragraph (b) of this section.

(e) After [Effective Date of Final Rule], no cargo tank structural support member or rear-end protection device may be welded directly to the cargo tank wall. Mounting pads must be used and conform to the requirements of § 178.337–3(g).

26. In § 178.337–17, paragraph (a) would be revised to read as follows:

§ 178.337–17 Marking.

(a) *Metal identification plate.* Each cargo tank certified after [Effective Date of Final Rule] must have a corrosion resistant metal plate permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. It must be maintained in a legible condition. Each insulated cargo tank must have an additional plate, as described, attached to the jacket in the location specified. If the plate is attached directly to the cargo tank wall by welding it must be welded thereto before the cargo tank is postweld heat treated. The plate must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the following information, in addition to that required by the ASME Code, in characters at least 3/16 inch high (parenthetical abbreviations may be used):

(1) DOT-specification number MC 331 (DOT MC 331);

(2) Original test date (Orig. Test Date) month and year;

(3) MAWP in psig;

(4) Cargo tank test pressure (Test P), in psig;

(5) Cargo tank design temperature (Design Temp. Range) __°F to __°F;

(6) Cargo tank motor vehicle manufacturer (CTMV mfr.);

(7) Cargo tank motor vehicle certification date (CTMV cert. date), if different from the cargo tank certification date;

(8) Cargo tank manufacturer (CT Mfr.);

(9) Cargo tank manufacture date (CT date Mfr.);

(10) Cargo tank certification date (CT cert. date);

(11) Material specification number—shell (Shell matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type;

(12) Material specification number—heads (Head matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type.

Note—When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***);

(13) Maximum weight of lading (Max. Payload) in pounds;

(14) Exposed surface area in feet;

(15) Nominal capacity (Water Cap.), in pounds;

(16) Maximum design density of lading (Max. lading density), in pounds per gallon;

(17) Weld material (Weld matl.);

(18) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top __, side __, bottom __, in inches). Parenthetical abbreviations noted in this paragraph (a) are permitted;

(19) Manufactured Thickness—shell (Mfg. Shell-thick), in inches. When manufactured shell thicknesses are not the same for different areas, show (top __, side __, bottom __, in inches). Parenthetical abbreviations noted in this paragraph (a) are permitted;

(20) Minimum Thickness—head (Min. Head-thick), in inches;

(21) Manufactured Thickness—head (Mfg. Head-thick), in inches;

(22) Lining Material (Lining), if applicable;

(23) Heating system design pressure (Heating sys. press.) in psig, if applicable;

(24) Heating system design temperature (Heating sys. temp.) in °F, if applicable.

Note 1 to Paragraph (a): *See* § 173.315(a) of this chapter regarding water capacity.

Note 2 to Paragraph (a): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

* * * * *

27. In § 178.337–18, paragraphs (a)(3) and (a)(4) would be redesignated as paragraphs (a)(5) and (a)(6) respectively, and new paragraphs (a)(3) and (a)(4) would be added to read as follows:

§ 178.337–18 Certification.

(a) * * *

(3) When a cargo tank motor vehicle is manufactured in two or more stages, each manufacturer who performs a manufacturing function or portion thereof on the incomplete cargo tank motor vehicle must provide to the succeeding manufacturer, at or before the time of delivery, a certificate that states the function performed by the manufacturer, including any certificates received from previous manufacturers, Registered Inspectors, and Design Certifying Engineers.

(4) *Specification shortages.* When a cargo tank motor vehicle is manufactured in two or more stages, the manufacturer of the cargo tank must attach the name plate and specification plate as required by § 178.337–17(a) and (b) without the original date of certification stamped on the specification plate. The manufacturer must list the specification requirements that are not completed on the manufacturer's Certificate of Compliance. When the cargo tank motor vehicle is brought into full compliance with the applicable specification, the Registered Inspector must stamp the date of certification on the specification plate and issue a Certificate of Compliance to the owner of the cargo tank motor vehicle. The Certificate of Compliance must list the actions taken to bring the cargo tank motor vehicle into full compliance. In addition, the certificate must include the date of certification and the person (manufacturer, carrier or repair organization) accomplishing compliance.

* * * * *

28. In § 178.338–2, paragraph (c) would be revised to read as follows:

§ 178.338–2 Material.

* * * * *

(c) Impact tests are required on all tank materials, except materials that are excepted from impact testing by the ASME Code, and must be performed using the procedure prescribed in Section VIII (Division 1) of the ASME Code (see § 171.7 of this subchapter).

* * * * *

29. In § 178.338–3, paragraph (g) would be revised to read as follows:

§ 178.338–3 Structural integrity.

* * * * *

(g) The design, construction and installation of an attachment, appurtenance to the cargo tank or structural support member between the cargo tank and the vehicle or suspension component or accident protection device must conform to the following requirements:

(1) Structural members, the suspension subframe, accident protection structures and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to the cargo tank wall such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by a continuous weld or in such a manner as to preclude formation of pockets that may become sites for corrosion. Attachments meeting the requirements of this paragraph (g)(2) are not authorized for cargo tanks constructed under part UHT, Section VIII (Division 1) of the ASME Code (*see* § 171.7 of this subchapter).

(3) Except as prescribed in paragraphs (g)(1) and (g)(2) of this section, the welding of any appurtenance or structural support member to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.187 inch may be used when the shell or head thickness is over 0.187 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must:

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of Section VIII (Division 1) of the ASME Code (*see* § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the attached structural member.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and a tank or jacket seam weld.

30. In § 178.338–10, the section heading and paragraph (c) would be revised to read as follows:

§ 178.338–10 Accident damage protection.

* * * * *

(c) *Rear-end protection.* Rear-end protections devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and piping in the event of a rear-end collision. The rear-end tank protection device design must transmit the force of the collision directly to the chassis of the vehicle. The rear-end tank protection device and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank, or within 30 horizontal degrees thereof. The rear-end tank protection device dimensions must meet the requirements of § 393.86 of this title and extend vertically to a height adequate to protect all valves and fittings located at the rear of the cargo tank from damage that could result in loss of lading; or

(2) Conform to the requirements of § 178.345–8.

* * * * *

31. In § 178.338–11, paragraph (c) would be revised to read as follows:

§ 178.338–11 Discharge control devices.

* * * * *

(c) Except for a cargo tank that is used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, xenon, or mixtures thereof, each liquid filling and liquid discharge line must be provided with an on-vehicle remotely controlled self-closing shutoff valve.

(1) If pressure from a reservoir or from an engine-driven pump or compressor is used to open this valve, the control must be of fail-safe design and spring-biased to stop the admission of such pressure into the cargo tank. If the jacket is not evacuated, the seat of the valve must be inside the tank, in the opening nozzle or flange, or in a companion flange bolted to the nozzle. If the jacket is evacuated, the remotely controlled valve must be located as close to the tank as practicable.

(2) Each remotely controlled shut off valve must be provided with on-vehicle remote means of automatic closure, both mechanical and thermal. One means may be used to close more than one remotely controlled valve. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. The thermal means must consist of fusible elements actuated at a temperature not exceeding 121°C (250° F), or equivalent devices. The loading/unloading connection area is where hoses are connected to the permanent metal piping. The number and location of remote operators and thermal devices shall be as follows:

(i) On a cargo tank motor vehicle over 3,500 gallons water capacity, remote means of automatic closure must be installed at the ends of the cargo tank in at least two diagonally opposite locations. If the loading/unloading connection at the cargo tank is not in the general vicinity of one of these locations, at least one additional thermal device must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system.

(ii) On a cargo tank motor vehicle of 3,500 gallons water capacity or less, at least one remote means of automatic closure must be installed on the end of the cargo tank farthest away from the

loading/unloading connection area. At least one thermal device must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system.

32. Section 178.338–13 would be revised to read as follows:

§ 178.338–13 Supporting and anchoring.

(a) On a cargo tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the structural member used in place of a motor vehicle frame, the cargo tank or the jacket must be supported by external cradles or by load rings. For a cargo tank mounted on a motor vehicle frame, the tank or jacket must be supported by external cradles, load rings, or longitudinal members. If cradles are used, they must subtend at least 120 degrees of the cargo tank circumference. The design calculations for the supports and load-bearing tank or jacket, and the support attachments must include beam stress, shear stress, torsion stress, bending moment, and acceleration stress for the loaded vehicle as a unit, using a safety factor of four, based on the tensile strength of the material, and static loading that uses the weight of the cargo tank and its attachments when filled to the design weight of the lading (see Appendix G of Section VIII, Division 1 of the ASME Code), multiplied by the following specified factors in paragraphs (a)(1) and (2) of this section. The effects of fatigue must also be considered in the calculations. Minimum static loadings must be as follows:

(1) For a vacuum-insulated cargo tank—

(i) Vertically downward of 2;

(ii) Vertically upward of 2;

(iii) Longitudinally of 2; and

(iv) Laterally of 2.

(2) For any other insulated cargo tank—

(i) Vertically downward of 3;

(ii) Vertically upward of 2;

(iii) Longitudinally of 2; and

(iv) Laterally of 2.

(b) When a loaded tank is supported within the vacuum jacket by structural members, the design calculations for the tank and its structural members must be based on a safety factor of four and the tensile strength of the material at ambient temperature. The enhanced tensile strength of the material at actual operating temperature may be substituted for the tensile strength at ambient temperature to the extent recognized in the ASME Code for static loadings. Static loadings must take into consideration the weight of the tank and the structural members when the tank is filled to the design weight of lading (see Appendix G of Section VIII, Division 1 of the ASME Code), multiplied by the factors specified in paragraphs (b)(1) through (4) of this section. When load rings in the jacket are used for supporting the tank, they must be designed to carry the fully loaded tank at the following specified factors in paragraphs (b)(1) through (4) of this section for static loadings, and external pressure. Minimum static loadings must be as follows:

(1) Vertically downward of 2;

(2) Vertically upward of 1½;

(3) Longitudinally of 1½; and

(4) Laterally of 1½.

(c) No cargo tank structural support member or rear-end protection device may be welded directly to the cargo tank wall. Mounting pads must conform to the requirements of § 178.338–3(g).

33. In § 178.338–18, paragraph (a) would be revised to read as follows:

§ 178.338–18 Marking.

(a) *Metal identification plate.* Each cargo tank certified after [Effective Date of Final Rule] must have a corrosion-resistant metal plate permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. It must be maintained in a legible condition. Each insulated cargo tank must have an additional plate, as described, attached to the jacket in the location specified. If the plate is attached directly to the cargo tank wall by welding, it must be welded thereto before the cargo tank is postweld heat treated. The plate must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the following information (all parenthetical abbreviations noted in this paragraph (a) may be used), in addition to that required by Section VIII (Division 1) of the ASME Code (see § 171.7 of this subchapter), in characters at least 3/16 inch high:

(1) DOT-specification number MC 338 (DOT MC 338);

(2) Original test date (Orig. Test Date) month and year;

(3) Tank MAWP in psig;

(4) Cargo tank test pressure (Test P), in psig;

(5) Cargo tank design temperature (Design Temp. Range)__°F to__°F;

(6) Cargo tank motor vehicle manufacturer (CTMV mfr.);

(7) Cargo tank motor vehicle certification date (CTMV cert. date), if different from the cargo tank certification date;

(8) Cargo tank manufacturer (CT Mfr.);

(9) Cargo tank manufacture date (CT date Mfr.);

(10) Cargo tank certification date (CT cert. date);

(11) Material specification number—shell (Shell matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type;

(12) Material specification number—heads (Head matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type;

(13) Maximum weight of lading (Max. Payload) in pounds;

(14) Exposed surface area in feet;

(15) Nominal capacity (Water Cap.), in pounds net at 60 °F., with the tank at its coldest operating temperature, after deduction for the volume above the inlet to the pressure relief device or pressure control valve, structural members, baffles, piping, and other appurtenances inside the tank;

(16) Maximum design density of lading (Max. lading density), in pounds per gallons;

(17) Weld material (Weld matl.);

(18) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top __, side __, bottom __, in inches);

(19) Manufactured Thickness—shell (Mfg. Shell-thick), in inches. When manufactured shell thicknesses are not the same for different areas, show (top __, side __, bottom __, in inches);

(20) Minimum Thickness—head (Min. Head-thick), in inches;

(21) Manufactured Thickness—head (Mfg. Head-thick), in inches;

(22) Lining Material (Lining), if applicable;

(23) ''Insulation for Oxygen Service'' or ''Not Authorized for Oxygen Service,'' as appropriate;

(24) Marked rated holding time for at least one cryogenic liquid, in hours, and the name of that cryogenic liquid (MRHT __ hrs, name of cryogenic liquid). MRHT markings for additional cryogenic liquids may be displayed on or adjacent to the specification plate.

Note 1 to Paragraph (a): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

* * * * *

34. In § 178.345–1, paragraph (c) would be revised and paragraph (k) would be removed to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) *Definitions.* See § 178.320(a) for the definition of certain terms used in §§ 178.345, 178.346, 178.347 and 178.348.

* * * * *

35–36. In § 178.345–2, paragraph (b) would be revised to read as follows:

§ 178.345–2 Material and material thickness.

* * * * *

(b) *Minimum thickness.* The minimum thickness for the shell and heads (or baffles and bulkheads when used as tank reinforcement) must be no less than that determined under criteria for minimum thickness specified in § 178.320(d).

* * * * *

37. In § 178.345–3, paragraph (b)(3) would be added and paragraph (f) would be revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(b) * * *

(3) Cargo tank designers, manufacturers, owners, and users must consider all of the conditions specified in § 173.33(c) of this subchapter when matching a cargo tank's performance characteristic to the characteristic of each lading transported.

* * * * *

(f) The design, construction, and installation of an attachment, appurtenance to a cargo tank, structural support member between the cargo tank and the vehicle or suspension component must conform to the following requirements:

(1) Structural members, the suspension sub-frame, accident protection structures and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to a cargo tank wall such as a conduit clip, brake line clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by continuous weld or in such a manner as to preclude formation of pockets which may become sites for corrosion.

(3) Except as prescribed in paragraphs (f)(1) and (f)(2) of this section, the welding of any appurtenance or structural support member to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.187 inch may be used when the shell or head thickness is over 0.187 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must:

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of Section VIII (Division 1) of the ASME Code (*see* § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the structural member attached.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and the tank or jacket seam weld.

38. In § 178.345–5, paragraph (e) introductory text would be revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(e) On cargo tank motor vehicles manufactured after [One Year From Effective Date of Final Rule], each manhole assembly must be permanently marked on the outside by stamping or other means in a ready visible location, with:

* * * * *

39. In § 178.345–8, paragraphs (a)(5) and (d) introductory text would be revised to read as follows:

§ 178.345–8 Accident damage protection.

(a) * * *

(5) *Minimum road clearance.* The minimum road clearance of any cargo tank motor vehicle component or protection device located between any two adjacent axles on a vehicle or vehicle combination must be at least one-half inch for each foot separating the component or device from the nearest axle of the adjacent pair, but in no case less than twelve (12) inches, except that the minimum road clearance for landing gear within ten (10) feet of an axle must be no less than ten (10) inches.

* * * * *

(d) *Rear-end protection.* Each cargo tank motor vehicle must be provided with a rear-end tank protection device to protect the cargo tank and piping in the event of a rear-end collision and reduce the likelihood of damage that could result in the loss of lading. Nothing in this paragraph relieves the manufacturer of responsibility for complying with the requirements of § 393.86 of this title and, if applicable, paragraph (b) of this section. The rear-end tank protection device must conform to the following requirements:

* * * * *

40. In § 178.345–10, paragraph (a) and the last sentence in paragraph (b)(3)(i) would be revised to read as follows:

§ 178.345–10 Pressure relief.

(a) Each cargo tank must be equipped to relieve pressure and vacuum conditions in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent cargo tank rupture or collapse due to over-pressurization or vacuum resulting from loading, unloading, or from heating and cooling of lading. Pressure relief systems are not required to conform to the ASME Code.

(b) * * *

(3) * * *

(i) * * *. An acceptable method is outlined in TTMA RP No. 81–97 ''Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks'' (*see* § 171.7 of this subchapter).

* * * * *

41. In § 178.345–13, paragraph (a) would be revised to read as follows:

§ 178.345–13 Pressure and leakage tests.

(a) Each cargo tank must be pressure and leakage tested in accordance with this section and § 178.346–5, § 178.347–5, or § 178.348–5.

* * * * *

42. In § 178.345–14, paragraphs (b)(1), (c)(6) and (c)(7) would be revised to read as follows:

§ 178.345–14 Marking.

* * * * *

(b) * * *

(1) DOT-specification number DOT XXX (DOT XXX) where ''XXX'' is replaced with the applicable specification number. For cargo tanks having a variable specification plate, the DOT-specification number is replaced with the words ''See variable specification plate.''

* * * * *

(c) * * *

(6) Maximum loading rate in gallons per minute (Max. load rate, G.P.M.).

(7) Maximum unloading rate in gallons per minute (Max. unload rate, GPM).

* * * * *

§ 178.346–1 [Amended]

43. In § 178.346–1, the following changes would be made:

a. In paragraph (d)(6), the reference to ''§ 178.345–10'' would be revised to read ''§ 178.346–3''.

b. In paragraph (d)(7), the reference to ''§ 178.345–13'' would be revised to read ''§ 178.346–5''.

44. In § 178.346–2, the introductory text and the titles to Table I and Table II would be revised to read as follows:

§ 178.346–2 Material and thickness of material.

The type and thickness of material for DOT 406 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(d). The following Tables I and II identify the specified minimum thickness values to be employed in that determination:

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming [1]

* * * * *

45. In § 178.346–5, paragraph (c) would be revised to read as follows:

§ 178.346–5 Pressure and leakage tests.

* * * * *

(c) *Leakage test.* A cargo tank used to transport a petroleum distillate fuel that is equipped with vapor recovery equipment may be leakage tested in accordance with 40 CFR 63.425(e). To satisfy the leakage test requirements of this paragraph (c), the test specified in 40 CFR 63.425(e)(1) must be conducted using air. The hydrostatic test alternative permitted under Appendix A to 40 CFR part 60 (''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test'') may not be used to satisfy the leakage test requirements of this paragraph (c). A cargo tank tested in accordance with 40 CFR 63.425(e) must be marked as specified in § 180.415 of this subchapter.

46. In § 178.347–1, the following changes would be made:

a. Paragraph (c) would be revised.

b. In paragraph (d)(5), the reference to ''§§ 178.345–5 and 178.347–5'' would be revised to read ''§ 178.347–3''.

c. In paragraph (d)(6), the reference to ''§ 178.345–10'' would be revised to read ''§ 178.347–4''.

d. In paragraph (d)(7), the reference to ''§ 178.345–13'' would be revised to read ''§ 178.347–5''.

e. Paragraph (d)(9) would be added.

The addition and revision would read as follows:

§ 178.347–1 General requirements.

* * * * *

(c) Any cargo tank built to this specification with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum must be ''constructed and certified in conformance with the ASME Code''. The external design pressure for a cargo tank loaded by vacuum must be at least 15 psig.

(d) * * *

(9) The strength of a weld seam in a bulkhead that has not been radiographically examined shall be 0.85 of the strength of the bulkhead under the following conditions:

(i) The welded seam must be a full penetration butt weld.

(ii) No more than one seam may be used per bulkhead.

(iii) The welded seam must be completed before forming the dish radius and knuckle radius.

(iv) Compliance test: Two test specimens of materials representative of those to be used in the manufacture of a cargo tank bulkhead must be tested to failure in tension. The test specimen must be of the same thickness and joined by the same welding procedure. The test specimens may represent all the tanks that are made in the same facility within 6 months after the tests are completed. Before welding, the fit-up of the joints on the test specimens must represent production conditions that would result in the least joint strength. Evidence of joint fit-up and test results must be retained at the manufacturers' facility for at least 5 years.

(v) Acceptance criteria: The ratio of the actual tensile stress at failure to the actual tensile strength of the adjacent material of all samples of a test lot must be greater than 0.85.

47–48. In § 178.347–2, paragraph (a) introductory text and the titles to Table I and Table II would be revised to read as follows:

§ 178.347–2 Material and thickness of material.

(a) The type and thickness of material for DOT 407 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(d). The following Tables I and II identify the specified minimum thickness values to be employed in that the determination:

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

§ 178.348–1 [Amended]

49. In § 178.348–1, the following changes would be made:

a. In paragraph (e)(2)(v), the reference to ''§§ 178.345–5 and 178.348–5'' would be revised to read ''§ 178.345–5''.

b. In paragraph (e)(2)(vi), the reference to '' 178.345–10'' would be revised to read ''§ 178.348–4''.

c. In paragraph (e)(2)(vii), the reference to ''§ 178.345–13'' would be revised to read ''§ 178.348–5''.

50. In § 178.348–2, paragraph (a) introductory text and the titles to Table I and Table II would be revised to read as follows:

§ 178.348–2 Material and thickness of material.

(a) The type and thickness of material for DOT 412 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(d). The following Tables I and II identify the

[1] Maximum distance between bulkheads, baffles, or ring stiffeners shall not exceed 60 inches.

''Specified Minimum Thickness'' values to be employed in that determination:

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

51. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

52. In § 180.403, the definition for ''Corrosive to the tank/valve'' would be removed and new definitions for ''Corroded or abraded'' and ''Corrosive to the tank or valve'' would be added in the appropriate alphabetical order to read as follows:

§ 180.403 Definitions.

* * * * *

Corroded or *abraded* means any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface.

Corrosive to the tank or valve means that the lading has been shown through experience or test data to reduce the thickness of the material of construction of the tank wall or valve.

* * * * *

53. In § 180.405 paragraph (g)(3) would be removed and reserved, paragraphs (b), (k), and (l)(2)(iii) would be revised, and a new paragraph (o) would be added, to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) *Cargo tank specifications.* (1) To qualify as an authorized packaging, each cargo tank must conform to this subpart, the applicable requirements specified in part 173 of this subchapter for the specific lading, and where a DOT specification cargo tank is required, an applicable specification in effect on the date initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, MC 338, DOT 406, DOT 407, or DOT 412 (§§ 178.337, 178.338, 178.345, 178.346, 178.347 and 178.348 of this subchapter). However, except as provided in paragraphs (b)(2), (d), (e), (f)(5), and (f)(6) of this section, no cargo tank may be marked or certified after August 31, 1995, to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification in effect on December 30, 1990.

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification that has not been stretched, rebarrelled, or modified may be re-certified to the original specification provided:

(i) Sufficient records are available verifying the cargo tank was originally manufactured to the specification;

(ii) A Registered Inspector verifies the cargo tank conforms to all applicable requirements of the specification;

(iii) The cargo tank meets all applicable tests and inspections required by § 180.407(c);

(iv) Any repairs performed on the cargo tank after June 30, 1992, were conducted in accordance with § 180.413; and

(v) The cargo tank is re-certified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification, and the date it was re-certified. The specification plate on the cargo tank or cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

* * * * *

(k) *DOT specification cargo tank with no marked design pressure or a marked design pressure of less than 3 psig.* The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, or MC 312 cargo tank with a pressure relief system set at 3 psig, must mark or remark the cargo tank with an MAWP or design pressure of not greater than 3 psig.

(l) * * *

(2) * * *

(iii) The structure of the bumper must be designed in accordance with § 178.345–8(d)(3) of this subchapter.

* * * * *

(o) *On-truck remote control of self-closing stop valves—MC 330, MC 331, and MC 338.* On or before [Three years From Effective Date of Final Rule]—

(1) Each owner of an MC 330 or MC 331 cargo tank motor vehicle marked or certified before January 1, 1995, must equip the cargo tank with an on-vehicle remote means of closure of the internal self-closing stop valve in conformance with § 178.337–11(a)(2) of this subchapter. This requirement does not apply to cargo tanks used only for carbon dioxide and marked ''For carbon dioxide only'' or intended for use in chlorine service only.

(2) Each owner of an MC 338 cargo tank motor vehicle marked or certified before January 1, 1995, must equip each remotely controlled shutoff valve with an on-vehicle remote means of automatic closure in conformance with § 178.338–11(c) of this subchapter. This requirement does not apply to cargo tanks used for the transportation of argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon, or mixtures thereof.

54–55. In § 180.407, the following changes would be made:

a. Paragraphs (b)(4) and (g)(1)(v) would be removed and reserved;

b. Paragraphs (d)(4), (d)(5), and (d)(6) would be redesignated as paragraphs (d)(5), (d)(6), and (d)(7), respectively;

c. Paragraphs (a)(2), (b)(1), (b)(2), (d)(1), (g)(1)(ii) introductory text, (g)(1)(ii)(A), (g)(4), (h)(1) introductory text, (i)(5) introductory text and titles and column headings to Tables I and II, and (i)(6) would be revised;

d. Paragraph (h)(1)(i) would be amended by removing ''; or'' and adding a period in their place; and

e. New paragraphs (d) introductory text, (d)(4), (h) introductory text, (h)(1)(iv), and (h)(1)(v) would be added.

The additions and revisions would read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

(a) * * *

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure or MAWP.

* * * * *

(b) * * *

(1) The cargo tank shows evidence of dents, cuts, gouges, corroded or abraded areas, leakage, or any other condition that might render it unsafe for hazardous materials service. At a minimum, any area of a cargo tank showing evidence of dents, cuts, digs, gouges, or corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i)(2), (i)(3), (i)(5), and (i)(6) of this section and evaluated in accordance with the criteria prescribed in § 180.411. Any signs of leakage must be repaired in accordance with § 180.413.

(2) The cargo tank has sustained damage to an extent that may adversely

affect its lading retention capability. A damaged cargo tank must be pressure tested in accordance with the procedures set forth in paragraph (g) of this section.

* * * * *

(d) *External visual inspection and testing.* The following applies to the external visual inspection and testing of cargo tanks:

(1) Where insulation precludes a complete external visual inspection as required by paragraphs (d)(2) through (d)(6) of this section, the cargo tank also must be given an internal visual inspection in accordance with paragraph (e) of this section. If internal visual inspection is precluded because the cargo tank is lined, coated, or designed so as to prevent access for internal inspection, the tank must be hydrostatically or pneumatically tested in accordance with paragraph (g)(1)(iv) of this section.

* * * * *

(4) Ring stiffeners or other appurtenances, installed on cargo tanks constructed of mild steel or high-strength, low-alloy steel, that create air cavities adjacent to the tank shell that do not allow for external visual inspection must be thickness tested in accordance with paragraphs (i)(2) and (i)(3) of this section, at least once every 2 years. At least four symmetrically distributed readings must be taken to establish an average thickness for the ring stiffener or appurtenance. If any thickness reading is less than the average thickness by more than 10%, thickness testing in accordance with paragraphs (i)(2) and (i)(3) of this section must be conducted from the inside of the cargo tank on the area of the tank wall covered by the appurtenance or ring stiffener.

* * * * *

(g) * * *

(1) * * *

(ii) All self-closing pressure relief valves (normal vents and emergency relief vents) must be:

(A) Removed from the cargo tank for inspection and testing. Each self-closing pressure relief valve must open at the required set pressure and seat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification; or

* * * * *

(4) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every 5 years. The test pressure must be at least the maximum system design operating pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

* * * * *

(h) *Leakage test.* The following requirements apply to cargo tanks requiring a leakage test:

(1) Each cargo tank must be tested for leaks in accordance with paragraph (c) of this section. The leakage test must include testing product piping with all valves and accessories in place and operative, except that any venting devices set to discharge at less than the leakage test pressure must be removed or rendered inoperative during the test. All internal or external self-closing stop valves must be tested for leak tightness. Each cargo tank of a multi-cargo tank motor vehicle must be tested with adjacent cargo tanks empty and at atmospheric pressure. Test pressure must be maintained for at least 5 minutes. Cargo tanks in liquefied compressed gas service must be externally inspected for leaks during the leakage test. Suitable safeguards must be provided to protect personnel should a failure occur. Cargo tanks may be leakage tested with hazardous materials contained in the cargo tank during the test. Leakage test pressure must be no less than 80% of the tank design pressure or MAWP, whichever is marked on the certification or specification plate except as follows:

* * * * *

(iv) An MC 330 or MC 331 cargo tank in dedicated service for anhydrous ammonia may be leakage tested at not less than 483 kPa (70 psig).

(v) A non-specification cargo tank required by § 173.8(d) of this subchapter to be leakage tested, must be leakage tested at not less than 16.6 kPa (2.4 psig), or as specified in paragraph (h)(2) of this section.

(2) Cargo tanks used to transport petroleum distillate fuels that are equipped with vapor collection equipment may be leak tested in accordance with the Environmental Protection Agency's ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test,'' as set forth in Appendix A to 40 CFR Part 60. Test methods and procedures and maximum allowable pressure and vacuum changes are in 40 CFR 63.425(e)(1). The hydrostatic test alternative, using liquid in Environmental Protection Agency's ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test,'' may not be used to satisfy the leak testing requirements of this paragraph (h). The test must be conducted using air. Cargo tanks tested using the Environmental Protection Agency's ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test,'' test must be marked in accordance with § 180.415.

* * * * *

(i) * * *

(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are determined based on the definition of minimum thickness found in § 178.320(a) of this subchapter. The following Tables I and II identify the ''In-Service Minimum Thickness'' values to be employed in this determination. The column headed ''Minimum Manufactured Thickness'' tabulates the minimum values required for new construction as set forth in §§ 178.346–2, 178.347–2, and 178.348–2 of this subchapter. In-Service Minimum Thicknesses are based on 90 percent of the minimum value required for new construction, rounded to three places. Tables I and II follow:

TABLE I.—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANK CONSTRUCTED OF STEEL AND STEEL ALLOYS

Minimum manufactured thickness (US gauge or inches)	Nominal decimal equivalent for reference (inches)	In-service minimum thickness (inches)

* * * * *

TABLE II.—IN-SERVICE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS

Minimum manufactured thickness (inches)	In-service minimum thickness (inches)

* * * * *

(6) An owner of a cargo tank that no longer conforms to the minimum thickness prescribed for the design as manufactured may use the cargo tank to transport authorized materials at reduced maximum weight of lading or reduced maximum working pressure, or combinations thereof, provided the following conditions are met:

(i) A Design Certifying Engineer must certify that the cargo tank design and thickness are appropriate for the reduced loading conditions by issuance of a revised manufacturer's certificate, and

(ii) The cargo tank motor vehicle's nameplate must reflect the revised service limits.

* * * * *

56. In § 180.409, paragraphs (a)(1) and (a)(2) would be revised and paragraph (a)(3) would be added to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(a) * * *

(1) Be registered with the Associate Administrator for Hazard Materials Safety in accordance with part 107, subpart F of this chapter;

(2) Be familiar with DOT-specification cargo tanks and trained and experienced in use of the inspection and testing equipment needed; and

(3) Have the training and experience required to meet the definition of ''Registered Inspector'' in § 171.8 of this subchapter.

* * * * *

57. Section 180.413 would be revised to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

(a) *General.* Any repair, modification, stretching, rebarrelling, or mounting of a cargo tank must be performed in conformance with the requirements of this section.

(1) Except as otherwise provided in this section, each repair, modification, stretching, or rebarrelling of a specification cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp and must be made in accordance with the edition of the National Board Inspection Code in effect at the time the work is performed.

(i) Repairs, modifications, stretchings, and rebarrellings performed on non-ASME stamped specification cargo tanks may be performed by:

(A) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME ''U'' stamp using the quality control procedures used to obtain the Certificate of Authorization; or

(B) A repair facility holding a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp using the quality control procedures used to obtain the Certificate of Authorization.

(ii) A repair, modification, stretching, or rebarrelling of a non-ASME stamped cargo tank may be done without certification by an Authorized Inspector, completion of the R–1 form, or being stamped with the ''R'' stamp.

(2) Prior to each repair, modification, stretching, rebarrelling, or mounting, the cargo tank motor vehicle must be emptied of any hazardous material lading. In addition, cargo tank motor vehicles used to transport flammable or toxic lading must be cleaned and purged, including void spaces between double bulkheads, piping and vapor recovery systems.

(3) Each person performing a repair, modification, stretching, rebarrelling or mounting of a DOT specification cargo tank must be registered in accordance with Subpart F of part 107 of this chapter.

(b) *Repair.* The suitability of each repair affecting the structural integrity or lading retention capability of the cargo tank must be determined by the testing required either in the applicable manufacturing specification or in § 180.407(g)(1)(iv). Each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The following provisions apply to specific cargo tank repairs:

(1) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair;

(2) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 406 specification in effect at the time of repair;

(3) MC 304 and MC 307 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 407 specification in effect at the time of repair;

(4) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 412 specification in effect at the time of repair;

(5) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair; and

(6) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and the National Board Inspection Code (see § 171.1 of this subchapter). Each cargo tank having cracks or other defects requiring welded repairs must meet all inspection, test, and heat treatment requirements in § 178.337–16 of this subchapter in effect at the time of the repair, except that postweld heat treatment after minor weld repairs is not required. When a repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those repaired by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(c) *Maintenance or replacement of piping, valves, hoses, or fittings.* After each repair, maintenance or replacement of a pipe, valve, hose, or fitting on a cargo tank, that component must be installed in accordance with the provisions of the applicable specification before the cargo tank is returned to service.

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, or fitting must be tested for leaks. This requirement is met when the piping, valve, hose or fitting is tested after installation at not less than 80 percent of the design pressure marked on the cargo tank. A hose may

be tested before or after installation on the cargo tank.

(2) After repair or replacement of piping, valves, or fittings that involves welding on the cargo tank wall, the cargo tank must be pressure tested in accordance with the applicable manufacturing specification or § 180.407(g)(1)(iv). In addition, the affected piping, valve, or fitting must be tested in accordance with paragraph (c)(1) of this section.

(d) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank motor vehicle must conform to the following provisions:

(1) The design of the modified, stretched, or rebarrelled cargo tank motor vehicle must be certified in writing by a Design Certifying Engineer as meeting the structural integrity and accident damage protection requirements of the applicable specification.

(2) Except as provided in paragraph (d)(2)(v) of this section, all new material and equipment affected by modification, stretching, or rebarrelling must meet the requirements of the specification in effect at the time such work is performed, and all applicable structural integrity requirements (§ 178.337–3, 178.338–3, or § 178.345–3 of this subchapter). The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1995 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407 until August 31, 1995 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1995 and, thereafter to specification DOT 412 only;

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331; and

(v) For specification MC 338 cargo tanks, the provisions of specification MC 338. However, structural modifications to MC 338 cargo tanks authorized under § 180.405(d) may conform to applicable provisions of the ASME Code instead of specification MC 338, provided the structural integrity of the modified cargo tank is at least equivalent to that of the original cargo tank.

(3) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures.

(ii) Assure compliance of the rebuilt cargo tank's structural integrity, venting, and accident damage protection with the applicable specification requirements.

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for all newly installed safety equipment.

(iv) Assure the suitability of each modification, stretching and rebarrelling that affects the lading retention capability of the cargo tank by performing the tests required in the applicable specification or § 180.407(g)(1)(iv).

(v) Any modification that changes information displayed on the specification plate requires the installation of a supplemental specification plate, nameplate, or both containing the information that reflects the cargo tank as modified, stretched or rebarrelled. The plate must include the name of the person or facility doing the work, DOT registration number, date work is completed, retest information, and any other information that differs from the original plate. The supplemental plates must be installed immediately adjacent to the existing plate or plates.

(vi) On a variable specification cargo tank, install a supplemental or new variable specification plate, and replace the specification listed on the original specification plate with the words ''see variable specification plate.''

(4) A Registered Inspector must certify that the modified, stretched, or rebarrelled cargo tank conforms to the requirements of this section and the applicable specification by issuing a supplemental certificate of compliance. The registration number of the Registered Inspector must be entered on the certificate.

(e) *Mounting of cargo tanks.* Mounting a cargo tank on a cargo tank motor vehicle must be:

(1) Performed as required by paragraph (d)(2) of this section and certified by a Design Certifying Engineer if the mounting of a cargo tank on a cargo tank motor vehicle involves welding on the cargo tank head or shell or any change or modification of the methods of attachment; or

(2) In accordance with the original specification or the specification in effect at the time of the mounting, and performed under the supervision of a Registered Inspector if the mounting of a cargo tank on a cargo tank motor vehicle does not involve welding on the cargo tank head or shell or a change or modification of the methods of attachment.

(f) *Records.* Each owner of a cargo tank motor vehicle must retain at the owner's principal place of business all records of repair, modification, stretching, or rebarrelling, including notation of any tests conducted to verify the suitability of the repair, modification, stretching, or rebarrelling made to each cargo tank during the time the cargo tank motor vehicle is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, if not the owner of the cargo tank motor vehicle, at its principal place of business during the period the cargo tank motor vehicle is in the carrier's service.

58. In § 180.415, paragraphs (b) would be revised to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed, subject to the following provisions:

(1) The date must be readily identifiable with the applicable test or inspection.

(2) The markings must be in letters and numbers at least 32 mm (1.25 inches) high, near the specification plate or anywhere on the front head.

(3) The type of test or inspection may be abbreviated as follows:

(i) V for external visual inspection and test;

(ii) I for internal visual inspection;

(iii) P for pressure test;

(iv) L for lining inspection;

(v) T for thickness test;

(vi) K for leakage test for a cargo tank tested under § 180.407, except § 180.407(h)(2); and

(vii) K–EPA27 for a cargo tank tested under § 180.407(h)(2) after [One Year From Publication Date of Final Rule].

(4) For cargo tanks marked after October 1, 2001, the date marked must be the date the required test or inspection expires, preceded by the letter ''N.'' Cargo tanks marked in accordance with this section before October 1, 2001, are not required to be remarked to show the date of the next test.

Examples to Paragraph (b): The markings ''10–99 P, V, L'' represent that in October 1999, a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings ''2–00 K–EPA'' represent that in February

2000, a cargo tank passed the leakage test under § 180.407(h)(2). The markings ''2–00 K, K–EPA'' represent that in February 2000, a cargo tank passed the leakage test under both § 180.407(h)(1) and under EPA Method 27 under § 180.407(h)(2). For a cargo tank marked after October 1, 2000, the markings ''N11–02 V, L'' represent that an external visual inspection and test, and a lining test expire November 2002.

* * * * *

59. In § 180.417, paragraphs (b) and (d) would be revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) *Test or inspection reporting*. Each person performing a test or inspection as specified in § 180.407 must prepare a written report, in English, in accordance with this paragraph (b).

(1) Each test or inspection report must include the following information:

(i) Owner's and manufacturer's unique serial number for the cargo tank;

(ii) Name of cargo tank manufacturer;

(iii) Cargo tank DOT or MC specification number;

(iv) MAWP of the cargo tank;

(v) Minimum thickness of the cargo tank shell and heads;

(vi) Indication of whether the cargo tank is lined, insulated, or both; and

(vii) Indication of special service of the cargo tank (e.g., transports material corrosive to the tank, dedicated service, etc.).

(2) Each test or inspection report must include the following specific information as appropriate for each individual type of test or inspection:

(i) Type of test or inspection performed;

(ii) Date of test or inspection (month and year);

(iii) Listing of all items tested or inspected, including information about pressure relief devices that are removed, inspected and tested or replaced, when applicable (type of device, set to discharge pressure, pressure at which device opened, pressure at which device re-seated, and a statement of disposition of the device (e.g., reinstalled, repaired, or replaced)); information regarding the inspection of upper coupler assemblies, when applicable (visually examined in place, or removed for examination); and, information regarding leakage and pressure testing, when applicable (pneumatic or hydrostatic testing method, identification of the fluid used for the test, test pressure, and holding time of test);

(iv) Location of defects found and method of repair;

(v) ASME or National Board number of person performing repairs, if applicable;

(vi) Name and address of person performing test;

(vii) Registration number of the facility or person performing the test;

(viii) Continued qualification statement, such as ''cargo tank meets the requirements of the DOT-specification identified on this report'' or ''cargo tank fails to meet the requirements of the DOT-specification identified on this report'';

(ix) DOT registration number of the registered inspector; and

(x) Dated signature of the registered inspector and the cargo tank owner.

(3) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor carrier leasing a cargo tank for fewer than 30 days.

* * * * *

(d) *Supplying certificates and reports*. Each person offering a DOT-specification cargo tank for sale or lease must provide the purchaser or lessee a copy of the cargo tank certificate of compliance, records of repair, modification, stretching, or rebarrelling; and the most recent inspection and test reports made under this section. Copies of such reports must be provided to the lessee if the cargo tank is leased for more than 30 days.

Issued in Washington, DC, on November 5, 2001, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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Part III

Department of Health and Human Services

Administration for Children and Families

Family Violence Prevention and Services Program; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 02–01]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services, Administration for Children and Families, (ACF), Department of Health and Human Services.

ACTION: Notice of the availability of funding to States and Native American Tribes, Alaskan Villages, and Tribal organizations for family violence prevention and services.

SUMMARY: This announcement supersedes Program Instruction No. OCS 97–06, published May 16, 1997 in the **Federal Register** [62 FR 27045]. This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to States (including Territories and Insular Areas) and Native American Tribes, Alaskan Villages, and Tribal organizations. The purpose of these grants is to assist States and Tribes in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants, awarded in fiscal year (FY) 2002.

DATES: Applications for FY 2002 States, Native American Tribes, Alaskan Villages, and Tribal Organizations grant awards meeting the criteria specified in this instruction should be received no later than January 7, 2002.

ADDRESSES: Applications should be sent to Office of Community Services, Administration for Children and Families, Attn: Dr. James Gray, 5th Floor, West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley (202) 401–5529, James W. Gray (202) 401–5705, or Sunni L. Knight (202) 401–5319.

Part I. Reducing Family and Intimate Violence Through Coordinated Prevention and Services Strategies

The Importance of Coordination of Services

Family and intimate violence has serious and far reaching consequences for individuals, families, and communities. Estimates from the National Crime Victimization Survey (NCVS) indicate that in 1998 about 1 million violent crimes were committed against persons by their current or former spouses, boyfriends, or girlfriends. Such crimes termed *intimate partner violence*, are committed primarily against women. About 85% of victimizations by intimate partners in 1998, were against women. It is important to note that regardless of the demographic characteristics considered, women experienced intimate partner violence at higher rates than men between 1993 and 1998 (Bureau of Justice Statistics, 2000).

The impacts of family and intimate violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

It is estimated that between 12 percent and 35 percent of women visiting emergency rooms with injuries are there because of battering. Estimates of the number of women who are homeless because of battering range from 27 percent to 41 percent to 63 percent of all homeless women. The significant correlation between domestic violence and child abuse, and the use of welfare by battered women as an ''economic escape route'' also suggest the need to coordinate domestic violence intervention activities with those addressing child abuse and welfare reform activities at the Federal, State and local levels.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, service delivery and prevention system may be the result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services (HHS) urges State agencies and Native American Tribes receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

Part II. Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401, *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (the Act). The Act was first implemented in FY 1986, reauthorized and amended in 1992 by Public Law 102–295, in 1994 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act, and in 1996 by Pub. L. 104–235, the ''Child Abuse Prevention and Treatment Act (CAPTA) of 1996''. The Act was most recently amended by the ''Victims of Trafficking and Violence Protection Act'' (Pub. L. 106–386, 10/28/2000).

The Act was most recently amended by the ''Victims of Trafficking and Violence Protection Act of 2000'' (Pub. L. 106–386, 10/28/00).

The purpose of this legislation is to assist States and Native American Tribes, Alaskan Villages and Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2001, 230 grants were made to States and Native American Tribes. The Department also made 53 family violence prevention grant awards to nonprofit State domestic violence coalitions.

In addition, the Department supports the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The SIRCs are: the Battered Women's Justice Project; the Resource Center on Child Custody and Protection; Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women; and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to

Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February, 1996, the Department funded the National Domestic Violence Hotline to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The National Domestic Violence Hotline is a 24-hour, toll-free service which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The hotline number is 1–800–799-SAFE; the TDD number for the hearing impaired is 1–800–787–3224. As of June 30, 2001, the National Domestic Violence Hotline has answered over 500,000 calls.

B. Funds Available

Of the total appropriation for the Family Violence Prevention and Services Act (FVPSA) Program for FY 2002, the Department of Health and Human Services will allocate 70 percent to the designated State agencies administering Family Violence Prevention and Services programs. We will allocate 10 percent to the Tribes, Alaskan Villages and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services. Additionally, in a separate program announcement, we will allocate 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing coordination, public information and education, technical assistance and training, and advocacy services with local domestic violence programs and encouraging appropriate responses to domestic violence within the States.

Five percent of the FY 2002 appropriation will be available to continue the support for the National Resource Center and the four Special Issue Resource Centers. The remaining 5 percent of the FY 2002 family violence prevention and services funding will be used to support training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration activities at the national level.

C. State Allocation

The Secretary is required to make available not less than 70 percent of amounts appropriated under section 310(a) of the Act, 42 U.S.C. 104, for grants to States and not less than 10% of amounts appropriated under section 310(a) for grants to Native American Tribes and Tribal organizations.

Family Violence grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State shall be allotted $600,000 with the remaining funds allotted to each State in an amount that bears the same ratio to the remaining funds as the population of the State has to the population of all States.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of 1% percent of the amounts appropriated.

D. Native American Tribal Allocations

Of the funds available for FY 2002, the Department of Health and Human Services will allocate ten percent for grants to Native American Tribes. Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of such entities as found in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 b, and are able to demonstrate their capacity to carry out a family violence prevention and services program.

Any Native American Tribe that believes it meets the eligibility criteria and should be included in the list of eligible tribes should provide supportive documentation in its application and a request for inclusion. (See Native American Tribal Application Requirements in Part V.)

In computing Native American Tribal allocations, we will use the latest available population figures from the Census Bureau. Where Census Bureau data are unavailable, we will use figures from the BIA Indian Population and Labor Force Report.

Because section 304 of the Act specifies a minimum base amount for State allocations, we have set a base amount for Native American Tribal allocations. Since FY 1986, we have found, in practice, that the establishment of a base amount has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Due to the expanded interest in the prevention of family violence and in the provision of services to victims of family violence and their dependents, we have received an increasing number of Tribal applications over the past several years. In order to ensure the continuance of an equitable distribution of family violence prevention and services funding in response to the increased number of Tribes that apply, we have changed the funding formula for the allocation of family violence funds.

Native American Tribes which meet the application requirements and whose reservation and surrounding Tribal Trust Lands population is:

Category No.	Tribal population	Will receive a base amount of
1	1–1,500	$2,000
2	1,501–3,000	3,500
3	3,001–4,000	4,500
4	4,001–5,000	5,500
5	5,001–6,000	6,500
6	6,001–7,000	7,500
7	7,001–8,000	8,500
8	8,001–9,000	9,500
9	9,001–10,000	10,500
10	10,001–12,000	13,000
11	12.001–14,000	15,000
12	14,001–16,000	17,000
13	16,001–18,000	19,000
14	18,001–20,000	21,000
15	20,001–22,000	23,000
16	22,001–24,000	25,000
17	24,001–26,000	27,000
18	26,001–28,000	29,000
19	28,001–30,000	31,000
20	30,001–32,000	33,000
21	32,001–34,000	35,000
22	34,001–36,000	37,000
23	36,001–38,000	39,000
24	38,001–40,000	41,000
25	40,001–42,000	43,000
26	42,001–44,000	45,000
27	44,001–46,000	47,000
28	46,001–48,000	49,000
29	48,001–50,000	51,000
30	50,001–100,000	125,000
31	100,001–150,000	175,000
32	150,001 and over	225,000

Once the base amounts have been distributed to the Tribes that have applied for family violence funding, the ratio of the Tribe's base amount to the total base amount of all the applicant Tribes is then considered in allocating the remainder of the funds. With the distribution of a proportional amount plus a base amount to the Tribes we have accounted for the variance in actual population and scope of the family violence programs. As in previous years, Tribes are encouraged to apply as consortia for the family violence funding.

Part III. General Grant Requirements Applicable to States and Native-American Tribes

A. Definitions

States and Native American Tribes should use the following definitions in

carrying out their programs. The definitions are found in section 309 of the Act, 42 U.S.C. 10408.

(1) *Family violence:* Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) *Shelter:* The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(3) *Related assistance:* The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers.

(b) Counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(c) Transportation and technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but does not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.

B. Expenditure Periods

The FVPSA funds may be used for expenditures obligated on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the fiscal year, i.e., FY 2002 funds may be used for expenditures incurred from October 1, 2001 through September 30, 2002. Recipients must liquidate all obligations incurred under the award by September 30, 2003.

The family violence prevention funds alotted to Native American Tribes, Alaskan Villages, and Tribal organizations may be used on and after July 1 of each fiscal year for which they are granted, and will be available through June 30 of the following fiscal year, i.e., FY 2002 funds may be used for expenditures from July 1, 2002 through June 30, 2003. Recipients must liquidate all allegations incurred under the award by June 30, 2004.

Reallotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for reallotment. FY 2002 grant funds which are made available to the States through reallotment, under section 304(d), 42 U.S.C. 10403(d), must be expended by the State no later than September 30, 2003.

C. Reporting Requirements: State, Tribe, and Tribal Organizations Performance Report

States, Native American Tribes, Alaskan Villages, and Tribal organizations are required to file a performance report with the Department describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of the performance report must be completed by each grantee or subgrantee that performed the direct services contemplated in the application certifying performance of such services. State, Native American Tribes, Alaskan Villages, and Tribal organizations grantees should compile performance reports into a comprehensive consolidated comprehensive report for submission.

The Performance Report should include examples of success stories about the services which were provided and the positive impact on the lives of children and families and should include the following information: an explanation of the activities carried out, including an assessment of the major activities supported by the family violence funds; what specific priorities within the State.

Tribe, or Tribal organization were assessed; what special emphases were placed on these activities, e.g., a focus on under-served populations; and a description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (e.g., shelters, safehouse, related assistance, programs for batterers).

Performance reports for the States are due on an annual basis at the end of the calendar year (December 31). Performance reports for Tribes and Tribal organizations are due on an annual basis on September 30 of each year.

The statute also requires the Department to suspend funding for an approved State application if any applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

D. Reporting Requirements; Departmental Grants Mangement Reports

All State grantees are reminded that the annual Program Reports and annual Financial Status Reports (Standard Form 269) are due 90 days after the end of each Federal fiscal year, i.e., reports are due on December 31 of each year. All Tribal and Native Alaskan program reports and annual financial status reports are due 90 days after the end of the expenditure period for Tribes, Alaskan Villages, and Tribal organizations, i.e., September 30 of each year.

Program reports are to be sent to: Office of Community Services, Administration for Children and Families, Attention: William D. Riley, 370 L'Enfant Promenade, SW., 5th Floor West, Washington, DC 20447.

Financial Reports are to be sent to: Office of Mandatory Grants, Administration for Children and Families, Attention: Joseph Lonergan, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447.

E. Required Certifications

All applications must submit or comply with the required certifications found at the list of Attachments as follows:

Anti-Lobbying Certification and Disclosure Form must be signed and submitted with the application: If applicable, a standard Form LLL, which discloses lobbying payments must be signed and submitted.

Certification Regarding Drug-Free Workplace Requirements and the Certification Regarding Debarment: The signature on the application by the chief program official attests to the applicants intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace and Debarment certification do not have to be returned with the application.

Certification Regarding Environmental Tobacco Smoke: The signature on the application by the chief program official attests to the applicant's intent to comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

Part IV. Application Requirements for States

A. Eligibility: States

''States'' as defined in section 309(6) of the Act, 42 U.S.C. 10408, are eligible to apply for funds. The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

In the past, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands have applied for funds as a part of their consolidated grant under the Social Services Block grant (the Republic of Palau has applied for funds through the Community Services Block Grant). These jurisdictions need not submit an application under this program announcement if they choose to have their allotment included as part of a consolidated grant application.

B. Approval/Disapproval of a State's Application

The Secretary will approve any application that meets the requirements of the Act and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a 6-month period providing an opportunity for applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

C. Content of the State Application

The State's application must be signed by the Chief Executive Officer of the State or the Chief Program Official designated as responsible for the administration of the Act. (All section references cited hereinafter refer to the Act.)

All Applications Must Contain the Following Information or Documents

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of family violence programs and activities funded under this Act, the coordination of related programs within the State, and the name of a contact person if different from the Chief Program Official (section 303)(a)(2)(D), 42 U.S.C. 10402 (a)(2)(D).

(2) A plan describing in detail how the needs of underserved populations will be met, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation (section 303(a)(2)(C), 42 U.S.C. 10402(a)(2)(C).

(a) Identify the underserved populations that are being targeted for outreach and services;

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, e.g., new shelters, services for the battered elderly, women of color, etc.; and

(c) Describe the public information component of the State's outreach program; describe the elements of your program that will be used to explain domestic violence, the most effective and safe ways to seek help, identify available that will be resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions and other knowledgeable individuals and interested organization to assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C)) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with section 303(a)(2)(A), 303(a)(3) and 311(a)(5).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds, a description of the target population, the number of shelters to be funded, the services the state will provide, and the expected results from the use of the grant funds (section 303(a)(4)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303)(a)(2)(F)).

All Applications Must Contain the Following Assurances

(a) That grant funds under the Act will be distributed to local public agencies and nonprofit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(b) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(f)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That, in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(e) That grants funded by the States will meet the matching requirements in section 303(e), i.e., not less than 20 percent of the total funds provided for a project under the FVPSA with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in kind; and the local share will not include any Federal funds provided under any authority other than the FVPSA (section 303(e)).

(f) That grant funds made available under this program by the State will not be used as direct payment to any victim

or dependent of a victim of family violence (section 303(c)).

(g) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(d)).

(h) That the address or location of any shelter-facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(i) That programs or activities funded in programs or activities funded in whole or in part under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(j) That funds made available under the Act be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of the Act.

(k) That States will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Parts 74 and 92.

Part V. Application Requirements for Native America Tribes and Tribal Organizations

A. Eligibility: Native American Tribes and Tribal Organizations

As described above, Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of such entities as found the Indian Self-Determination and Education Assistance Act and are able to demonstrate their capacity to carry out a family violence prevention and services program.

As in previous years, Native American Tribes may apply singularly or as a consortium. In addition, a non-profit private organization, approved by a Native American Tribe for the operation of a family violence shelter or program on a reservation is eligible for funding.

B. Approval/Disapproval of a Native American Tribes Application

The Secretary will approve any application that meets the requirements of the Act and this announcement, and will not disapprove an application unless the Native American Tribe or Tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies.

C. Native American Tribe/Tribal Organization Application Content Requirements

The application from the Native American Tribe, Tribal organization, or nonprofit private organization approved by an eligible Native American Tribe, must be signed by the Chief Executive Officer of the Native American Tribe or Tribal organization.

All Applications Must Contain the Following Information/Documents

(1) The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under the Act, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Native American individuals in the Tribe(s) and to administer programs and activities funded under this program (section 303(b)(2)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of State coalitions against domestic violence, and operators of family violence shelters and service programs.

(4) A description of the Tribe's operation of and/or capacity to carry out a family violence prevention and services program (section 303 (b)(2)). This might be demonstrated in ways such as the following:

(a) The current operation of a shelter, safehouse, or family violence prevention program;

(b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of family violence prevention activities or services; or

(c) The operation of social services programs as evidenced by receipt of ''638'' contracts with the Bureau of Indian Affairs (BIA); Title II Indian Child Welfare grants from the BIA; Child Welfare Services grants under Title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

(5) A description of the services to be provided, how the Native American Tribe or Tribal organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services (section 303 (b)(2)).

(6) Documentation that procedures have been developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(7) The EIN number of the Native American tribe, Tribal organization, or non-profit organization submitting the application.

Each Application Must Contain the Following Assurances

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25% of the funds distributed shall be used to provided related assistance (section 303(f)).

(b) That grant funds made available under the Act will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(c) That the address or location of any shelter or facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(d) That law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

(e) That all programs or activities funded in whole or in part under the Act will prohibit discrimination on the bases of age, handicap, sex, race, color, national origin, or religion.

(f) That applicant will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Parts 74 and 92.

Part VI. Other Information

A. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally-recognized Native American Tribes are exempt from all provisions and requirements of E.O. 12372.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this instruction have been approved by the Office of Management and Budget under control number 0970–0062.

C. Certifications

Applicants must comply with the required certifications found at Attachments A, B, C, and D as follows:

1. The Anti-Lobbying Certification and Disclosure Form: Pursuant to 45 C, **Federal Register** Part 92, the certification must be signed and submitted with the application. If applicable, a Standard Form LLL, which discloses lobbying payments must be signed and submitted.

2. Certification Regarding Debarment: The signature on the application by a coalition official responsible for the administration of the program attests to the applicant's intent to comply with the Debarment Certification. The Debarment Certification does not have to be returned with the application.

3. Certification Regarding Environmental Tobacco Smoke: The signature on the application by a coalition official certifies that the applicant will comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any standards which contain provisions for children's Services and that all grantees shall certify accordingly.

4. Certification Regarding Drug-Free Workplace Requirements: The signature on the application by a coalition official attests to the applicant's intent to comply with the Drug-Free Workplace requirements.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services)

Dated: November 27, 2001.

Robert Mott,

Deputy Director, Office of Community Services.

List of Attachments

Attachment A—Certification Regarding Lobbying

Attachment B—Certification Regarding Debarment

Attachment C—Certification Regarding Environmental Tobacco Smoke

Attachment D—Certification Regarding Drug-Free Workplace

Attachment A

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

INSTRUCTIONS FOR COMPLETION OF SF–LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Administration for Children and Families

U.S. Department of Health and Human Services

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this

proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment C

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment D

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful

manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 02–02]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services (OCS), Administration for Children and Family (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funds to State domestic violence coalitions for grants to carry out family violence intervention and prevention activities.

SUMMARY: This notice governs the proposed award of fiscal year (FY) 2002 formula grants under the Family Violence Prevention and Services Act (FVPSA) to private non-profit State domestic violence coalitions. The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This notice sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in FY 2002.

DATES: Applications for FY 2002 State Domestic Violence Coalition grant awards meeting the criteria specified in this instruction must be received no later than January 7, 2002.

ADDRESSES: Applications should be sent to Department of Health and Human Services, Office of Community Services, Administration for Children and Families, Attention: Catherine L. Beck, Fifth Floor—West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Williams D. Riley (202) 401–5529, Catherine L. Beck (202) 401–9352, or Sunni Knight (202) 401–5319.

Introduction

This notice for family violence prevention and services grants to State domestic violence coalitions serves two purposes. The first is to confirm a Federal commitment to reducing family and intimate partner violence and to urge States, localities, cities, and the private sector to become involved in State and local planning efforts leading to the development of a more comprehensive and integrated service delivery approach to services for victims of domestic violence (part I).

The second purpose is to provide information on application requirements for FY 2002 grants to State domestic violence coalitions. These funds will support planning and coordination efforts, intervention and prevention activities, and efforts to increase the public awareness of domestic violence issues and services for battered women and their children (Part II).

Part I. Reducing Family and Intimate Partner Violence Through Coordinated Prevention and Services Strategies

1. The Importance of Coordination of Services

The impacts of family and intimate violence include physical and psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

It is estimated that between 12 percent and 35 percent of women visiting emergency rooms with injuries are there because of battering. Estimates of the number of women who are homeless because of battering range from 27 percent to 41 percent, to 63

percent of all homeless women. The significant correlation between domestic violence and child abuse, and the use of welfare by battered women as an ''economic escape route'' also suggest the need to coordinate domestic violence intervention activities with those addressing child abuse and welfare reform activities at the Federal, States and local levels.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, prevention and service delivery system is the result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties be involved in the design and improvement of intervention and prevention activities.

2. Suggestions for Developing New or Strengthening On-Going Coordination Efforts

A. Family violence programs need to focus on providing increased services in existing and underserved locations; develop innovative and comprehensive service and prevention programs to train health care providers to identify and refer victims of violence to appropriate services. Programs should also seek to provide culturally appropriate services for underserved populations, such as ethnic minority populations, rural communities, people with disabilities, and others.

Many ethnic minority and rural communities do not have services to address domestic violence. We know that American Indian and Alaska Natives suffer higher rates of domestic violence than the majority of American women. American Indian women are at particularly high risk of homicide, including domestic violence homicide (College of Emergency Physicians, 1995). Seventeen percent of Native American/Alaskan women have been stalked compared to 8.1 percent of all women (Department of Justice, 1997).

B. There is a constant imperative to demonstrate innovative and comprehensive ways to deliver services, conduct prevention activities, and provide access to help for survivors, their families and perpetrators. Programs need to make services more comprehensive to support survivors and their families beyond immediate crisis needs. Services for this purpose may include transitional housing assistance; long term support of survivors; child care; job skills training; mental health and substance abuse services to survivors and perpetrators; integration with adult and child protective services; safe enforcement of child support for TANF and non-TANF families.

C. Family violence programs may also develop integrated educational program and services that focus on violent adolescent relationships for adolescents who experience, perpetrate or witness domestic violence. Studies on the prevention of domestic abuse and violence in interpersonal relationships suggest that youth education may represent an effective community action to reduce the incidence of violence in adolescent relationships.

D. Through shelters and home visitation programs, family violence programs can create new services to address the needs of children who witness violence against women. Witnessing violence as a child is an important risk factor for being a victim or perpetrator of violence against women later in life. Developing innovative strategies for identifying and treating child witnesses is an under-explored potential avenue for preventing violence.

E. Perpetrators of domestic violence often have multiple problems that cannot be dealt with separately. Consequently, services for perpetrators could be made more effective by better integrating them with other relevant services; e.g., substance abuse, mental health, aging, and criminal justice services.

Part II. State Coalition Grant Requirements

This section includes application requirements for family violence prevention and services grants for State domestic violence coalitions and is organized as follows:

Application Requirements:

A. Legislative Authority
B. Background
C. Eligibility
D. Funds Available
E. Expenditure Period
F. Reporting Requirements
A. Application Requirements
B. Paperwork Reduction Act
C. Executive Order 12372
D. Certifications

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U. S. C. 10401, *et seq.*) is entitled the FamilyViolence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Public Law 102–295, and was amended and reauthorized for fiscal years 1996 through 2000 by Public Law 103–322, the Violence Crime Control and Law Enforcement Act of 1994 and by Public Law 104–235, the ''Child Abuse Prevention and Treatment Act Amendment of 1996''. The Act was most recently amended by the ''Victims of Trafficking and Violence Protection Act'' (Pub. L. 106–386, 10/28/2000).

B. Background

Section 311 of the Act, 42 U.S.C. 10410, requires the Secretary to award grants to statewide private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention.

C. Eligibility

To be eligible for grants under this program announcement, an organization shall be a statewide private non-profit domestic violence coalition meeting the following criteria:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a State domestic violence coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b);

(2) The Board membership of the coalition is representative of such programs;

(3) The purpose of the coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services for victims of domestic violence and their children; and

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition:

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

D. Funds Available

The Department will make ten percent of the Family Violence Prevention and Services Act (FVPSA) appropriation available for grants to State domestic violence coalitions. One grant each will be available for the State domestic violence coalitions of the 50 states, the Commonwealth of Puerto

Rico, and the District of Columbia. The Coalitions of the U. S. Territories (Guam, U. S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for domestic violence coalition grant awards.

E. Expenditure Period

The FVPSA funds may be used for expenditures obligated on and after October 1 of each fiscal year for which they are granted and will be available for expenditure through September 30 of the fiscal year, i.e., FY 2002 funds must be obligated by September 30, 2002. Recipients must liquidate all obligations incurred under the award by September 30, 2003.

F. Reporting Requirements

1. The State domestic violence coalition grantee must submit an annual report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out; the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the state child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities.

The annual report is due 90 days after the end of the fiscal year, in which the grant is awarded (December 29). The final program report is due 90 days after the end of the expenditure period, (December 29). Program Reports are to be sent to: Office of Community Services, Administration for Children and Families, Attn: William D. Riley, 370 L'Enfant Promenade, SW., 5th Floor West, Washington, DC 20447.

2. The State domestic violence coalition grantees must also submit an annual financial report, Standard form 269 (SF–269). A financial report is due 90 days after the end of the fiscal year in which the grant is awarded. A final financial report is due 90 days after the end of the expenditure period. Financial reports are to be sent to: Office of Mandatory Grants, Administration for Children and Families, 370 L'Enfant Promenade, SW., Attention: Joseph Lonergan, 4th Floor, Washington, DC 20447.

G. Application Requirements

The State domestic violence coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information (consistent with the requirements of the Family Violence Prevention and Services Act):

1. A description of the process and anticipated outcomes of utilizing these federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including:

(a) Training and technical assistance for local programs and professionals working with victims of domestic violence;

(b) Planning and conducting State needs assessments and planning for comprehensive services;

(c) Serving as an information clearinghouse and resource center for the State; and

(d) Collaborating with other governmental systems that affect battered women (section 311(a) (1), 42 U.S.C. 10410(a)(1)).

2. A description of the public education campaign regarding domestic violence to be conducted by the coalition through the use of public service announcements and informative materials that are designed for print media; billboards; public transit advertising; electronic broadcast media; and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (section 311 (a) (4), 42 U.S.C. 10410(a)(4)).

3. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of issues including the:

(a) Inappropriateness of mutual protection orders;

(b) Prohibition of mediation when domestic violence is involved;

(c) Use of mandatory arrests of accused offenders;

(d) Discouragement of dual arrests;

(e) Adoption of aggressive and vertical prosecution policies and procedures;

(f) Use of mandatory requirements for pre-sentence investigations;

(g) Length of time taken to prosecute cases or reach plea agreements;

(h) Use of plea agreements;

(i) Consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(j) Restitution to victims;

(k) Use of training and technical assistance to law enforcement and other criminal justice professionals;

(l) Reporting practices of, and the significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(m) Use of interstate extradition in cases of domestic violence crimes;

(n) The use of statewide and regional planning; and

(o) Any other matters the State Domestic Violence Coalition believes merits investigation (section 311 (a) (2), 42 U.S.C. 10401 (a) (2)).

4. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with family law judges, criminal court judges, child protective services agencies, child welfare agencies, family preservation and support service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present, including the:

(a) Inappropriateness of mutual protection orders;

(b) Prohibition of mediation when domestic violence is involved;

(c) Inappropriateness use of marital or conjoint counseling in domestic violence cases;

(d) Use of training and technical assistance for Family Law Judges, Criminal Court Judges, and court personnel;

(e) The presumption of custody to domestic violence victims;

(f) Use of comprehensive protection orders to grant fullest protection possible to victims of domestic violence, including temporary custody support and maintenance;

(g) Development of Child Protective Services of supportive responses that enable victims to protect their children;

(h) Implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(i) The possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk (section 311(a)(3), 42 U.S.C. 10410(a)(3)).

5. The anticipated outcomes and a description of other activities in support of the general purpose of furthering domestic violence intervention and prevention.

6. The following documentation will certify the status of the domestic violence coalition and must be included in the grant application:

(a) A description of the procedures developed between the State domestic

violence agency and the Statewide coalition that allow for implementation of the following cooperative activities:

(i) The applicant coalition's participation in the planning and monitoring of the distribution of grants and grant funds provided in the State, under section 303(a) of the Act (section 311(a)(5), 42 U.S.C. 10410(a)(5)).

(ii) The participation of the State domestic violence coalition in compliance activities regarding the State's family violence prevention and services program grantees as required by section 303(a)(3) of the Act.

(b) Unless already on file at HHS, a copy of a currently valid 501(c)(3) certification letter from the Internal Revenue Service stating private non-profit status; or a copy of the applicant's listing in the Internal Revenue's Services (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;

(c) A copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled;

(d) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant coalition's current membership list by organization;

(e) A list of the applicant coalition's current Board of Directors, with each individual's organizational affiliation and the Chairperson identified;

(f) A copy of the resume of any coalition or contractual staff to be supported by funds from this grant and/or a statement of requirements for staff or consultants to be hired under this grant; and

(g) A budget narrative which clearly describes the planned expenditure of funds under this grant.

7. Required Documentation and Assurances (included in the application as an appendix).

(a) The applicant coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the coalition:

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (section 311(b)(4)(A), 42 U.S.C. 10410(b)(4)(A)); and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (section 311(b)(4)(B), 42 U.S.C. 10410(b)(4)(B)).

(b) The applicant coalition must provide a signed statement that the coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State or local legislative body, or State proposals by initiative petition, except that the representatives of the State Domestic Violence Coalition may testify or make other appropriate communications:

(i) when formally requested to do so by a legislative body, a committee, or a member of such organization (section 311(d)(1), 42 U.S.C. 10410(d)(1)); or

(ii) in connection with legislation or appropriations directly affecting the activities of the State domestic violence coalition or any member of the coalition (section 311(d)(2), 42 U.S.C. 10410(d)(2)).

(c) The applicant coalition must provide a signed statement that the State domestic violence coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion, in accordance with Section 307 of the Act, 42 U.S.C. 10406.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (the Act), Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting of record-keeping requirement inherent in a proposed or final rule, or program announcement. This program announcement contains information collection requirements in sections (F) and (G) of Part II which require that certain information must be provided in annual reports, fiscal reports, and as part of a grantee's application. We estimate that all of the information requirements for this program will take each grantee approximately 6 hours to complete. As there are 57 projected grantees, the total number of hours annually will be 342.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 308), Washington, DC 20503, Attention: Desk Officer for the Administration for Children and Families.

In accordance with the Act, the application requirements contained in this notice have been approved by OMB under control number 0970–0062.

I. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

J. Certifications

Applicants must comply with the required certifications found at Attachments A, B, C, and D as follows:

1. *The Anti-Lobbying Certification and Disclosure Form* must be signed and submitted with the application. If applicable, a Standard Form LLL, which discloses lobbying payments must be signed and submitted.

2. *Certification Regarding Debarment:* The signature on the application by a coalition official responsible for the administration of the program attests to the applicant's intent to comply with the Debarment Certification. The Debarment Certification does not have to be returned with the application.

3. *Certification Regarding Environmental Tobacco Smoke:* The signature on the application by a coalition official certifies that the applicant will comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any standards which contain provisions for children's Services and that all grantees shall certify accordingly.

4. *Certification Regarding Drug-Free Workplace Requirements:* The signature on the application by a coalition official attests to the applicant's intent to comply with the Drug-Free Workplace requirements.

(Catalog of Federal Domestic Assistance Number 93.591,Family Violence Prevention and Services: Grants to State Domestic Violence Coalitions)

Dated: November 26, 2001.

Robert Mott,

Deputy Director, Office of Community Services.

List of Attachments

Attachment A—Certification Regarding Lobbying
Attachment B—Certification Regarding Debarment
Attachment C—Certification Regarding Environmental Tobacco Smoke
Attachment D—Certification Regarding Drug-Free Workplace

Attachment A

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

INSTRUCTIONS FOR COMPLETION OF SF–LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment B

Administration for Children and Families

U.S. Department of Health and Human Services

Certification Regarding Debarment, Suspension and other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency

may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment C

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and

submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment D

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the Attachment D workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the

Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant: Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 01–29834 Filed 12–3–01; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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/plawcurr.html*.

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/nara005.html*. Some laws may not yet be available.

H.R. 768/P.L. 107–72

Need-Based Educational Aid Act of 2001 (Nov. 20, 2001; 115 Stat. 648)

H.R. 2620/P.L. 107–73

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Nov. 26, 2001; 115 Stat. 651)

H.R. 1042/P.L. 107–74

To prevent the elimination of certain reports. (Nov. 28, 2001; 115 Stat. 701)

H.R. 1552/P.L. 107–75

Internet Tax Nondiscrimination Act (Nov. 28, 2001; 115 Stat. 703)

H.R. 2330/P.L. 107–76

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Nov. 28, 2001; 115 Stat. 704)

H.R. 2500/P.L. 107–77

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Nov. 28, 2001; 115 Stat. 748)

H.R. 2924/P.L. 107–78

To provide authority to the Federal Power Marketing Administration to reduce vandalism and destruction of property, and for other purposes. (Nov. 28, 2001; 115 Stat. 808)

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